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**HEARING ONE**  
**COMMISSION ON SAFETY AND ABUSE**  
**IN AMERICA'S PRISONS**

**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 I

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1 **COMMISSION MEMBERS:**  
2 The Hon. John J. Gibbons  
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1                   The following proceedings were had and taken:  
2                   MR. KATZENBACH: Good morning. First of all, let  
3 me say how very pleased we are to be in the State of  
4 Florida and the Tampa Bay Area. The Commission has  
5 been warmly welcomed by state and local officials,  
6 community organizations, networks of concerned  
7 citizens, the media, and by all of you, indeed  
8 everybody, and that's very encouraging. It's  
9 encouraging because the problems we have to explore or

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10 are here to explore - dangerous and even deadly  
11 conditions in correctional facilities - are not someone  
12 else's problems, they're our problems. They're  
13 Florida's problems, they're New Jersey's, New York's,  
14 California's, every state. They're the nation's  
15 problems. When a prison environment becomes dangerous  
16 or abusive, everyone in society suffers: There are  
17 those who are incarcerated, the men and women who work  
18 there, their families, their neighborhoods, the towns,  
19 the cities that prisoners and officers return to,  
20 whether at the end of a sentence or at the end of a  
21 shift.

22 There are serious problems in at least some of our  
23 prisons and jails, but right now our knowledge about  
24 those problems is based on impressions, anecdotes, and  
25 the relatively few high profile incidents and court

5

1 cases that make the news. These individual stories are  
2 important -- and you'll hear moving personal accounts  
3 of violence and abuse later this morning -- but stories  
4 in isolation cannot tell us whether such problems are  
5 widespread, are highly prevalent in any single place or  
6 nationwide. Over the coming year, the Commission will  
7 continue to bring individual stories to light. We will  
8 also work to build on those anecdotes, gathering  
9 whatever evidence we can find and, I expect, make a  
10 strong case for better recordkeeping and  
11 transparency as a part in solving the problems. And we  
12 aim to work closely with corrections professionals

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every step of the way.

14 We have to remember that the majority, the great  
15 majority of corrections officers and administrators are  
16 dedicated, well intentioned, well-trained professionals  
17 whose performance -- often under extremely different  
18 circumstances -- usually equals their high intentions.  
19 But the admirable performance of the many obviously  
20 cannot be an excuse for ignoring the troubling or, in  
21 some cases, criminal actions of the minority of  
22 officers and administrators. We don't know the size of  
23 that minority. We don't know which problems are most  
24 common, where they are likely to occur, why and when.  
25 We don't know why well meaning individuals sometimes do

6

1 awful things or fail utterly to uphold their duty. In  
2 short, we -- and when I say "we," I mean all of us, the  
3 American public -- don't know enough about what happens  
4 behind bars to the estimated 13 and a half million  
5 people who are detained annually in the United States.  
6 Nor do we know enough about the pressures on the  
7 750,000 Americans who spend their days and nights  
8 working in our nation's prisons and jails and the  
9 dangers they face through inmates every day.

10 I've said the Commission will work with  
11 corrections and professionals at all levels, and  
12 we already have some enthusiastic partners. Three of  
13 them were so convinced of the merits of this inquiry  
14 that they joined the Commission. We have Gary Maynard,  
15 a 34-year correction veteran, now Director of  
16 Corrections in Iowa, and President-Elect of the

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17 American Correctional Association; Timothy Ryan, Chief  
18 of Corrections in Orange County, Florida, not far from  
19 here, and a Past President of the American Jail  
20 Association; and we have Mark Luttrell, Sheriff of  
21 Shelby County, Tennessee, and formerly a warden at  
22 three federal prisons.

23 Other experienced corrections professionals are  
24 with us in Tampa as witnesses, and they'll testify  
25 later today and tomorrow. One of them is

7

1 Ron McAndrew, former warden of a maximum security  
2 prison in Florida. You'll hear Ron describe some  
3 frightening, violent encounters and also patterns of  
4 degradation and physical abuse -- what he calls the  
5 "valleys" of his career and profession. But you'll  
6 also hear him define the "peaks" of that same  
7 career -- friendships, loyalty, honor -- and you'll  
8 hear him recommend the corrections profession -- and  
9 let me quote him here -- "to anyone of any employable  
10 age seeking a challenging and rewarding career path."

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

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to the men and women employed there as well as to those  
21 who are incarcerated.

22 John --

23 MR. GIBBONS: Good morning.

24 I have to agree with my co-chair that it's a  
25 pleasure to be here today in Tampa, Florida, for the

8

1 first meeting of the Commission on Safety and Abuse in  
2 American prisons.

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

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

14 To single out just a few, they range from Iowa  
15 Corrections Commissioner Gary Maynard, whom Nick  
16 mentioned earlier, to Stephen Bright, a well known and  
17 admired advocate for the rights of prisoners, to the  
18 Honorable William Sessions, former director of the  
19 Federal Bureau of Investigation and former United  
20 States District Judge, to Saul Green, a former United  
21 States Attorney. They include also Ray Krone, who  
22 brings the perspective of an inmate who spent more than  
23 a decade in prison, a good part of it on death row,

24 before being exonerated, to Pat Nolan, who heads the  
25 Justice Fellowship, the policy arm of Prison Fellowship

9

1 Ministries and to California Senate Majority Leader  
2 Gloria Romero, whom I hope will be able to bring the  
3 work of the Commission directly to bear on her ongoing  
4 efforts to reform the enormous California corrections  
5 system.

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

21 The commission is the beneficiary of extensive  
22 volunteer behind-the-scenes support. It is funded  
23 partially by private foundations, but we could not hope  
24 to complete our work without significant support of  
25 several major law firms that are generously providing

1 pro bono legal assistance and even donating office  
2 space for our headquarters in Washington, D. C.  
3 Approximately a dozen law firms -- and indeed the list  
4 keeps growing -- are working alongside the Commission's  
5 staff -- and in some cases collaborating across  
6 firms -- to gather information, to identify witnesses,  
7 and to help us understand the breadth of the issues  
8 raised by our inquiry. Even the service of recording  
9 and transcribing this first hearing have been donated.  
10 And we have universities that have offered to host  
11 subsequent hearings and federal lawmakers who are eager  
12 for our findings.

13 Now, why are we invested in this inquiry?

14 Well, in my lifetime, the prison and jail  
15 population in this country has mushroomed to a size  
16 beyond my wildest imaginings, and most of that growth  
17 has occurred over the last decade.

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

22 Much of today's testimony will paint a picture of  
23 life in prison that doesn't fit with the core values  
24 of our democratic society and that, therefore, should  
25 trouble all Americans. Given the enormous number of

1 people incarcerated, we need to understand whether such

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3 problems and abuses are isolated or are widespread.  
4 It's clearly time for the study that's been  
5 undertaken by this commission.

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

23 Colonel Parrish --  
24 COLONEL PARRISH: Good morning, Commissioners.  
25 (Several Commissioners respond with "good  
morning.")

12

1 COLONEL PARRISH: On behalf of Sheriff David Gee  
2 and the 3,304 employees with the Hillsborough County  
3 Sheriff's Office, welcome to Tampa. I really  
4 appreciate this opportunity to talk to you about the  
5 public's perception regarding the operation of

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6 America's jails and prisons.

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

24 I really intend to provide you with factual  
25 information in support of my comments. It's based on

13

1 experienced gained in building and operating over 1.5  
2 million square feet of jail space.

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

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

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

14

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

10 I want to talk to you about the Hillsborough  
11 County Sheriff's Office jail system and share with you  
12 how we've addressed issues locally. In Hillsborough

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13 County, the problems that the Commission on Safety and  
14 Abuse in America's Prisons was created to study and  
15 have been addressed systemically through three  
16 initiatives, and they are: Direct inmate supervision,  
17 professional staff development, and compliance with  
18 accreditation standards. Let me take each one of them  
19 individually.

20 First of all, direct inmate supervision. In most  
21 traditional jails inmates control about 90 percent of  
22 the building, all the housing area. And the staff  
23 controls the hallways and the control rooms, ten  
24 percent of the building. Officers spend the majority  
25 of their time responding to problems and assaults after

15

1 the facts. About 20 years ago the Sheriff's Office  
2 explored direct supervision as a solution to the  
3 age-old problem of being reactive, we wanted to be  
4 proactive. In committing to this concept, we were able  
5 to design a facility where we run the whole jail not  
6 just the hallways and control rooms.

7 Inmate housing areas were separated into 94 units  
8 or pods of 64 beds each supervised full time by a  
9 detention deputy. Now, let me make it very clear,  
10 direct supervision does not mean supervising through  
11 the glass or the bars. Direct supervision is where  
12 the officer is face to face with those inmates. I  
13 equate it to the teacher in the classroom, no bars or  
14 glass between them. The podular-shaped units greatly  
15 improved sight lines, thereby making it more difficult

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17 for inmates to commit infractions without being  
18 detected. The direct interaction between staff and  
19 inmates dramatically reduces vandalism, assaults, and  
20 suicides. The deputies' constant physical presence  
21 assures the inmates that he or she is in charge, not  
22 unlike the teacher in the classroom.

23 Now, 90 percent of our jail system's capacity is  
24 general population, pods or dormitories. Ten percent  
25 is confinement housing for inmates who are noncompliant  
or fit into one of several special management

16

1 categories such as protective custody, administrative  
2 confinement or psychiatric observation. And basically,  
3 that ten percent provides the leverage that makes  
4 direct supervision work throughout the rest of the  
5 system.

6 A proper classification system is essential to  
7 ensure that all relevant data is collected and  
8 evaluated prior to making housing and program  
9 decisions. The Hillsborough County Sheriff's Office is  
10 one of three agencies nationwide to help the National  
11 Institute of Corrections develop the objective  
12 classification system back in the 1980s. It's being  
13 used all the over the country today. The objective  
14 classification system is finally based -- primarily  
15 based on behavior, not necessarily charge. The  
16 facility will make sure you stay there. Then if you  
17 behave, you can go into direct supervision. It doesn't  
18 mean just because you're charged with a serious crime  
19 you have to be placed in lockdown. The direct

20 supervision is recognized by progressive jail  
21 administrators as the most practical way to build and  
22 operate a detention facility. Direct supervision jails  
23 are more staff efficient and cost effective and they're  
24 safer than traditional jails.

25 The second topic is professional staff

17

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

11 Just as other professions have certification and  
12 licensing programs that recognize continuing education  
13 or advanced standing, correction professionals now have  
14 similar programs. I mean, the American Jail  
15 Association has a certified jail manager program and  
16 will soon offer a certified jail officer's status.  
17 The American Correctional Association offers  
18 several levels of proventiling from certified  
19 correctional officer through certified correctional  
20 executive. In each case, extensive application  
21 documents must be completed to demonstrate the  
22 candidates having professional and educational

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background and leadership experience where applicable  
24 to sit for the certification examination. And  
25 certification is valid for a period of four years,

18

1 after which time recertification is contingent upon  
2 proof of extensive continuing education. Today there  
3 are 300 certified jail managers in the United States.  
4 I sat on the commission that helped create that  
5 for the American Jail Association.

6 Then we have compliance with accreditation  
7 standards. Hillsborough County Sheriff's Office  
8 recognized the benefits of accreditation in the early  
9 1980s, as well as the need to make changes within the  
10 agency consistent with the philosophy of accreditation.  
11 It's really a process not an event.

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

21 I'm going to read to you something that comes  
22 directly from ACA as to the purpose, but overly  
23 simplified. I just want to tell you that accreditation  
24 is valuable because it makes you prove that you do what  
25 you say you do. You can have all the SOPs in the

1 world, but you actually have to follow them and you  
2 have to have somebody independent to come in and tell  
3 you that it's being done properly. The accreditation  
4 program offers agencies the opportunity to measure  
5 their operations against national standards,  
6 correct deficiencies, and improve the quality of  
7 commercial programs and services.

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

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

1 led to more progressive ideas and jail design and

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

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

16 Let me wrap up with a few comments. Direct  
17 supervision facilities are less costly to construct and  
18 operate than traditional jails. They provide superior  
19 security and control since inmate movement outside the  
20 unit is limited. They allow staff to manage the entire  
21 facility not just the control rooms and catwalks;  
22 thereby providing a safe environment for staff and  
23 inmates. Something a lot of people forget is the  
24 people who are really locked up for life are the  
25 deputies, they're there for 10, 20, 30 years. Our

21

1 average length of stay is 24 days to keep them in jail,  
2 anyway. You need to have a safe environment for the  
3 staff.

4 A side benefit of accreditation is that

5 physical plant standards have been universally adopted  
6 by architects in correctional facility planning. Even  
7 newly constructed facilities not accredited are built  
8 to current ACA standards. It's unlikely that an  
9 architect today would put his or her name on a project  
10 that did not meet the minimum standards due to a  
11 liability involved.

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

21 Specialized training in the nine principles of  
22 direct supervision is, in fact, the critical element  
23 required to run an effective, safe, and secure  
24 correctional facility. Jail operations have a history  
25 of being off limits to outsiders. Such is not the case

22

1 with accredited facilities, and certainly not here in  
2 Hillsborough County. Compliance with accreditation  
3 standards is a measure of how jails do business. It  
4 does not make them perfect, but an accredited jail is  
5 an example of a professionally run operation with an  
6 interest of some security, life safety, and sanitation.

7 The Hillsborough County Sheriff's Office  
8 encourages jail tours and is open to the media and the

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9 public for a firsthand examination. Last year we  
10 hosted 326 tours with 4,063 participants. I've always  
11 said that if I could get all 1,100,000 people who live  
12 in Hillsborough County to come through for a tour of  
13 our jail system most of my problems would go away  
14 because then they'd understand.

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

23 I've provided some backup material for you which  
24 I'm sure Alex will get to you. One, for those of you  
25 who took the tour, it's already here, a little brochure

23

1 about our jail system. An article, not just because I  
2 wrote it, but it's Cost Effective Jail Design and  
3 Operation, and it's the right way to build and  
4 operate a jail for the puritan corrections today. And  
5 then The National Institute of Corrections provides  
6 some outstanding resources. This one called Jail  
7 Resource Issues, What Every Funding Authority Needs to  
8 Know. You can read it in 15 minutes and it puts  
9 everything in perspective. There's a companion piece,  
10 there's video that's 22 minutes long, "Beyond the Myth,  
11 the Jail in Your Community." I encourage you to take

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the time to examine it.

13 I thank you for taking time from your busy  
14 personal and professional lives to address an issue  
15 that is not of much concern to the general public. It  
16 should be, but few people become involved until  
17 incarceration affects them personally. Your interest  
18 and dedication to improving standards in America's  
19 prisons and jails is commendable. And I thank you for  
20 this opportunity.

21 MR. KATZENBACH: Thank you very much. It's most  
22 interesting and a very good beginning.

23 COLONEL PARRISH: Thank you, sir.

\*\*BREAK\*\*

#### ACCOUNTS OF LIFE IN PRISON

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

2 Mr. Cunningham --

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

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

8 Thank you.

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

11 On behalf of the Commission on Safety and Abuse in  
12 America's Prisons, I want to welcome each one of you to  
13 the first of four hearings in Tampa, Florida. Before I  
14 introduce each of you, I want to thank you for your  
15 willingness to come before the Commission to discuss

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16 your very personal and moving experiences to come  
17 before this Commission with your experience in jails  
18 and prisons and public.

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

25

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

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

17 MR. CUNNINGHAM: Good morning, ladies and  
18 gentlemen.

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MR. SESSIONS: Your mike is not on.

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.

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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

23 happened all the time. He advised me to stay away from  
24 Chaney.

25 The prison psychologist's advice did nothing to

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1 prevent the continuing sexual harassment, so a month  
2 later I decided to go to the prison's administration  
3 for help. I approached the assistant warden and his  
4 second-in-command officer and told them about Chaney's  
5 sexual comments and sexual touching during pat  
6 searches. They told me that I was exaggerating and  
7 that Chaney was just doing his job.

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

12 Officer Chaney eventually raped me in September of  
13 2000. On that day, I had just finished my job at the  
14 prison's laundry and began walking to the back room in  
15 order to take a shower. Suddenly, Chaney shoved me,  
16 knocking me off balance. I screamed and struggled to  
17 get him off me, but he was too big. Officer Chaney  
18 weighed about 300 pounds. I'm 5 feet 6 inches  
19 tall and weigh about 145 pounds.

20 While I struggled, Chaney handcuffed both my  
21 hands. He then pulled down my boxers and forcefully  
22 penetrated me. When I screamed from terrible pain,  
23 Chaney told me to shut up. I tried to get away, but I  
24 could barely move under his weight. After it was  
25 over, I was dazed. He took me to the showers in

1 handcuffs, turned on the water and put me under it. I  
2 was crying under the shower and I saw blood running  
3 down my legs.

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

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

25 I wrote the Internal Affairs Department two times

1 Transcript of first hearing - FULL.TXT  
2 about Chaney's inappropriate touching. They never  
3 addressed my concerns and failed to take the  
4 precautions to protect me. I was too scared to file a  
5 written complaint against Chaney because I feared  
6 retaliation from prison officials. Instead, I  
7 requested a private meeting with an Internal Affairs  
8 investigator. I received no response to my request and  
9 Chaney was never punished for assaulting me.

10 Officer Chaney went on to sexually harass and  
11 assault other prisoners. One year later, Nathan Essary  
12 began working under Chaney's supervision in the same  
13 laundry where I had previously been assigned. On  
14 several occasions, Nathan was forced to perform sex  
15 acts on Chaney. Fortunately for Nathan, he was able to  
16 collect Chaney's semen during two of the attacks and  
17 DNA testing positively linked the samples to Chaney.  
18 Chaney finally resigned from the Luther Unit in January  
19 2002 when he was indicted for his crimes against  
20 Nathan Essary. Last month, he pleaded guilty to sexual  
21 contact with an incarcerated person. He will serve  
22 no time in prison.

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

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1 constitutional rights.

2 For me, I have found no justice. While I was in  
3 prison, the fear of retaliation by staff or other  
4 prisoners haunted me and prevented me from reporting

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5 the rape right away. My fear led me to attempt suicide  
6 just to escape the pain of my situation. Because my  
7 previous complaints to prison officials resulted in  
8 sharp rebukes, and the prison psychologist's assistance  
9 was limited, I felt hopeless. I believe that openly  
10 pursuing my charges against Chaney would have led to  
11 retaliation from staff. They could write disciplinary  
12 cases to keep in one prison for years beyond my  
13 expected release date. They could ship me to a rougher  
14 unit where I'd be guaranteed to face additional abuse.

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

25 Many men and women in Texas experience sexual

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1 abuse at the hands of officers and other prisoners but  
2 their pleas for help go unanswered by administrators  
3 and staff. It seems that officials take action to  
4 protect the prisoner only when the victim has physical  
5 evidence, such as a semen sample. Individuals without  
6 this kind of proof are left to fend for themselves.  
7 Prisoners who file a complaint encounter a complicated

8 grievance system that few prisoners can navigate, but  
9 you are shut out of the court forever if you cannot  
10 figure out how to get your grievance properly answered  
11 and filed within a few days of the rape. Furthermore,  
12 victims of rape are usually too upset to figure  
13 out what they have to do to file a lawsuit; they're  
14 thinking about lawsuits, they're thinking about how to  
15 get protection, since prison officials do not want to  
16 listen to them. These factors result in very low rates  
17 of reporting among prisoners, which lead to the  
18 inaccurate perception among prison administrators that  
19 there is very little rape in prisons.

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

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

10 Now that I'm out of prison, I have not forgotten  
11 the people still behind bars. I speak out about my

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12 experience at the Luther Unit whenever I have an  
13 opportunity and I have my own organization to help  
14 prisoners. With the postage stamps that prisoners send  
15 to me, I provide up-to-date and accurate resource  
16 information to prisoners throughout the entire country  
17 who are looking for legal help, books, pen pals and  
18 aftercare services. The people I correspond with are  
19 always so grateful for the assistance because no one  
20 ever seems to be providing it.

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

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1 violence behind bars and preventing additional abuse.

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

4 MR. DUDLEY: Thank you, Mr. Cunningham.

5 What we're going to do formatwise is ask one or  
6 two follow-up questions before we go into the next  
7 witness, and then after we've completed all four  
8 witnesses, open up for all of the commissioners to ask  
9 questions of any of the four of you.

10 So for you, you've talked a lot about the -- how  
11 hard it is for the victims of such experiences of abuse  
12 to come forward. What about all the other people in  
13 the prison who must have seen or at least know about  
14 what happened to you and others, what's your experience

15 Transcript of first hearing - FULL.TXT  
with regard to their speaking up on behalf of those  
16 that have been victimized?

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

22 MR. DUDLEY: One more quick question before we  
23 move forward. The impact -- as we know, most people  
24 actually get out of jails and prisons, and what is the  
25 impact of this sort of experience either based on your

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1 own experience or based on those others that you've  
2 come to know and work with? How does it affect people  
3 in their ability to function once they're out?

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

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

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

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19 Ms. Haney --  
20 MS. HANEY: Thank you.  
21 Good morning. Can you hear me?  
22 MR. SESSIONS: Barely.  
23 MS. HANEY: Can you hear me now?  
24 MR. SESSIONS: Yes.  
25 MS. HANEY: How's this? There you go, right

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1 angle.  
2 Okay. Good morning. I'd like to thank the  
3 Commission for inviting me to speak today regarding  
4 my personal experience of being strip searched in  
5 Miami-Dade County.  
6 I'm the lead plaintiff in a federal class action  
7 suite filed against Miami-Dade County in March 2004 for  
8 the unconstitutional and unlawful practice of strip  
9 searching and visually inspecting body cavities of  
10 women arrested for non-violent, non-drug or  
11 weapons-related misdemeanors in Miami-Dade County  
12 Detention Facilities.  
13 I'm here today to speak to you about the details  
14 of my strip search, what it felt like, why I filed a  
15 class action suit, and what we discovered about  
16 Miami-Dade's practice of strip searching women prior to  
17 first arraignment.  
18 What I hope the Commission will understand at the  
19 end of my testimony is that type of strip search that I  
20 and thousands of women experienced was about  
21 humiliation and control, not about safety, just as rape

22 Transcript of first hearing - FULL.TXT  
23 is about violence and not about sex. I also hope that  
24 the Commission will understand that the people most  
25 likely to be subjected to this unconstitutional and  
unlawful abuse are very rarely privileged to seek a

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1 remedy. Finally, this practice is not limited to a  
2 county in South Florida but it happens across the  
3 country.

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

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

20 The hallway was not that long, with doors on  
21 either end and several doors that appeared to open into  
22 small rooms. There were three female corrections  
23 officers in the hallway with us. They opened one door  
24 and removed a woman from that room and moved her to a  
25 room farthest from us. The guard then took the first

1 woman from my group and put her into that room. I  
2 heard the guard tell her to take off her clothes.  
3 Hearing that startled and surprised me. We had not  
4 done anything that involved drugs or weapons; we were  
5 behaving peacefully and had been compliant with the  
6 requests of the corrections officers during the booking  
7 process. There had been no indication during our  
8 arrest and subsequent frisking and processing that the  
9 police or corrections officers considered us a threat  
10 in any way.

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

17 What happened next happened very quickly, but in  
18 my mind I had a lot to consider. I knew that the  
19 likelihood was close to zero that if I responded, "Yes,  
20 I am refusing -- this is an unreasonable search and is  
21 unconstitutional," that the guard would say, "Oh, all  
22 right, we won't do it then." I did know from the  
23 experience of individuals that have been in similar  
24 situations and had refused to be strip searched that  
25 the price of refusal could be high.

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1           A friend of mine in a similar situation in  
2 San Francisco refused to be strip searched, and she  
3 told me that the authorities responded by putting her  
4 in what I understand to be called a "cold room." Her  
5 clothes were removed without her cooperation, and she  
6 was put naked into a bare room with a hole for a toilet  
7 and nothing to cover her except what she described as a  
8 small dirty mat that looked something like a catcher's  
9 vest. The lights were bright, and there was a window  
10 looking into the room so that anyone passing by could  
11 see her sitting there naked. It had a metal door and  
12 someone came by I think every 15 minutes and banged on  
13 it; their story was that she was behaving strangely and  
14 needed to be put into the room for her "safety."

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

25           When it came my turn to be strip searched, the

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1           guard led me into the same small room the others had  
2 been in; it was approximately six by eight, maybe  
3 smaller, and had a bench along one wall. The guard

4 Transcript of first hearing - FULL.TXT  
5 stood in the doorway and ordered me to stand facing  
6 her and to remove my clothing piece by piece. As I did  
7 so, I handed a piece of clothing to her; she told me to  
8 put it on the bench. I started to fold my  
9 clothing and put it on the bench. She told me no, just  
10 drop it. I proceeded to remove each piece of clothing  
11 and drop each piece on the bench. While I was removing  
12 my clothes, the guard continued to stand at the door  
13 and watched as another guard stood behind her in the  
14 hallway; also watching me.

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

21 After I removed all my clothes, the guard told me  
22 to turn around, bend all the way over, and spread my  
23 cheeks. Bending over and "spreading my cheeks" exposed  
24 my genitalia and my anus to a complete stranger, who  
25 had physical authority over me, so that she could  
visually inspect me. The only way I could cope with

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1 this was to stay very focused in my head and to just  
2 separate from my body. The feeling was sort of like  
3 floating and sort of like being a big lump.

4 The guard's next set of instructions were to  
5 squat and then to hop like a bunny. Remember, I'm  
6 still "spreading my cheeks," so I can't use arms to  
7 balance or assist me in the hopping process.

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8 Hopping-like-a-bunny was physically very difficult for  
9 me because I've had bad knees for over 30 years. I  
10 didn't do it to the guard's liking, so I had to do it  
11 over several times, even though I explained to her that  
12 I was physically unable to do it. When that process  
13 was complete, the guard told me to turn around and to  
14 remove my navel piercing. I explained that it was  
15 unlikely that I would be able to remove it since it was  
16 not made to be removed. She told me to remove it or  
17 she would "cut it out." I tried to remove it, but I  
18 couldn't. The guard then left and returned with  
19 very large clippers and cut it out of me. She then  
20 told me to put my clothes back on.

21 I stood, bent over, and hopped naked under orders  
22 and in view of at least two guards in a small room with  
23 a door open to a hallway that passersby could see in  
24 for about ten to 15 minutes. My genitalia and anus  
25 were exposed and viewable to anyone passing

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1 through the hallway for over five minutes. I would ask  
2 the Commissioners to take a moment and imagine what  
3 that feels like.

4 After getting out of jail on bond about 36 hours  
5 later, I spoke with the men who were arrested at the  
6 same time and inquired if they had been strip searched;  
7 they had not. This is when I started to believe that I  
8 would consider legal action against the county. To  
9 perform an unreasonable strip search which in effect is  
10 visual rape is outrageous enough, but to do it to women

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11 only and not to men arrested for the same minor  
12 non-violent charge revealed the practice was doubly  
13 unjust.

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

24 After filing the complaint, my attorneys  
25 discovered that indeed women arrested for minor

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1 offenses, which were not drug or weapons related, were  
2 routinely strip searched prior to the first arraignment  
3 and that men were not subject to the same procedure.  
4 Additionally, they discovered that the practice had  
5 been going on for seven years despite being in  
6 violation of state and federal law. Miami-Dade's  
7 reason was that, due to overcrowding, they were housing  
8 pre-arraignment arrestees with the general population,  
9 and they were concerned about contraband. However,  
10 Miami-Dade did no study prior to instituting the policy  
11 that would indicate that strip searching  
12 pre-arraignment misdemeanants would reduce contraband  
13 in the jail.

14 During the process of the suit, we identified a

15 potential class size of ten-to-twenty-thousand women  
16 who were subjected to these dehumanizing searches over  
17 a four-year time period. Yet we know that the practice  
18 lasted seven years. That means it is likely that over  
19 20,000 women were subjected to these searches in one  
20 county. These women may be elderly, physically or  
21 mentally disabled, menstruating, or pregnant while  
22 they were forced to expose themselves and hop around.

23 The other thing that my attorneys discovered that  
24 I think is important for the Commission to know, is  
25 that prior to filing the complaint no one new about

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1 this practice. My attorneys, the Florida Justice  
2 Institute, a firm that deals specifically with  
3 prisoners' rights, had not known about it, the Public  
4 Defenders in Miami-Dade didn't know about it. If we  
5 hadn't filed the lawsuit, these unlawful strip searches  
6 would most likely be continuing today.

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

15 Thank you.

16 MR. DUDLEY: Thank you, Ms. Haney.

17 I'm struck by your comment that no one seemed to

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

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

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

21 Most people in the corrections system don't have

22 those privileges, and I think that that's a big factor  
23 in whether people stand up and speak out.

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

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

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

19 MR. DUDLEY: Our next witness is  
20 Jeffrey Scott Hornoff. Mr. Hornoff served over six  
21 years of a life sentence in a Rhode Island prison until  
22 he was exonerated. Because he had been a police  
23 detective before his arrest, he served that time in  
24 protective custody. Since his release he has been

1 been a tireless spokesperson against wrongful  
2 convictions. And in addition, a spokesperson against  
3 abusive and degrading conditions of confinement.  
4 However, he remains committed to law enforcement. He  
5 is seeking reinstatement with the Cranston, Rhode  
6 Island Police Department, but believes that the ways in  
7 which we treat those who are incarcerated are wrong and  
8 counter-productive.

9 Mr. Hornoff --

10 MR. HORNOFF: Good morning.

11 MR. SESSIONS: Good morning.

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

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

22 In 1989, I was a newly promoted detective with the  
23 Warwick Rhode Island Police Department. I was also for  
24 a short time a murder suspect by my department during  
25 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 A few years later the state police took over the  
5 investigation. They testified at my trial that they  
6 were only assigned to investigate me, so a single and  
7 focused investigation took place. On June 19th, 1996,  
8 after a six-week trial, I was found guilty of first  
9 degree murder. I was subsequently sentenced to life  
10 in prison, and I was transported to the Intake Service  
11 Center.

12 During this short time of testifying you will not  
13 hear me use the words "criminal justice," "Department  
14 of Correction" or "correctional officers" because I do  
15 not believe that any of those words truly exist and can  
16 be applied properly. I was transported to the Intake  
17 Service Center, which is part of the Rhode Island  
18 prison system.

19 I was strip searched again. My shoelaces, my  
20 belt, my tie were taken from me. I was placed in a  
21 "cold room" similar to what Ms. Haney described.  
22 Fortunately, I was allowed my underwear. But there  
23 were bright lights. I was kept in there for 48 hours.  
24 It was considered observation for my protection.

25 After that time, I was taken to the lieutenant's

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1 office and I was told that because I am a police  
2 officer I was going to be placed in protective custody.  
3 It is a unit which houses police officers, prison

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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.

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

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

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1 to go through the photographs, the legal work, and  
2 whatnot and retrieve it.

3 During the first couple years of incarceration, I  
4 was a mod porter, a custodian, if you will. And part  
5 of my duties was cleaning up after the frequent cell  
6 searches. I understand that cell searches are an

7 important part of maintaining safety and security, but  
8 when the guards go to extreme measures of laughing at  
9 and ridiculing the inmates while they are handcuffed to  
10 the railings outside of their cells in various forms of  
11 dress and undress, and they proceed to throw all of  
12 their personal possessions out into the common room and  
13 mix them together, joking that it would be fun to watch  
14 the inmates scurry like mice to find photographs of  
15 loved ones, important legal documents. It was just  
16 another form of humiliation.

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

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

5 In mentioning "segregation," I would share with  
6 the Commission that above protective custody was where  
7 the segregation unit was housed. Nowhere in the prison  
8 facility is there more abuse and degradation than in  
9 segregation. I could hear the frequent beatings of  
10 inmates above me as they screamed for help, their cries

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11 coming through the air vents as guards would  
12 relentlessly pound on them, and you could hear the  
13 laughter.

14           Approximately two years after I was in prison, I  
15 became a law clerk. This was a step up. Because of my  
16 legal background, they decided to move me into the law  
17 library. As part of my duties, I was to take a law  
18 book cart to segregation. Now I was seeing these  
19 inmates firsthand, and I would see the bruises on their  
20 face. I would see them stripped bare in cells that did  
21 not have a blanket, a pillow, or the water turned on.  
22 And I began to understand why these inmates would  
23 sometimes reach a breaking point in which they would  
24 defecate and urinate in their toilets and then shove  
25 their sheets and pillows into the toilets creating a

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1 mixture that would stop up the system. Then they would  
2 begin to flush their toilets, and this would overflow  
3 and rain down on us in protective custody.

4           Besides the abuse in segregation and the other  
5 humiliations which I witnessed and endured, I also  
6 spoke with the guards; and one of the reasons I will  
7 not refer to them as "correctional officers" was I  
8 constantly asked them if they had a degree in sociology  
9 or psychology or anything that would put them in a  
10 position where they could motivate an inmate, whether  
11 they're innocent or guilty, to break the cycle that  
12 they were in. Some of the inmates would go in and out  
13 of the prison system five or six times, which was

14 Transcript of first hearing - FULL.TXT  
15 rather frustrating for me, being innocent. None of the  
16 guards would admit to any type of degrees. They  
17 actually laughed and scoffed.

18 I could go on and tell you about guards who took  
19 food out of the cafeteria for their summer picnics. I  
20 could go on and tell you about guards who just for the  
21 littlest look from an inmate would find some type of  
22 retaliation. Whether it's coming from Florida,  
23 California, Texas or any of the other areas in which  
24 you're going to have people testifying before you, I  
25 can tell you it's widespread. I can also tell you that  
the prison director in Rhode Island, who I have been

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1 told by one of the Commission members here is actually  
2 looked upon as a bright spot and a model of reform, is  
3 nothing even close.

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

16 We are not interested in rehabilitation. We  
17 haven't been interested in rehabilitation since

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18 President Nixon was in office and used the campaign  
19 platform of "Get tough on time." We need to refocus  
20 our efforts and we need to break the cycle.

21 I'll close by sharing with you something that an  
22 inmate shared with me just prior to my release. I  
23 found out on November 4th of 2002 I was going to be  
24 released, and another inmate was sitting with me in the  
25 day room and he looked at me, and said, "Scott, they're

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1 creating monsters, and I'm one of them; and they're  
2 going to reap what they've sown." We are reaping what  
3 we've sown. I do not want those individuals being  
4 released from prison, treated like animals, to be my  
5 neighbors again.

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

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

18 Thank you.

19 MR. BALCORTA: Before you were incarcerated and  
20 were working as a police detective, did you

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truly -- do you think you truly understood what a  
22 prison sentence meant for the men and women that you  
23 helped to convict?

24 MR. HORNOFF: I decided to become a police officer  
25 when I was 12 years old, and I devoted my life to the

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1 judicial system. When I heard of an individual  
2 receiving ten years or twenty years for a sentence,  
3 usually I would think that that was justified. After  
4 having experienced the judicial system from the many  
5 angles I have -- including jury duty since getting  
6 out -- I wasn't chosen -- I have come to find that  
7 Judges throw out these sentences without a true regard  
8 for how much time ten years truly is. One day of  
9 freedom in reality is like three days in prison.  
10 That's pretty much how slow the clock moves when you  
11 are incarcerated.

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

24 MR. BALCORTA: You know, it's individuals that

25 come before the public and share experiences like

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1 yours. I'm pretty sure that in the past two and a half  
2 years you've learned from a lot of individuals who  
3 share experiences like yours, and even when you were a  
4 police detective you would hear about experiences, I'm  
5 pretty sure. What do you think it's going to take,  
6 besides Commission hearings, for people to start  
7 believing these human beings?

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

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1           MR. BALCORTA: Thank you.

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

15           MR. McANDREW: Wewahitchka.

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

18           Mr. McAndrew --

19           MR. McANDREW: Thank you, sir.

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

22           MR. SESSIONS: Good morning.

23           MR. McANDREW: Before I go further, let me say as  
24 a weathered warden, I am still troubled to hear the  
25 first three witnesses and the accounts that they have

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1           presented to you today. I'm stirred emotionally by  
2 what each person has said.

3 Let me dedicate my written statement today to the  
4 two correctional officers that saved my life at Dade  
5 Correctional Institution back in 1980, Sergeant Robert  
6 Erhenkaufner, now a lieutenant at Tomoka Correctional  
7 Institution, and the late Sergeant George Leone.

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

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

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

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1 this privilege.

2 It's of central importance first to compliment the  
3 many honest, hard working correctional professionals  
4 that do in fact exist in the Florida Department of  
5 Corrections. During 23 years I had the distinct honor  
6 and pleasure to serve with thousands, that including

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7 correctional uniformed staff and senior appointees  
8 that have left in me in a state of veneration. This  
9 honorable group is not the group of whom I shall speak  
10 today.

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

25 I experienced direct involvement in putting down

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1 two major riots in my first year as a correctional  
2 officer, finding a near dead fellow correctional  
3 officer, unconscious and bleeding from razor  
4 slashes over his face and entire body; it was a scary  
5 site. Finding myself being beaten with iron rebar and  
6 steel chairs and personally observing both physical and  
7 mental torture of those under our custody and care, and  
8 it was that that spurred me on toward a goal of better  
9 corrections. I knew it could be done better, and it

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certainly can.

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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.

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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

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14 whole. This comment is based on quotes and actions  
15 that I personally observed during this period. Such  
16 quotes as, "It's us against them;" meaning, of course,  
17 that it's us against those who would fault us; or "they  
18 want it done, they just don't want to know about it."  
19 In other words, upper echelon staff want us to keep  
20 order with brutal force, and that's truly believed by a  
21 number of uniformed staff around this state, that they  
22 don't want to hear about it. In other words, keep it  
23 quiet; or the wearing of partially visible  
24 self-designed insignia implying "goon or special squad  
25 member"; or a group of such members meeting a staff

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1 member suspected of "informing" at his personal vehicle  
2 at quitting time. That's very intimidating to walk  
3 out to your car in a large parking lot where there are  
4 three or 400 cars and there are ten or 12 goons sort  
5 of surrounding your car. They don't say a word to you,  
6 they just look at you real hard like. You better be  
7 getting the message, bubba. Telephone threats, as I  
8 mentioned; meeting at local watering holes and partying  
9 after an "eventful" shift. That eventful will coincide  
10 with the incidents that I'm going to get into in just a  
11 minute.

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

16 During the opening of Orange Correctional

17 Transcript of first hearing - FULL.TXT  
18 Institution (later to become Central Florida Reception  
19 Center there in Orlando) a goon squad was observed  
20 during this -- I observed a goon squad in its formation  
21 process. And with that -- I was an assistant warden at  
22 that time, and with my warden's full support, tireless  
23 efforts were made to apprehend those responsible for  
24 the beating of prisoners to little avail. They were  
25 just too slick for us. But when the trail did become  
"hot", many of the goon squad leaders transferred to

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1 yet another newly opening prison in Charlotte County.  
2 These very officers were later tried for the murder  
3 of a prisoner at Charlotte Correctional Institution.  
4 Those who pled guilty and turned state's  
5 evidence -- they had not come from Central Florida  
6 Reception Center -- they were found guilty and  
7 sentenced; the others who went to trial were acquitted  
8 by a jury.

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

19 Prior to my departure from Florida State Prison in  
20 1998 to new assignment as the warden of Central Florida

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21 Reception Center, I spoke with my successor,  
22 James V. Crosby, III, indicating that Florida State  
23 Prison was being run by a "goon squad," that beatings  
24 were chronic, that I had the suspects under  
25 investigation and that if something was not done to

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1 stop this activity, it would only be a matter of time  
2 before a prisoner was killed. Crosby was advised that  
3 the investigators on this case had little time at that  
4 point to make any conclusive charges. I advised Crosby  
5 that I wanted to do a "desk audit" before my departure  
6 and would he prefer written or a verbal audit. Crosby  
7 rejected the idea of an audit indicating that he knew  
8 FSP (Florida State Prison), and that he had grown up in  
9 that area and knew the staff from childhood. The  
10 threat of a possible killing was repeated, I repeated  
11 it, mentioning that if something weren't done in terms  
12 of getting the suspects under control and out of  
13 corrections entirely, Florida State Prison and the  
14 Department of Corrections would suffer.

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

20 Crosby had once previously attempted to pressure  
21 me into promoting the correctional officer lieutenant  
22 to correctional officer captain, but I had refused to  
23 do this for obvious reasons. Crosby stated I should

24 Transcript of first hearing - FULL.TXT  
just put these names on a "piece of paper and place it  
25 in the warden's desk." And following Crosby's arrival

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1 at Florida State Prison in March of 1998 the following  
2 actions evolved:

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

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

17 The correctional officer was promoted to sergeant.  
18 After I personally forced Crosby's hand by demanding an  
19 investigation our Central Office in 2000 -- through our  
20 Central Office 2000, this correctional officer sergeant  
21 was demoted to correctional officer for yet another  
22 crime against my person and that of my wife Lynne.  
23 Several months later this demoted correctional officer  
24 was promoted to sergeant again. In the past month,  
25 some 30 days ago, this same correctional officer has

1           been arrested and jailed on federal drug charges and is  
2           awaiting trial. Remember, this is the correctional  
3           officer who bashed the inmate in the back of the head  
4           with a gloved fist.

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

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

15          Minority staff that I had promoted or assigned to  
16          key Florida State Prison positions was moved. Note  
17          that I promoted the first Afro-American lieutenant in  
18          the history of Florida State Prison. I'm not  
19          talking -- we're not in the year 1800, this is 1996,  
20          '97, '98. The first Afro-American lieutenant in  
21          the history of Florida State Prison who was assigned to  
22          and allowed to supervise shift work at the main unit.  
23          I was blatantly informed when I was about to make this  
24          appointment that a black man had never worn a white  
25          shirt past Times Square. Times Square is a famous area

1           at Florida State Prison. It's where you start making  
2           inmate contact. You've gone through about five or six

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3 very intimidating cell doors that make that hard  
4 clinging sound behind you, and then you're at an area  
5 where you can actually get to the cells of inmates. I  
6 hired and promoted the first female assistant warden  
7 also in the history of Florida State Prison assigning  
8 her over operations at the main unit of Florida State  
9 Prison.

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

23 Racism certainly does exist in the Florida prison  
24 system. The horrible "N" word was used without caution  
25 until around 1990. Thereafter the word was used

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1 without caution in the so-called "protected areas" of  
2 Florida State Prison and numerous other places where  
3 they felt protected. After sending the following  
4 e-mail to Governor Jeb Bush on July the 3rd, 2003; the  
5 results were almost instant promotion of a number of

6 Transcript of first hearing - FULL.TXT  
minority staff to senior positions:

7 And I'd like to read that e-mail that I sent to  
8 Governor Bush. "I urge you to have someone from your  
9 legal office question the Department of Corrections,  
10 demanding a detailed list of all DC staff above the  
11 rank of captain. "

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

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

18 MR. McANDREW: Thank you.

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

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

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

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

8 I felt comfortable in sending this to Governor  
9 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  
12 staff in general gloated over the idea that the USA vs.  
13 Florida lawsuit allowed for "male gender only" past the  
14 Times Square (inmate contact) area of the prison. Note  
15 this meant that female correctional officers could not  
16 work in contact with male prisoners at Florida State  
17 Prison and thus were assigned to "behind the scene"  
18 locations such as the control room. I have little  
19 doubt that the gloating mentality of male security  
20 staff alone contributed immensely to the removal of the  
21 female assistant warden from Florida State Prison upon  
22 Crosby's arrival.

23 By the way, her number one assignment when I put  
24 her in that unit is, "You get to work on this brutality  
25 thing." She had worked as a very serious investigator

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1 for Volusia County for a number of years. She was the  
2 past director of Volusia County Female Corrections, and  
3 she was quite an incredible professional and was making  
4 good progress at Florida State Prison in putting down  
5 some of the beatings. I had a little doubt that the  
6 gloating mentality of male security staff alone  
7 contributed to the removal of the female assistant  
8 warden from Florida State Prison upon Crosby's arrival.  
9 This lawsuit did not apply to this female assistant  
10 warden as she was not a uniformed officer nor did it  
11 apply to female nurses and medical employees.

12 I've maintained contact on an almost regular basis

13 Transcript of first hearing - FULL.TXT  
14 with the Department of Corrections staff around the  
15 state. I've observed the leadership these days of the  
16 majority of prisons in Florida at least over the last  
17 five years involves very close Crosby allies from the  
18 Columbia, Union, Bradford Counties... or, that close  
19 Crosby allies have been given key positions in those  
20 prisons which implies that "big brother" is watching.  
21 In some cases for some areas I dare say that panic  
22 exists because of the cloud of fear. "See nothing, say  
23 nothing, know nothing," was recently recounted to me by  
24 a mid-level correctional professional.

25 Medical services in the Florida Department of  
Corrections has improved tremendously over the past 15

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1 years thanks mainly to full support of  
2 Secretary Harry K. Singletary, Jr., Dr. David Thomas,  
3 Dr. Matthews and Dr. Dianne Rehtine, the American  
4 Correctional Association, and without doubt, the  
5 Costello vs. Wainwright lawsuit settlement. There does  
6 still exist very serious problems with access to  
7 medical services because of the "second core"  
8 group -- that I mentioned -- uniformed staff that  
9 challenge offenders' claims of illness. If the  
10 information is correct, there are a number of prisoners  
11 who died, and just recently. And that -- there may  
12 possibly be claims of access denial to medical  
13 services. I'm still trying to confirm all this  
14 information.

15 On unions, the Police Benevolent Association is  
16 presently the union in Florida Department of

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

22 No. 1. Given unlimited access to the entire  
23 prison.

24 No. 2. Given the authority to see all records at  
25 any time.

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1 No. 3. To visit at any time of the day or not  
2 night with any prisoner or staff member in any location  
3 of the prison.

4 No. 4. To privately converse with anyone inside  
5 the prison.

6 No. 5. To temporarily overrule decisions by  
7 uniformed supervisors when suspicious activity is  
8 detected.

9 No. 6. To have access to private telephone  
10 numbers of the warden, ranking staff of the Attorney  
11 General's office, the State Inspector General's office  
12 and the Florida Department of Law Enforcement.

13 No. 7. To require all DC shift staff supervisors  
14 (lieutenants and captains) to notify the legal observer  
15 prior to "suiting up" for a "cell extraction." That  
16 means putting on all this heavy gear that protects  
17 officers when they have to go into a potential volatile  
18 situation. To allow the legal observer the opportunity  
19 to observe the extraction when at all possible.

20 No. 8. To develop rules within Chapter 33 of the  
21 Florida Administrative Code outlining the authority of  
22 this legal observer position.

23 No. 9. To transfer each legal observer on a

24 frequent enough basis to prevent fraternization with  
25 correctional staff. In other words, this would be an

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1 independent body.

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

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

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

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

1 for these folks.

2 God bless this Commission. Thank you.

3 MR. DUDLEY: Thank you, Mr. McAndrew.

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

13 MR. McANDREW: Well, I wish I had a magic answer  
14 for that, but it requires a little bit of a detailed  
15 answer inasmuch as that the -- it's a question of  
16 supply and demand. The demand for correctional  
17 officers in the State Prison System is so dear that  
18 they actually advertise out of state. They advertise  
19 in New York; places where they may advertise in the  
20 wintertime, by the way, in New York. And it draws  
21 people down to Florida for interviews, and some of  
22 these folks wind up working as correctional officers.

23 If you hired -- and I have hired 50 correctional  
24 officers in one single day in the past, and within 90  
25 days I'd be down to five out of the 50. Ten percent.

1 And then after six or seven months, I might only have

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2 one. That's how quickly people come and go from  
3 corrections. It's a little better these days. And I  
4 think it has a lot to do with the accreditation of  
5 prisons in Florida and the fact that the accreditation  
6 process consists -- the training be such that prepares  
7 people better to handle the stress and the demands of a  
8 correctional officer's job. It's a very  
9 difficult -- it's a very difficult job.

10 MR. DUDLEY: Thank you.

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

14 Yes.

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

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

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1 described seem to take place.

2 By the time I would park my truck in the parking  
3 lot in front of the administration building and walk to  
4 the Tower No. 1, and the tower guard had to open the  
5 first two chain link gates for me to get in -- that's

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6 two gates -- and he had to recognize me and that sort  
7 of thing; the next gate I go through lets me into a  
8 control room where there is an officer behind links and  
9 recognizing me and wanting to see my ID card because  
10 it's a requirement that they do that, and asking me if  
11 I have any metal objects or knives or whatever in my  
12 pockets; and then I go through two more gates just to  
13 get past his station, and then there's a long  
14 corridor of about 50 yards to the main control room of  
15 Florida State Prison, and that's the Times Square area.  
16 Well, Times Square is like a big box and it's nothing  
17 but bar stock all the way around and there are doors  
18 that are handled electronically and with keys. And  
19 then the main control room has to let me through that  
20 and then I decide which area of the prison I'm going to  
21 from that particular point. Before -- long before I  
22 get to that main control room, not only does every  
23 staff member in the prison know that I'm there, but  
24 every prisoner knows I'm there. If I dropped on the  
25 building by helicopter and chopped my way through the

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1 roof, it would be faster than getting in there to see  
2 what's going on. So, you know, by the time you pull  
3 up in the parking lot they could mop up a quart of  
4 blood, wash a man's face, put him under the covers  
5 and tell him what's going to happen to him later if he  
6 doesn't just go to sleep and be quiet. That's the  
7 story at Florida State Prison and the real armpit of  
8 abuse as I have seen and known it in the Florida

11 MR. RYAN: Mr. Cunningham -- I'm sorry.

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

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

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

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

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

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13 MR. CUNNINGHAM Yes, sir.  
14 MR. BRIGHT: Over here.  
15 MR. CUNNINGHAM Sorry.  
16 MR. BRIGHT: I notice you said in your statement,  
17 "You're out of court forever unless you can figure out  
18 how to file your grievance there in the prison system "  
19 How many days did you have to file a grievance  
20 after an incident?  
21 MR. CUNNINGHAM You have approximately, I believe  
22 it's seven days, seven to 14 days to file a grievance.  
23 MR. BRIGHT: And I take it you don't have -- in  
24 terms of who's available to you, you don't have any  
25 lawyers available, do you?

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1 MR. CUNNINGHAM No. It's you -- you just  
2 have to do all the paperwork yourself and -- when  
3 you're in that particular type of situation, my  
4 experience, that's nothing that you want to ask another  
5 offender for assistance with; that's something you  
6 really don't want to discuss with anybody. And, you  
7 know, it's something that you have to feel comfortable  
8 discussing with officials, you know, or anybody and  
9 that's why I chose to go to the unit psychologist and  
10 discuss it with him. I felt I could do it in  
11 confidence, you know, without the retaliation from  
12 other offenders and from prison officials.  
13 MR. BRIGHT: And that's the reason not to file  
14 a grievance, you're saying, right?  
15 MR. CUNNINGHAM That's right.

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

19 MR. CUNNINGHAM: Yes, that's correct.

20 DR. GILLIGAN: I had a question for Ron McAndrew.  
21 I was very interested in your detailed summary of  
22 the role of a legal observer and the authorization that  
23 he or she would have to perform the functions. I was  
24 reminded of a similar set of rules that apparently are  
25 in place in western European nations that comes with

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1 Europe, and the Committee for the Prevention of Torture  
2 has set up a similar practice of openness to any prison  
3 they choose to inspect; but they did set up one  
4 requirement, which is that the people doing the  
5 inspections should be nationals of a nation other than  
6 the ones whose prisons they're inspecting as a way of  
7 insulating them from the -- both the personal and  
8 political risks that could be involved there.

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

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

18 Doctor, it's amazing that you -- you -- you asked  
19 that question because I'm very familiar with

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

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1 observer representative.

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

13 The legal representative would come from the  
14 Attorney General's office, hopefully, and the Attorney  
15 General's office is like a foreign country because he's  
16 an elected official. And no matter what the governor  
17 wants to tell Charlie Crist, Charlie Crist, although  
18 he's a good friend of Jeb Bush's, can say, "I don't  
19 agree with that and I'm not going to do it or I'm going  
20 to do it another way." And hopefully, and I believe he  
21 would be continued to be respected as he is by the  
22 governor. But an attorney working out at that

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23 office -- and I visualize this as young attorneys  
24 beginning to build a legal career within government,  
25 perhaps just out of law school, a member of the Florida

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1 Bar and working these areas around the state and being  
2 available and being on call so that -- when I say "suit  
3 up," it's when they put on all this armour and a large  
4 squad goes into a prison exactly as they did the night  
5 Frank Valdes was beaten to death. He would have to be  
6 notified before they suited up. Unless that inmate was  
7 hanging by a sheet and it was a suicide in progress or  
8 something that was truly life threatening, they would  
9 have to pick a cell phone up and call this  
10 representative and say, "We need you now," and that  
11 person would come to that scene and observe as a  
12 representative of the Attorney General's office.

13 Now, when I was a uniformed officer, if I knew a  
14 prison inspector was somewhere in the area or  
15 if -- certainly if an attorney was in the area, and if  
16 he came from another department other than our own, I  
17 was going to be on my best P's and Q's. I was going to  
18 be very courteous and very polite not only to him but  
19 to the inmates. That's just -- it's human nature when  
20 you have an outside source like that looking over  
21 your shoulder, and saying, "You do your work, I'm just  
22 here to observe. I'm not going to tell you how to do  
23 it, you've already been trained. But if you start  
24 kicking this inmate in the head because he made a  
25 reference to a member of your family, I'm going

1 to" -- and that's another thing, are the names that  
2 officers wear on their uniforms. In Florida they have  
3 metal name tags and it has your name on it and it's  
4 very nice, very pretty. I would recommend that all  
5 uniforms in Florida have a patch sewn onto the uniform  
6 like the U.S. Army does because the first thing a  
7 goon squad does when they're up to no good is everybody  
8 removes the name tag and you stick it in your pocket  
9 and that lessens the possibility of identification.  
10 When you've got several thousand prisoners, you know,  
11 "Well he was an officer. Well, yeah, he was a white  
12 male. He was -- oh, you know, he sort of looks like  
13 everybody around here." In other words, he had on a  
14 uniform like everybody else. That name I believe is  
15 very important.

16 MR. HORNOFF: Doctor, may I answer your question  
17 just for a second?

18 In theory, having an agency from another country  
19 investigating abuses or allegations of abuse --

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

22 MR. HORNOFF: Well, in Europe I could see that  
23 possibly working because they cooperate a little bit  
24 better, but do you realistically believe that President  
25 Bush would allow an outside country to come in here and

1 tell us what we're doing wrong?

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2 DR. GILLIGAN: No, not an outside country. I  
3 meant somebody from another state within the U. S.

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

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

17 MR. HORNOFF: If we could get, perhaps, a prisoner  
18 advocate or a legal representative from Connecticut or  
19 another part of the country that would be great.

20 We definitely need a prison commission -- a prison  
21 review commission in every state.

22 SENATOR ROMERO: I'd like to comment that I've  
23 been struck by the testimony. And I'm from  
24 California. If I were to change the names, the faces,  
25 the letters again, too, I get stacks of letters from

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1 inmates and families of inmates writing to me, the  
2 stories are the same nationally; and yet, I think sort  
3 of the weight of this Commission and something that we  
4 must consider as we move forward is that state statutes

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5 vary not only by prisons, by jails, correction  
6 standards, training, it's completely different. And I  
7 think perhaps part of the work of the Commission could  
8 be to take a look nationally at some of these statutes  
9 and laws and access to media, for example, which we'll  
10 talk about a little bit later, which is completely  
11 different depending on where you are in the country;  
12 and yet the story remains the same. That is a major  
13 challenge for us to address, and I hope that as the  
14 Commission moves forward we can take a look at this  
15 nationally as far as moving forward with rehabilitation  
16 and corrections.

17 Ms. Haney, I'd like to comment as well. I  
18 appreciate your testimony. Even something that you  
19 said struck me that -- the question was asked, "Well,  
20 did you know your constitutional rights," and in a  
21 sense those are questions that, yes, we want to ask, we  
22 want to provide, but in a sense it's sort of blaming  
23 the victim mentality as though the inmate is the one  
24 who's supposed to say "I know my rights", when it's  
25 really -- we should turn it back to the focus being the

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1 trained officer under color of authority is responsible  
2 for knowing the rights and carrying out the laws. So I  
3 think we have to turn that language around, but again,  
4 in California I've heard it as well.

5 And then, Mr. McAndrew, you talked about, do  
6 people want to know; keeping quiet. Does the American  
7 public really want to know? And I have mixed feelings  
8 on that, but I certainly think that the response that

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9 we saw at the international level with Iraq, although  
10 it was -- the discussion came, as we all know, with the  
11 collection of physical evidence like semen; when we saw  
12 the videotapes; when we saw the photographs, the  
13 American public -- and I am very proud of how the  
14 American public did respond in California; likewise,  
15 I think, too, that when we have seen the evidence,  
16 we've had to respond, but I think it poses some very  
17 interesting questions for all of us in terms of the  
18 role of the media and an open access. We shouldn't  
19 have to wait for that; we shouldn't have to wait for  
20 the actual evidence to be there, but perhaps until we  
21 do have that evidence coming forward there will be  
22 lulling into silence because to a large extent I think  
23 much of the public doesn't want to know. It's a closed  
24 world. And part of the Commission's work, I think,  
25 could be to provide sunshine that's very much needed

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1 into a very dark, dank, closed room.

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

6 Does anybody have an additional question?

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

11 Since we mentioned the Iraq war, you know, I

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

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

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

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

3 Nick Yarris spent 22 years on death row in  
4 Pennsylvania. The Iraqi prison guard who was brought  
5 up on charges was a prison guard in Pennsylvania and  
6 oversaw Nick Yarris. For the first two years  
7 Nick Yarris was incarcerated, he wasn't allowed to  
8 speak, he wasn't allowed to talk, because Pennsylvania  
9 was founded on an institutional philosophy of  
10 separating the inmates, of letting them contemplate  
11 their errors and the ways of their life. So for two  
12 years he couldn't speak. And then after that time he  
13 was abused and degraded as much as any of the Iraqi  
14 prisoners. If you want to hear him say this in his own  
15 words, I invite you to try and find a theatre that's

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16 showing "After Innocence." It's a documentary  
17 profiling exonerees, and he's one of them. And I was  
18 very fortunate in meeting him and to hear what he  
19 endured from one of these Iraqi guards, who was also  
20 his guard, is just -- it's very heartbreaking, but it  
21 goes on and not just in Pennsylvania and not just in  
22 Florida. It goes on every day while we're sitting  
23 here, it's going to go on tonight, it's going to go on  
24 tomorrow.

25 MS. HANEY: I think one other comment that we

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1 could make is that what all of us here have been  
2 talking about is really giving voice to the people who  
3 are having these experiences, but we're also hearing  
4 why there is real barriers to that voice. Speaking out  
5 can really mean that you'll be subject to retribution  
6 and additional violence.

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

10 While I'm not recommending that people in -- that  
11 documentation be part of the torture process in the  
12 United States, I think that we do need to actually find  
13 a way to give the people who are subject to the abuses  
14 in the corrections institutions voice, and that has to  
15 be a safe way to do that. And I think that that should  
16 be something that the Commission should consider, is  
17 how to give voice to those people who are having these  
18 experiences in a way that they can feel safe to do that

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because I think that is a critical aspect of getting  
20 that information out to the public so that they know  
21 what's going on.  
22 The people who are experiencing these things know  
23 that it's going on, their family knows that it's going  
24 on, their friends know that it's going on, but it's not  
25 getting out beyond that and we do need to make a very

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1 big effort to make sure that everybody knows what's  
2 happening so that we can stop it.

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

11 (All witnesses responded with "Thank You.")

12 (A luncheon recess was taken.)

**\*\*BREAK\*\***

WITNESS PANEL: SYSTEM "INSIDERS"

13 (Hearing resumed.)

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

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21 understand two issues critical to this Commission's  
22 work:

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

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

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

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

24 One, the U.S. Inspector General Glenn Fine

25 oversees federal prisons, and the other, Attorney

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1 Mike Gennaco, overseas the largest jail system in the  
2 United States. Additionally, we have as a witness a  
3 man who has as a warden was responsible for the  
4 operation of the state prison, and then as regional  
5 director oversaw internal oversight of more than one  
6 prison.

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

19 Glenn Fine is the first person who will testify  
20 for us. He was confirmed by the United States Senate  
21 as the Inspector General of the Department of Justice  
22 on December 15th, 2000. He served as Acting Inspector  
23 General since 19 -- 2000 -- from August of 2000, and  
24 has worked for the Office of the Inspector General  
25 since January of 1995. Initially, he was Special

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1 Counsel to the Inspector General. In 1996, he became  
2 the Director of the Office of the Inspector General's  
3 Special Investigations and Review Unit.

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

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

20 In the three years of its existence, the OIR has  
21 reviewed hundreds of internal investigations and has  
22 made numerous policy recommendations and  
23 implemented -- as implemented by the Sheriff's  
24 Department. Mostly recently, Mr. Gennaco was appointed  
25 by a federal Judge as an expert consultant for the

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1 court to assist in designing an oversight body for the  
2 California Department of Corrections.

3 Mr. Gennaco served for over six years as an  
4 Assistant United States Attorney for the Central  
5 District of California. As Chief of the Civil Rights  
6 Section, Mr. Gennaco was responsible for overseeing all  
7 investigations and allegations for federal civil rights  
8 violations and has prosecuted judges, police officers,  
9 and white supremacists. Prior to that, Mr. Gennaco was  
10 a prosecutor with the Civil Rights Division of the  
11 United States Department of Justice.

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

16 Mr. Cowley is currently the National Director of  
17 Alpha for Prisons and Re-Entry, part of Alpha USA,  
18 an interdenominational non-profit ministry. Alpha for  
19 Prisons and Re-Entry trains, equips, and connects  
20 volunteers to deliver a basic Christianity course to  
21 prison inmates and to assist offenders into  
22 successfully reintegrating into their communities after  
23 release. From 1996 to 2003, Mr. Cowley worked as  
24 Director of Operations at the local, state, and  
25 national levels for Justice Fellowship and the

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1 InnerChange Freedom Initiative in -- pardon me, at  
2 Fellowship Ministries.

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

6 MR. FINE: Thank you, Judge Sessions and members

7 of the Commission.

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

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

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

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

5 The most common allegations investigated by the  
6 OIG involving BOP employees related to sexual and  
7 physical abuse of inmates, introduction of contraband,  
8 use of unnecessary force, and other official  
9 misconduct.

10 My written statement provides further statistics  
11 regarding the numbers of allegations as well as  
12 examples of substantiated cases of misconduct. But in  
13 addition to individual investigations of misconduct,  
14 the OIG reviews programs and systemic issues within the  
15 Department of Justice. Examples of recent reviews  
16 conducted by our office involving the BOP include a  
17 review of the treatment of aliens held on immigration  
18 charges in connection with the investigation of the  
19 September 11th attacks.

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

23 An examination of the Bureau of Prisons  
24 disciplinary system and a review of the Bureau of  
25 Prisons efforts to prevent drugs from entering into

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1 federal prisons.

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

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

13 However, that does not mean that abuse does not

14 occur in federal facilities or that it is an  
15 unimportant issue. I believe it is a critical issue  
16 that must be aggressively addressed.

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

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1 consider the wider use of this model.

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

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

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

16 Fourth, the hiring and training of prison staff

17 Transcript of first hearing - FULL.TXT  
18 is critically important. A few corrupt employees  
19 within an institution can result in incredible damage  
20 to the safety and security of both inmates and staff.

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

25 Fifth, the laws criminalizing service prison  
abuses must be sufficient. I make this comment with

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1 the federal laws regarding sexual abuse of inmates in  
2 mind. The OIG has investigated hundreds of allegations  
3 of sexual abuse of inmates by BOP staff.

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

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

19 In conclusion, abuse and safety within  
20 prisons -- for both inmates and staff -- are critical

21 issues. I believe this Commission can have an  
22 important impact by making recommendations to assist in  
23 these areas, and in this testimony I've highlighted a  
24 few of the issues I believe are worthy of further  
25 explanation. I thank the Commission for inviting me to

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1 testify, and I will be glad to answer any questions  
2 that you have.

3 MR. SESSIONS: Thank you, Mr. Fine.

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

8 MR. GENNACO: Thank you, Judge Sessions.

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

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

23 When this allegation became known, media interest

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was directed at the jails. And unfortunately, this  
25 murder was the fifth murder over the course of six

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1 months in the downtown Los Angeles jail complex.

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

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

18 In addition, Sheriff Baca, because of the  
19 oversight group that he had agreed to incorporate into  
20 his disciplinary and oversight system and allow  
21 independent observers to come into the system and work  
22 and shape investigations, turned over the  
23 investigations that ensued of each of those five inmate  
24 murders to the Office of Independent Review, which I  
25 have been entrusted to lead.

1           Independent legal advisers, six of us, get to work  
2 on a daily basis as outside observers in shaping  
3 internal investigations of misconduct by LA County  
4 employees, including jailers, and also not only shape  
5 those investigations but have a meaningful voice in the  
6 disciplinary outcomes of those investigations.

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

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

1 we'd like.

2           More importantly, or as importantly in my view,

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

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

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1 systemic failures.

2 I think it's only through this transparency, only  
3 through this ability to provide a bridge of information  
4 from the shuttered world of the jails to the outside  
5 world that confidence can be re-established among the

6 public about the way in which an important part of our  
7 governmental functions; that is, the care and custody  
8 of people who have been incarcerated can be restored.

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

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

18 MR. SESSIONS: Thank you, Mr. Gennaco.

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

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

24 MR. COWLEY: Thank you.

25 I'd like to think that I'm here representing

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

7 I was a warden for many years, and I absolutely  
8 loved what I did, but it becomes very tiresome to see  
9 the revolving door of corrections; and yet, when we're

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10 not held accountable, corrections professionals, the  
11 culture inside the prisons becomes a place that is so  
12 foreign to the culture of the real world that we  
13 develop our own way of doing things.

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

21 I recently spoke with the warden of the women's  
22 facility at a state jail in Texas, who on Easter Sunday  
23 had 48 critical posts to fill and only eight staff  
24 showed up. In a condition like that, there is no way  
25 possible that they can begin to deal with the delivered

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1 indifference that's taking place in our prisons. She's  
2 only just trying to survive herself.

3 The system has become out of control, and yet,  
4 it's the greatest job in the world because there's  
5 really no expectations for you to succeed. Very few  
6 wardens are held accountable for things that happen in  
7 their prisons. Until that changes, there isn't any  
8 outside influences that can be imparted strong enough  
9 to change it. You could have a herd of lawyers  
10 descending on prisons with oversight authority, and  
11 it's not going to change it. It's not going to change  
12 the result of incarceration.

13 Prisons can work. They can only -- and by that, I  
14 mean that fewer people leave badder, worse than when  
15 they came in. Prisons can produce citizens that will  
16 not break the law again, and they can do it more than  
17 they don't. But we have to begin to believe in  
18 ourselves, that it's possible, and that can only happen  
19 in a system from the governor to the Secretary of  
20 Corrections, to the warden, to the deputy warden, to  
21 the correctional officer on the shift.

22 When I came to the one prison, I decided to go eat  
23 breakfast with the inmates, so I had my jeans on and I  
24 walked out to the unit and we had satellite feeding so  
25 we carted all the food to the unit. It was a pretty

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1 good breakfast, eggs and pancakes. And after they go  
2 through the line, they would dump their trays in this  
3 slop bucket and put their silverware -- obviously,  
4 spoons -- in a bucket of what used to be hot, soapy  
5 water. So as I'm going through the line to get my  
6 breakfast, there's no more silverware. So watching  
7 what the guy in front of me did, he goes over and puts  
8 his hand into what used to be the warm, soapy water,  
9 which is now a cold, murky substance, and put his hand  
10 down in there and get his spoon and go eat his  
11 breakfast. So I stuck my hand down in the water,  
12 and amongst all the bits and pieces of eggs and  
13 pancakes, I found me a spoon.

14 Now, is that abuse?

15 But if you live that way, thinking the people that  
16 are there to help you get better don't care any more

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17 than that about you, then to live that way every day  
18 becomes abusive.

19 If you really want to change the system, you know,  
20 where everybody's got an answer, if you really want to  
21 change the system and produce ex-offenders who will  
22 not re-offend, in prison, all you have to do is hold  
23 wardens accountable for recidivism. That's all you  
24 have to do is say, "We will arrange the system in which  
25 we can tell how inmates re-offend, and for those

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1 wardens and directors of corrections who are operating  
2 a system that fail more than they succeed, guess what,  
3 you're not going to have a job any longer, and it will  
4 change the entire system into one in which we can be  
5 very proud. And prisons can become as positive as  
6 colleges.

7 Thank you very much.

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

16 Now, what do you do about reporting? What can you  
17 recommend for us that might be an encouragement to  
18 assure that those people who are the jailers and who  
19 are the prison officials actually know about and can

20 Transcript of first hearing - FULL.TXT  
deal with officer abuse or abuse by officers?

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

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

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

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

18 MR. SESSIONS: Mr. Gennaco--

19 MR. GENNACO: Yes, Judge. Thank you.

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

22 One, one thing that I think is long not  
23 acknowledged is that most of the complaints that -- or

24 investigations that are initiated that we see in the  
25 Office of Independent Review are generated by employees

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1 within the organization. There are employees that do  
2 have the courage to come forward and report misconduct,  
3 but there continually needs to be encouragement of  
4 that. And I'm not suggesting that there aren't times  
5 when that kind of -- there's a significant pressure  
6 placed on a deputy or any other correctional officer  
7 not to report in order to remain within the group of  
8 colleagues that are there backing them up every day  
9 with regard to a very dangerous occupation.

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

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

23 MR. SESSIONS: Mr. Cowley --

24 MR. COWLEY: Well, it's a cultural issue. And the  
25 way I did it is that we promoted those staff persons

1 that we knew wasn't a part of that culture. We were on  
2 the yard. I opened the prison up to tons of  
3 volunteers. We had eyes and ears all over the  
4 institution. They -- through our training -- we all  
5 are trained, correctional officers are trained. They  
6 are trained. But it isn't -- it's what happens later.  
7 And in order for them to understand, we have to model  
8 the kind of behaviors that we want them -- you see,  
9 correctional officers really don't believe that inmates  
10 can be good in prison or normal in prison, they're not  
11 trained that way. So we have to model that behavior.  
12 And when there is the use of force or when there is the  
13 idea that there has been some type of abuse occurred,  
14 not only would we probably know it before anybody else  
15 did, but that it would be -- at the warden's level, at  
16 the superintendent's level, at the jailer's level, it  
17 would be dealt with in a very discriminating way. It's  
18 just not acceptable.

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

1 MR. SESSIONS: Is there some times that an event

2 Transcript of first hearing - FULL.TXT  
involves multiple correctional officers?

3 MR. COWLEY: Sure.

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

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

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

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

24 MR. COWLEY: That's correct.

25 MR. SESSIONS: Mr. Gennaco --

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

4 I would agree with Mr. Cowley, though, that -- and  
5 I would just put a little more of a gloss on it with

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6 regards to the issues that we've seen at least in the  
7 correctional system that we oversee; and that is, there  
8 are a number of times in which bad intent or bad  
9 deputies or bad jailers are certainly involved in force  
10 and other integrity issues in the jails, there's no  
11 question about it.

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

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

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1 environment that's going to lead to violence and abuse.

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

4 MR. FINE: Just briefly in response to your issue  
5 of -- when the incident or misconduct involves multiple  
6 officers, it is true, as in any law enforcement  
7 investigation, and that's in some sense what it is,  
8 it's a -- basically, you do a thorough investigation,

9 Transcript of first hearing - FULL.TXT  
10 you try to separate the officers. You look for  
11 corroborating evidence, and you will often find one who  
12 is willing to expose wrongdoing.

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

23 MR. SESSIONS: Thank you.

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

The first question, I'm sure the bureau keeps a

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1 lot of records. What kinds of records do you find  
2 helpful in investigating the abuse or safety issues  
3 that currently the bureau has?

4 MR. FINE: The bureau does keep significant  
5 records. They keep incident reports on every incident  
6 that happens. They keep reports on complaints. Every  
7 complaint that an inmate makes is supposed to be kept  
8 by the Bureau of Prisons. We have unfettered access to  
9 those records at the Inspector General's Office and the  
10 Department of Justice. We have access to all records  
11 within the Department of Justice, and the Bureau of  
12 Prisons does turn that over to us.

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13           One of the things that's critically important is  
14 technology. We heard a little about cameras. Video  
15 cameras are very important within an institution, and  
16 we find within the Bureau of Prisons, the newer  
17 facilities have more video surveillance throughout the  
18 facility. It doesn't mean there are not blind spots  
19 here or there that are taken advantage of, but with  
20 video surveillance you often can see what happened  
21 before or after an incident, so that's very important,  
22 and we have relied upon that kind of evidence very  
23 strongly.

24           MR. MAYNARD: Mr. Gennaco --

25           MR GENNACO: Yes, Mr. Maynard.

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1           To answer your question -- and not to be  
2 redundant -- we also have access to documentation,  
3 force reports, incident reports and the like. But  
4 one thing that is missing and has been missing, I  
5 think, in the correctional setting that does exist in  
6 some of the more progressive police departments is a  
7 computer tracking system of employee behavior. The  
8 City of Los Angeles is finally developing one, but some  
9 of the other larger progressive law enforcement  
10 departments have this computer tracking system that  
11 captures every use of force the officer uses, every  
12 lawsuit in which the officer is named, every citizen  
13 complaint lodged against the officer, every time in  
14 which the person's named actually engages in use of  
15 force.

16 MR. SESSIONS: Does the testimony give an  
17 indication of where those departments are that we might  
18 look at?

19 MR. GENNACO: Yes, I can give you a list of them.  
20 But certainly the County of Los Angeles has a very good  
21 one, an early one. The City of Phoenix has a good one  
22 in their police department. Tampa has one, the City of  
23 Tampa Police Department has a good model. But there  
24 are models that are there. Unfortunately, this kind of  
25 model hasn't moved over to the correctional setting,

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1 and there's no reason why it can't. That kind of  
2 information that's available to managers can be used in  
3 a number of ways, not only for accountability but also  
4 to early on detect some issues involving particularly  
5 new employees or older employees that seem to have gone  
6 away and all kinds of ways this information can be used  
7 for the benefit of the correctional setting.

8 MR. MAYNARD: Thank you.

9 Mr. Fine, did you have any others that you --  
10 recordkeeping that you might need that you don't have  
11 that might be helpful?

12 MR. FINE: No. We -- as I say, we have access to  
13 all records. We too keep track of all the complaints  
14 that are made to us. We have an electric moni --  
15 investigative case management system that is very  
16 important to determine. When a case comes in, we don't  
17 have the resources to do every complaint that comes in,  
18 but we do see whether there's a pattern here or a  
19 pattern of an individual being involved in certain

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20 types of behavior, and that is very important, it's  
21 very helpful to us. I think that is a critical aspect  
22 to it.

23 MR. GIBBONS: I have a question.

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

25 MR. GIBBONS: In the cases where there is internal

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1 recordkeeping, are those records accessible to the  
2 press?

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

13 MR. GIBBONS: Even under FOIA?

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

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

20 MR. GENNACO: The Public Records Act of California  
21 does provide some relief to the media. Although, I  
22 have to say that the information that is made available

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is rather minuscule and is certainly -- for example,  
24 the identity of the deputies involved is redacted  
25 pursuant to other privacy statutes and exceptions to

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

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

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

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

1 idea about what's going on. And for me, that's more  
2 important.

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

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

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

16 MR. BRIGHT: Could I follow up on that?

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

24 And then to the extent to which the inmates,  
25 their families, and the public are able to find out

1 what's going on. I mean, I'm -- you know, I'm sure you

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2 know that in the penitentiary in Atlanta, the special  
3 housing unit, for as long as I can remember,  
4 allegations -- or not allegations, but it's been proven  
5 of people put in four-point restraints improperly,  
6 rapes, beat ups, stabbings, all that, and the FBI won't  
7 even tell you whether they're investigating or not. So  
8 what's your answer to that?

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

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

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

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1 For example, with our review of the Metropolitan  
2 Detection Center in Brooklyn, we provided a very  
3 detailed report on what exactly happened there. We  
4 didn't provide the names of the officers in the report,

5 but we did provide our conclusions about the misconduct  
6 that occurred. I think that's critically important.

7 MR. BRIGHT: And I wanted to ask about that.  
8 As I understand it, you provided your report in June of  
9 2003 --

10 MR. FINE: Uh-huh.

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

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

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

24 The BOP has had it since the spring of 2004. They  
25 have not imposed discipline, they're still in the

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1 process of doing so. As we reported in one of our  
2 reports, they recently found additional videotapes.

3 And what -- that report relied very heavily on  
4 videotapes of what happened. And they found additional  
5 videotapes and we and they are going to find out how  
6 that happened. But in effect, you're absolutely right  
7 that the discipline in this matter has been delayed and  
8 too slow. And that's one of the failings of the

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9 system, when it is not swift and sure, that's an  
10 example of it.

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

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

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

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

24 MR. BRIGHT: But just a run-of-the-mill complaint  
25 about a prison, would that be the same thing, that you

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1 found that there was some misconduct, abuse in prison  
2 you refer that then to the Bureau of Prisons to take  
3 some action on it, would that become public at that  
4 time?

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

7 For example, under the Patriot Act, section 1001,  
8 we're required to receive and review civil rights and  
9 civil liberties violation through the Department of  
10 Justice. We are also required to report on that every  
11 six months. So in each six-month report we provide

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13 information on the case, where it is, what the status  
14 of it is, and when they're completed and either  
15 substantiated or unsubstantiated, we provide that  
16 information as well. That's not every case we do, but  
17 in terms of civil rights or civil liberties cases  
18 arising under Section 1001 of The Patriot Act, we try  
19 and do that as well.

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

20 MR. FINE: They are prison cases, yes.

21 MR. BRIGHT: They are.

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

24 MR. BRIGHT: Oh, they are.

25 MR. FINE: In fact, we had one where it was

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1 presumably described and was described failings of the  
2 warden in that prison to adequately address complaints  
3 of discrimination, and provided that report -- well,  
4 provided the information about the report in our  
5 Section 1001 report just recently.

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

14 MR. BRIGHT: Yeah. The problem is, somebody else  
15 receives them.

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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

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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

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20 take on the flavor of the stew pot, and there are two  
21 different types of stew pots in the different prisons  
22 I've been in. They fall very clearly within one of  
23 those two categories, usually.

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

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

12 MR. GENNACO: Very interesting observations. I  
13 would agree with you that the institutions and the  
14 individual facilities do take on a culture in and of  
15 themselves and a large part of that culture derives  
16 from the leadership at the institution itself. It's  
17 interesting, even in a hierarchical organization like  
18 the Sheriff's Department and in my more limited  
19 experience with the California Department of  
20 Corrections, you see that phenomenon happening in the  
21 prison environments where essentially the leader of  
22 that facility essentially can close him or herself off

23 from the rest of the hierarchical structure and sort of  
24 on his or her own develop the culture within that  
25 institution because of the way in which prisons sort of

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1 exist and the fact that they are closed down and  
2 insular. So as a result of that, I think that it's  
3 important to again open up to some degree those  
4 facilities; not only to outside groups, but also to  
5 members within the hierarchy to make sure that the  
6 management philosophy comes from the very top of the  
7 organization and not allowed to have it depends on the  
8 character of the individual at each institution.

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

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

21 Some wardens will not cooperate to the extent they  
22 should with us. Other wardens want us in there and  
23 want us to find out any problem and want to cooperate  
24 and get rid of the few bad apples that put a tarnish on  
25 the institution and on the entity. Some wardens will

1 allow us and cooperate with our proactive  
2 investigations when we'll do a proactive operation to  
3 put a wire on someone or put a video surveillance on a  
4 certain entity. We have to go through hoops to do  
5 that. Some of them make those hoops so high and so  
6 long that by the time we're through them the  
7 opportunity to catch the wrongdoing is over.

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

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

21 MR. COWLEY: We do now have models.  
22 Unfortunately, when I was -- when I was a warden for  
23 eight years at a particular prison we went for almost  
24 three and a half years without a use of force or a  
25 serious incident. I became known as the "hug-a-thug"

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warden.

2 Now, we didn't have any uses of force or any  
3 serious incidents, and the overtime of our staff went  
4 to zero. But because that wasn't the typical thing,  
5 then we began -- in fact, I was investigated because we  
6 didn't have any overtime and they thought perhaps I was  
7 keeping books under the table. So even if you do the  
8 right thing, in some systems it's, "Oh, my goodness,  
9 it's working so something must be wrong. "

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

24 So again, you have to start with the end in mind  
25 and understand. In some state systems, the training

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1 for correctional officers is they use this book called  
2 "The Games Convicts Play. " They're trained, don't  
3 touch, don't even shake hands, don't call them by their  
4 name, call them by their number. We've written books

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5 on how inmates -- or how people become convicts, but we  
6 have -- there's not been a book written yet on how  
7 inmates can be people, normal people and still be  
8 confined in prison. It's not the paradigm that we have  
9 in corrections.

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

19 MR. KRONE: I have a question.

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

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

5 MR. FINE: That's a good question. There are many  
6 ways that our work gets -- results of our work get  
7 implemented:

8           One, we work with prosecutors to prosecute  
9           wrongdoing and we have a significant number of our  
10          cases which we work with U. S. Attorneys, we work with  
11          the Civil Rights Division, and the offender gets  
12          criminally prosecuted and removed from the institution.  
13                 In other cases, we provide the report for  
14          discipline to the Bureau of Prisons and we follow up to  
15          determine what kind of discipline has been imposed.  
16          Now, we don't -- we don't have the ability to impose  
17          the discipline, we provide that to them. But we do  
18          monitor and follow and there is a significant number of  
19          them who get removed or resign in lieu of removal or  
20          get suspended for periods of time.  
21                 We also do, as I said, systemic reports. We look  
22          at the BOP disciplinary system. We find problems in it  
23          and make we recommendations for improvement. And the  
24          Bureau of Prisons is -- and we publish that. We  
25          publish that on our website. If you look on our Web

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1          site, you'll be able to see. And we publish the BOP's  
2          response to that. They have to -- each one of our  
3          recommendations they have to say whether they concur,  
4          or they agree or disagree, and we follow up with that.  
5          For the ones that disagree, we go back to them and ask  
6          them why. On the ones that say they agreed, we ask  
7          them, "Well, what are you going to do about it? What  
8          is your corrective action plan?" And then We follow  
9          through to determine whether they've implemented that.

10                 In some cases, we'll go back and do a follow-up  
11          review several years later to see, "Well, did you

12 actually implement the recommendations that we  
13 imposed?" We impose some pretty significant  
14 recommendations, for example, attempting to prevent  
15 drugs from entering the federal prisons, including  
16 random drug test of officers, including searches,  
17 random searches sometimes of officers, but sometimes  
18 correctional officers are the ones who bring the drugs  
19 into the institution. There is some resistance to  
20 that, but we push and we try to follow through to see  
21 whether they've implemented it and continue to apply  
22 the sunshine and pressure to it.

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

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

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

9 Ms. Schlanger --

10 MS. SCHLANGER: Thank you.

11 This talk about internal or quasi internal  
12 watchdogs, it sounds -- it sounds very attractive, but  
13 it -- I guess what I'm thinking about is it's obviously  
14 not entirely successful. So I'm thinking about the

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16 situations that I remember reading about with criminal  
17 prosecutions of the whole squad of folks in Florence,  
18 for example, I think it was, in the Bureau of Prisons  
19 or the five murders that you just mentioned.

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

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

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

9 That said, I do think that the jail is in a better  
10 place April 20th, 2005, than they were April 20th of  
11 2004, because of a number of things:

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

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

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

22 I didn't have a lot of time, but Title 15 is now  
23 actually being enforced. There are actually people  
24 dedicated to roaming the jails and ensuring that  
25 suicides don't become successful; that homicides don't

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1 become successful; that weapons are found before they  
2 are used, and all of this kind of activity didn't exist  
3 prior to a year ago and now do exist. And I have to  
4 say that it's not just us, but it's us in concert with  
5 the ACLU and other watchdogs and media attention and  
6 focus and progressive management at the top that has  
7 all worked in a concerted way to make the jail a safer  
8 place than it was a year ago.

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

14 MR. FINE: I agree with Mr. Gennaco. I also  
15 think that there will be incidents in prison, and you  
16 do need an entity to aggressively investigate it and  
17 hold people accountable for that. But you're  
18 absolutely right, through the prevention of those  
19 incidents and those problems are also critically  
20 important. And the Bureau of Prisons does and it  
21 should do many things within the institutions to

22 try and prevent that from happening, ranging from drug  
23 treatment for those who need it, making it available;  
24 prevention of drugs from entering the prison; work  
25 programs so that people are productively engaged while

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1 they're in prison. And The Bureau of Prisons does do  
2 that, they try and make sure that there's work  
3 available for people who are able to do it.

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

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

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

21 You can't -- there's nothing wrong with  
22 monitoring, but if you think -- if we have a piece  
23 that, oh, now things are well because we're monitored,  
24 believe me, it will not help a lot. It might give us  
25 confidence for a while, but we know how to get around

1 the monitors, believe me. If we're so inclined to run  
2 institutions that way, we're going to get around them.

3 MR. GENNACO: And they can wait the monitors  
4 out. And that's my concern is monitors is a finite  
5 period of time that the monitors are in existence, the  
6 three, five, even ten years, that's a blink of an eye  
7 in the length of any law enforcement organization or  
8 correctional institution or organization, and they will  
9 wait them out.

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

18 MR. SESSIONS: Okay. Questions.

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

25 MR. COWLEY: Yes. We've done amazing things in

Transcript of first hearing - FULL.TXT

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

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

17 One of the things -- if you really wanted to do  
18 something, most states have a policy which prevent a  
19 volunteer from having access to the inmates' families  
20 while they're a volunteer on the inside; as well as,  
21 they cannot volunteer and mentor that inmate once he's  
22 out. Now, that policy came about, I'm sure, because  
23 some volunteer was abused by some inmate that got out  
24 of prison, I'm sure. But the reality of it is, Faith  
25 Based Programs provide the opportunity for all of these

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1 staff, unpaid staff, to come in and -- as if we've  
2 heard today -- open up the prison and then provide  
3 access to jobs to support, have their families

Transcript of first hearing - FULL.TXT  
4 already involved with the community before they get  
5 out. It works wonders. I mean any -- well, I say  
6 that.

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

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

16 MR. SESSIONS: Thank you.

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

24 But Mr. Fine and Mr. Gennaco, you do talk about  
25 oversight and you talk about independence and yet it is

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1 certain -- at a certain point independence meets and  
2 sometimes clashes with the political will, whether  
3 they're supervisors or they're senators holding your  
4 purse in terms of how much money you get to be  
5 independent. So given that, and especially in a state  
6 like California or Los Angeles County where we're  
7 facing an \$8 billion deficit, there is push to maintain

8 educational services, health care, hospitals, you name  
9 it. What do you -- what do you find yourselves arguing  
10 to the supervisors or to your chieftains who ultimately  
11 control that purse to argue for the integrity of  
12 independence for the funding? Because you can be as  
13 independent as you want on paper, but it takes money to  
14 give you the teeth in order to truly have the  
15 independence.

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

19 MR. FINE: The resource question is a critical  
20 question and we have a fair number of people, we have  
21 415 employees of the Office of the Department of  
22 Justice -- the Office of the Inspector General. Now,  
23 that sounds like a lot, but you have to realize that we  
24 have oversight over the Bureau of Prisons but we also  
25 have oversight of the FBI, the DEA, United States

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1 Marshall Service, the ATF, the U.S. Attorneys' Offices.  
2 It is a daunting and wide-ranging task, and we could  
3 use more resources.

4 Having said that, at no time in my tenure has  
5 anyone in Congress, the appropriators or the  
6 authorizers, made any indication that they were going  
7 to take action or reduce our budget because they didn't  
8 like one of our reports. And I think you have got to  
9 have the attitude of independence and to make clear  
10 you're going to do what you believe is right. We've

11 Transcript of first hearing - FULL.TXT  
12 been set up to do that and to continue to do that  
13 regardless of the consequences; and to make the calls  
14 objectively and as fairly and aggressively as you can  
15 and as transparently as you can. And that has worked  
16 for us, that really has. We have increased our  
17 resources. We've gone from 330 to about 415 over my  
18 tenure, and I've been very gratified by that.

19 So I think it's very important to maintain your  
20 independence, and it's been successful for us. That  
21 doesn't mean, you know, there aren't others who have  
22 had problems with that. But the resource question is a  
23 critical question. And it's not the first priority  
24 when you sort of think about it. When there needs to  
25 be resources infused with the Department of  
Justice, they won't think -- initially the Office of

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1 the Inspector General, the FBI, the DEA, and the  
2 counter-terrorism, but we have a good return on any  
3 resources that are given to us because we help improve  
4 the efficiency and effectiveness for the rest of the  
5 Department of Justice, and that's why -- that's our  
6 argument and it's been successful.

7 MR. GENNACO: To follow up, in California or at  
8 least in Los Angeles County it's an interesting dynamic  
9 and one that concerns me all the time. Survival is, I  
10 think, critical to ensuring that the department  
11 continues to stay on the straight and narrow and for  
12 budgetary resources who rely on the County Board of  
13 Supervisors, they're elected officials the Sheriff  
14 is an elected official. That dynamic in some ways

15 helps because, quite frankly, before we came into  
16 existence the County Board of Supervisors had really no  
17 real way of knowing what was going on at the Sheriff's  
18 Department. And so we provide a bridge to our clients,  
19 the County Board with regards to letting them know  
20 earlier about before the LA Times learns that there's a  
21 significant event, that there's something that probably  
22 will show up in the paper in a couple days, or could  
23 likely. That's one resource that we provide. I think  
24 it's one reason that I think that we will continue to  
25 be maintained.

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

10 Last year, for example, in our annual report we  
11 reported that lawsuits alleging civil rights violations  
12 and violations of people's constitutional rights and  
13 payouts from those lawsuits had gone down from 13  
14 million to five and a half million. And if we -- and  
15 I'm not suggesting that our group should take total or  
16 even the majority of the credit, but we'll take a  
17 little bit of the credit for that kind of turnaround in

18 Transcript of first hearing - FULL.TXT  
19 payouts. And suggesting that, in fact, it's  
20 advantageous if you're just looking at the bottom  
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

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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.

22 As opposed to police departments which have different  
23 forms of oversight, as you are well aware. That's even  
24 more so if you look at correctional state-wide systems.  
25 There is again almost no real meaningful oversight to

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1 correctional state-wide systems, or what there has  
2 been -- has not really -- at least in the eyes of  
3 legislatures in the public work very effectively. So  
4 it is an anomaly. At least the way in which we do our  
5 work is unique. But as Senator Romero has said, one of  
6 our functions under the guise and ownership of the  
7 legislature and also a federal Judge who's overseeing  
8 some litigation is to develop an office like ours for a  
9 40,000 employee organization, the California Department  
10 of Corrections.

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

14 Mr. Fine, I am thinking of the broad leadership of  
15 the Justice Department, not just the Office of  
16 Inspector General, and as we look at the broad mandates  
17 of the Commission, what are other ways that the  
18 Department of Justice can and should be exercising  
19 leadership in addressing this very broad problem of  
20 safety and abuse in American's prisons? And I don't  
21 mean this Justice Department at this time, but in a  
22 very broad sense.

23 MR. FINE: I think through the range of support  
24 for the Bureau of Prisons initiatives that we attempt

25 Transcript of first hearing - FULL.TXT  
to address these problems. I think with adequate

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1 funding for the Bureau of Prisons, one of the issues  
2 that we see is when there's reduced staff and  
3 overcrowding abuse can increase and flourish more than  
4 when there's a full complement of staff, so I think  
5 that's important to make sure that the resources are  
6 provided so that there can be safe and secure  
7 facilities. So I think it is important despite the  
8 enormous tasks that the Department of Justice has in  
9 many, many areas, in many respects, to continue to  
10 provide sufficient resources and attention to this  
11 issue; to continue, as I mentioned previously, to  
12 provide for initiatives in the Bureau of Prisons that  
13 can help ameliorate conditions that can led to abuse,  
14 whether that is drug treatment, whether that is inmate  
15 release preparation programs, whether that is adequate  
16 work for the inmates.

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

20 MS. ROBINSON: What about the bully pulpit of the  
21 Attorney General?

22 MR. FINE: The Attorney General does have an  
23 enormous influence, and I think it's important to make  
24 sure that this is a priority of the Department of  
25 Justice, and I think it is. I think it's important for

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1 it to continue and that not to lose focus on this issue  
2 amongst a myriad of other duties that the Attorney  
3 General has.

4 MS. ROBINSON: Thank you.

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

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

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

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

25 I think it's important that they measure what they

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1 do and oversee what they do and not simply rely upon,  
2 oh, the OIG is going to be coming in here, we have to  
3 do something, but to have it internally as part of

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4 their culture, as part of their DNA to do things the  
5 right way.

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

8 MR. KATZENBACH: Well, it used to be.

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

19 MR. GENNACO: And I would just very briefly add to  
20 that by saying the philosophy of oversight and the way  
21 that you conduct oversight can really be consistent  
22 with your suggest that the departments need to continue  
23 to take ownership to doing a good job. And so instead  
24 of having independent or parallel or subsequent  
25 investigations, we work with the investigative

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1 resources the department has to ensure that they do the  
2 best they can to do. And we also don't take away their  
3 disciplinary determinations from them because they  
4 should retain ownership of those decisions. Good  
5 managers should continue to hold their people  
6 accountable. And as a result, what we do is an outside

7 Transcript of first hearing - FULL.TXT  
voice suggesting what the principal result might be.

8 MR. GIBBONS: Senator raised the question of  
9 fiscal restraints that limit the ability of the  
10 institutions to protect their inmates. Would general  
11 reduction in the length of sentences solve a lot of the  
12 problems that you have observed in the corrections  
13 system?

14 I'll address that to all three of you.

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

22 Quite frankly, that's where our increasing  
23 incarceration is coming from, that we're just keeping  
24 people a lot longer. I really don't -- it's not a  
25 matter of fairness on the part of -- on the part of the

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1 system to supply wardens with the resources that's  
2 necessary, and wardens march to the drummer, so to  
3 speak. The warden that had eight staff people there  
4 when she should have had 48 without working the post.  
5 If nothing else, I think that we should say, "If we're  
6 going to incarcerate for the length and the extent that  
7 we do, that there really does have to be resources that  
8 match that program of incarceration."

9 We are seeing correctional officers at greater  
10 risk in this country. There is absolutely no question

11 of that. And as well as inmates. But it's all -- it's  
12 almost like, here's the thought, and I think that not  
13 only the taxpayers but also perhaps the politicians.

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

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

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1 One is, they're a wait station for people that are  
2 awaiting trial, going to prison, coming back from  
3 prison, and also they are there to serve as the  
4 custodial situation for rather minor offenders for  
5 short-term. Because of some of the ways in which the  
6 system has been bogged down, perhaps because of its own  
7 weight, inmates spend months, sometimes years in those  
8 jails, those inns that are supposed to be hotel/motels,  
9 are there awaiting trial, awaiting sentencing, awaiting  
10 to be picked up by the prison authorities, state  
11 authorities to go to the prisons. And as a result of  
12 that lodging, the jails are no longer available for a  
13 lot of the minor offenders who should be serving their

14 Transcript of first hearing - FULL.TXT  
15 time and then getting out. So it's an example of how  
16 again the system impacts on the system.

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

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

24 Yes, go ahead.

25 MR. DUDLEY: It's been suggested that part of the  
problem is the ease with which inmates can be viewed

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1 less than human and, therefore, not necessarily  
2 deserving of humane treatment. To the extent that any  
3 of you think that that's at least a factor, what can  
4 we do about that?

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

11 But yes, when we were at the gate going into the  
12 prison in Texas, and this was a well-cared -- the  
13 warden was well-caring, but we were strip searching  
14 inmates and they were pulling down their boxers and  
15 then pulling them up, but they were out in view of  
16 anybody that came into the prison. And as the director  
17 of the Faith Based Program, I said, "No, no, no, you're

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18 not going to do that to my guys." And I explained to  
19 them, "Those are people. You can't" -- so they put up  
20 a screen. So when brought to the -- when it manifests  
21 itself, when somebody says, generally, "You can't feed  
22 bloody chicken to inmates. Would you eat that?" Then  
23 sometimes they will say, "Oh, you're right," but that's  
24 just the culture that's developed inside prisons, and  
25 it -- I think a lot of everything that happens stems

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1 from that because if the -- the more you are around  
2 inmates that do the things they do to one another, and  
3 have to grapple with the blood and the yuk, in order to  
4 survive you have to begin to see that -- we don't call  
5 them by name, or that you have the convict names,  
6 Goose Lips and Killer and Home Boy or their number, but  
7 once you start calling them Johnny -- in fact a lot of  
8 systems won't let you -- then it brings them a  
9 little -- starts bringing them up to at least a basis  
10 of humanity. But that's where it all comes from, I  
11 think. I don't know which one came first, but that's  
12 where it comes from, the whole prison culture comes  
13 from that very thing.

14 MR. SESSIONS: Okay. Have we run out of hands?  
15 Go right ahead, please.

16 MR. RYAN: I'm deeply troubled by the events that  
17 go down, and obviously they were first line  
18 supervisors, second line supervisors, sergeant,  
19 lieutenant-type concepts there. And the supervision  
20 level apparently failed to do what it was supposed to

21 Transcript of first hearing - FULL.TXT  
do.

22 What are your recommendations regarding that group  
23 of folks and what expectations are, what proactive  
24 things can we do to ensure that preventive measures are  
25 taken so that these events do not happen?

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1 MR. COWLEY: Wardens -- in my opinion, wardens and  
2 supervisors have to be involved and held accountable  
3 for everything that goes on in that prison. I had a  
4 correction officer that was -- and I knew he was a  
5 correctional officer II and he wanted to be promoted to  
6 lieutenant, and I began to look at all the misconduct  
7 reports, or I looked at all the misconduct reports and  
8 I noticed that he was writing reports every day. So I  
9 called him in, I said, "What in the world are you  
10 doing?" And he said, "I want to be promoted to a  
11 lieutenant."

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

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

22 And I think that -- I think as a profession we've  
23 kind of given up. Nobody really cares. We just  
24 thought, how can we make money off the system, you

25 know, with these, you know, private prison management

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1 funds.

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

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

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

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

24 MR. GENNACO: Thank you.

25 MR. FINE: Thank you.

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1                   MR. COWLEY: Thank you.  
2                   (There was a recess.)  
3                   (The hearing is continued in Volume II.)  
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1                   REPORTER' S CERTIFICATE  
2

3                   Transcript of first hearing - FULL.TXT  
4     STATE OF FLORIDA

5  
6     COUNTY OF HILLSBOROUGH

7  
8                   I, PAMELA J. WALKER, Certified Shorthand Reporter  
9     (CA), certify that I was authorized to and did  
10    stenographically report the foregoing proceedings and that  
11    the transcript is a true and complete record of my  
12    stenographic notes.

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

18                   Dated this 4th day of May, 2005.

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\_\_\_\_\_  
Pamela J. Walker, CSR

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HEARING ONE

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COMMISSION ON SAFETY AND ABUSE  
IN AMERICA'S PRISONS

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

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WITNESS PANEL: SYSTEM OUTSIDERS

1 (Hearing resumed.)

2 The following proceedings were had and taken:

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

10 As Judge Sessions stated at the beginning of the  
11 last panel, this outsider panel will be exploring with  
12 our witnesses some of the ways that outside  
13 organizations and individuals learned about what  
14 happens inside of our prisons and jails. We're  
15 interested in what kind of obstacles there are to

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16 finding out this information and what can be done to  
17 make it easier for people to understand the challenges  
18 confronting corrections officers and inmates.

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

25 For most of the 13 and a half million people who

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

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

16 Alan Elsner is a journalist. Barbara Owen is a  
17 research and writer. Margaret Winter is an attorney  
18 who handles civil cases involving prisoners. While not

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

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

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

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

11 So let me begin now by turning to Senator Romero.

12 SENATOR ROMERO: Thank you.

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

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

23 Author and reporter, Alan Elsner, has a  
24 distinguished 28-year career in journalism. His 2004  
25 book, "Gates of Injustice: The Crisis in America's

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1 Prisons," has been widely praised as a hard-hitting  
2 book at a major problem. Senator Edward Kennedy called  
3 it "a wake up call" for America. The book was  
4 short-listed for the Robert F. Kennedy Book Award.

5 Currently National Correspondent for Reuters New  
6 Service based in Washington, D. C., he also served as  
7 that agency's Chief Political Correspondent from  
8 1994 to 2000. From 1989 to 1994, Mr. Elsner was  
9 Reuters State Department Correspondent. Mr. Elsner was  
10 one of the first reporters to draw attention to the  
11 Rwandan genocide and helped the U. S. government to  
12 change its policy.

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

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

20 She has provided training for the National  
21 Institute of Corrections in such areas as operational  
22 practices for women offenders, staff sexual misconduct,  
23 women and community corrections and improving health  
24 care for women offenders. Dr. Owen is the author of  
25 over 12 articles and two books, including "In the Mix:

1 Struggle and Survival in a Women's Prison." She is  
2 developing an international Collective for the Study  
3 of Women's Prisons.

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

9 Margaret Winter is Associate Director of the  
10 National Prison Project of the ACLU. She has argued  
11 and won a prisoner's rights case in the United States  
12 Supreme Court. And for the past three years, she has  
13 been involved in the National Prison Project's special  
14 initiative to investigate and challenge conditions  
15 resulting in prisoner rape. She is lead counsel in a  
16 case involving sex slavery in a Texas prison, which  
17 resulted in the first federal appellate court decision  
18 recognizing the equal protection rights of gay  
19 prisoners not to suffer discrimination on the basis of  
20 their sexual orientation. In collaboration with  
21 Holland & Knight, she brought a class-wide challenge on  
22 behalf of Mississippi Death Row prisoners to their  
23 conditions of confinement, resulting in a sweeping  
24 injunction that was legally affirmed by the Fifth  
25 Circuit.

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She helped prepared 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](http://www.prisoncommission.org). Let me repeat that,  
[www.prisoncommission.org](http://www.prisoncommission.org). And all of the witness'  
testimony should be available anywhere from seven to  
ten days.

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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

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5 into the mike and use -- from the diaphragm as loud as  
6 possible. I know it's after lunch, but you can do it.

7 MR. ELSNER: Thank you very much.

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

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

16 MR. SESSIONS: We can arrange for that.

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

20 Over the past five years, as a reporter and also  
21 in researching for my book, I relied on a wide variety  
22 of information and sources: Official reports,  
23 statistics, the two states' reports by human rights  
24 organizations, legal transcripts and judgments,  
25 academic studies, memoirs and personal accounts and of

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1 course my own reporting gathered through numerous  
2 visits to prisons and jails around the country. I  
3 have visited many prisons and jails, mostly on the East  
4 and West coasts, but after a certain point, I made a  
5 deliberate decision to stop making these visits because  
6 I came to the conclusion that their journalistic  
7 usefulness for me was very difficult -- had run out,

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was about a zero.

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

19 To visit a prison, the procedure is something like  
20 this: You apply in writing to the Department of  
21 Corrections stating exactly what kind of a story you  
22 plan to write and who you want to talk to. When I went  
23 into a prison, I was usually accompanied by officials  
24 who controlled where in the facility I could go, who I  
25 could talk to, and what I could see. Before I spoke

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1 with a particular inmate, the official made sure that  
2 that inmate signed a personal release form. Often the  
3 inmates I spoke to were carefully selected in advance  
4 by prison administrators.

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

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

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

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1 written testimony.

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

15 Transcript of first hearing - FULL.TXT  
16 to speak to a reporter unless they wished to lose  
17 access to lawyers.

18 Recently, the Atlanta-based Southern Center for  
19 Human Rights filed a lawsuit alleging abuse of elderly  
20 and sick prisoners at the Hamilton Aged and Infirm  
21 Correctional Facility in Hamilton, Alabama. The suit  
22 alleges that the facility is severely overcrowded;  
23 inmates lacked access to adequate medical help; the  
24 facility is allegedly filthy and unhygienic and some  
25 inmates often lay in their own feces for days on end.  
In response, the Alabama Department of Corrections has

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1 said that the level of health services is well above  
2 federally mandated standards.

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

12 I should note here that turning down reporters'  
13 requests is all too common. I've never gained access  
14 to a so-called Supermax prison despite many requests.  
15 To extend my metaphor from the beginning of this  
16 testimony, if the prison system as a whole is like the  
17 former Soviet Union in its attitude toward reporters,  
18 the Supermax prisons are pretty much like North Korea.

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19 We basically have no idea what's going on in them  
20 today.

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

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

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

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

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

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

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

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

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

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

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22 inhabitants and remain citizens of the United States  
23 and do not forfeit their human rights the minute they  
24 step behind bars.

25 Thank you.

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1 SENATOR ROMERO: Thank you.

2 Dr. Owen --

3 DR. OWEN: Thank you, Senator Romero.

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

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

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

23 I'm here today to speak about the utility of  
24 social science research. I feel, along with my  
25 esteemed colleagues, social science research has a

1 place in the prison along with investigative reporting,  
2 along with legal research. I feel that social science  
3 research is one piece of the complex puzzle of safety  
4 and abuse in American prisons.

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

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

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

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

1 vote to that approach.

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

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

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

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

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

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

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1 careful review itself.

2 The two main points of my testimony are these:

3 First, prison research is best undertaken in a

4 spirit of collaboration and heartening. It's my  
5 experience that wardens and correctional managers want  
6 to know what's going on in their institution, and they  
7 sometimes turn to correctional researchers, to social  
8 science researchers to answer those questions. I  
9 believe that social science research can be critical of  
10 the prisons. In my work on women's prisons, for  
11 example, I've been highly critical of the way  
12 California treats its women's prisoners, but I believe  
13 good science and professional ethics overwhelm that  
14 idea of being critical.

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

21 My second concern involves the time it takes. It  
22 takes an enormous amount of time to conduct prison  
23 research. The question of access takes a lot of time,  
24 and there's many processes I describe in my written  
25 testimony. In terms of Alan's comment about the

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1 one-time visits, I think being in the field for a long  
2 period of time is also critical to getting one of the  
3 multiple stories that happens in prisons. Prison is  
4 about doing time, as is research.

5 Finally, I'd like to conclude by saying that  
6 knowledge is a powerful tool. And I have three  
7 specific recommendations, also contained in my written

8 testimony for the Commission:

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

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

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

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

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1 Thank you very much.

2 SENATOR ROMERO: Thank you, Dr. Owen.

3 Ms. Winter --

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

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

9 MS. WINTER: I felt for some years that a  
10 Commission of this kind was sorely needed, and when I

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heard that one was being convened, I was very happy.  
12 And I'm very honored to appear before it.  
13 Three years ago the National Prison Project of the  
14 ACLU filed suit on behalf of a young gay  
15 African-American man, a nonviolent offender, who was  
16 sent to serve his time in one of the most violent  
17 and gang infested prisons in Texas. He was immediately  
18 raped, and for the next 18 months he was literally  
19 enslaved, made a sex slave by prison gangs and degraded  
20 in every possible way.  
21 Month after month repeatedly he pleaded to prison  
22 officials from wardens all the way down for protection.  
23 He said, "Lock me up. Put in the me in your darkest  
24 protective custody or a set-aside cell, but get me away  
25 from this horror."

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1 And they told him repeatedly that he had three  
2 choices: Either to act like a man, fight, or to get a  
3 man; meaning get a boyfriend, a protector, or submit to  
4 the sex. Those were his three choices.  
5 I am very keenly aware that not all prison  
6 officials are callously indifferent; far from it. To  
7 the contrary. Some of the great shining lights  
8 of -- I've met in the process of litigation, I'm  
9 finding that there are people at every level in most  
10 systems who want to do the right thing and are doing  
11 their utmost to do that. Some of them have already  
12 testified to this Commission, and there will be more  
13 that will appear, including a very great man, Don  
14 Cabana, who I believe will appear tomorrow.

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

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

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1           this kind of scenario is commonplace.

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

18 cases that we have investigated that unfortunately in  
19 all too many prisons, in all too many facilities, it's  
20 not a sporadic, it's not a bolt of lightning out of the  
21 blue, it is the pattern of daily life.

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

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1 examples:

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

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

16 What we need is the coming at it from different  
17 ways, the power of this Commission, the power of  
18 courageous reporting, a social scientist doing  
19 research; a litigation that depends on federal Judges  
20 who have lifetime tenure to take the heat; and  
21 responsible, good wardens and Commissioners and

22 superintendents and correctional officers who say, you  
23 know, thank God that there's somebody who is going to  
24 look into this mess and give us the backing and the  
25 support that we need to change it.

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

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

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

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

19 MR. ELSNER: Well, I've been doing this for a  
20 relatively short time. I really only wrote my first  
21 prison story I think in early 2001, so I don't have a  
22 lot of perspective to bring to this, but in my opinion  
23 the public basically knows very, very little about the  
24 U. S. prison system.

1 it, and I get questions that you can't assume any  
2 knowledge at all. And I think that in our media  
3 coverage as a whole the amount that's written about the  
4 prison system or the amount that's covered about the  
5 prison system is minuscule compared to the constant  
6 barrage of sensationalist coverage of crime. The old  
7 adage, "If it bleeds, it leads." Every day people are  
8 bombarded with images and words about crime that gives  
9 them the idea that they are all constantly under threat  
10 all the time. And any coverage of the prison system  
11 just pales in comparison to that. And the crime  
12 coverage very, very rarely does it put it into  
13 perspective. You don't hear, for instance, that crime  
14 is down 70 percent over the past ten years or that  
15 murder is drastically reduced or that we're basically  
16 much safer than we ever were before. Still, you know,  
17 the constant barrage all the time. So I think that  
18 what we do is a pinprick in relation to that.

19 MR. GREEN: Ms. Owen --

20 MS. OWEN: I think there has been a net total of  
21 increased knowledge, so my short answer is yes, but I  
22 think the form of this knowledge and the accessibility  
23 of this knowledge is the problem. I can name for  
24 you -- because I'm a researcher -- five experts on any  
25 issue you that you want to bring up on prison, but

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1 whether or not their reports or their materials is read  
2 by folks in positions as you all hold, whether the  
3 public knows about it, whether even researchers outside  
4 that specific discipline know about it is the  
5 fundamental question.

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

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

20 MS. WINTER: Six years ago in Texas a brave  
21 federal Judge, Judge Justice entered a hundred-page  
22 long opinion describing violence and abuse in Texas  
23 prisons, and he said that part of the problem was that  
24 there weren't -- there was sort of a willful blindness  
25 there. The records weren't being kept. Statistics

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1 weren't being kept. Reports weren't being kept. And  
2 prison officials were turning a blind eye. He entered  
3 this magnificent opinion, and shortly -- within a

4 couple years -- the Fifth Circuit terminated the decree  
5 under the Prison Litigation Reform Act. And I can tell  
6 you, that was -- as far as I can see, there was  
7 not -- not for a moment was the problem solved or even  
8 lessened.

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

22 It was a huge problem to get those records. And  
23 so it's again the question of how do people get the  
24 will and the energy, change it once they've got the  
25 information. And it's not just prison officials. I

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1 mean, my God, it's state legislators, it's courts, it's  
2 the people, it's the public. Without the will and the  
3 energy, nothing changes. And I think that the will and  
4 the energy comes from occasions like this Commission  
5 where it's borne in on the public consciousness that  
6 they're real human beings who are suffering atrocities,

7 absolute atrocities, and barbarisms. And if we -- you  
8 know, if the majority of the people open their eyes to  
9 that, then there is a difference.

10 MR. GREEN: I hear you saying, and I think this  
11 Commission believes that it's going to be very, very  
12 important to put a human face on this issue that we are  
13 trying to examine. We heard in a previous -- in the  
14 previous panel about the fact that we look at prisoners  
15 as subhuman and that that has a great deal to do with  
16 some of the actions and activities that go on inside  
17 our prisons and jail.

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

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

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1 person.

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

8 You know, obviously, I'm the kind of -- you know,  
9 the sharp end of the stick. These guys go out there  
10 and labor for months and years on end, and I turn it

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11 into 500 very highly polished words. And I mean that  
12 quite seriously because, you know, I -- when I was  
13 writing my book, they basically haunted my responses  
14 and went through their files and tried to extract  
15 from them stories which I thought: A, illustrated some  
16 wider truth that was somehow typical; and B, brought  
17 home that this is really happening to real people.

18 And the same with the social science research.  
19 You know, there was dramatic studies by one of  
20 Dr. Owen's colleagues in Bedford Hills Prison about  
21 sex -- about abusive of women prisoners. And I was  
22 looking at the abuse these inmates had suffered prior  
23 to coming into the prison system, spousal abuse, abuse  
24 when they were children, and the figures were just  
25 astounding. And when you broke them down, you broke

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1 them down into how many had been kicked; how many  
2 had been struck; how many had been threatened with  
3 a knife; how many had been threatened with a gun; how  
4 many had been shot; how many had been bitten. And then  
5 when -- but just giving the statistics in a table, you  
6 know, you look at that and you think, oh, you know,  
7 terrible. When you actually talk to people and find  
8 out that this is the fabric of their lives and these  
9 are real people and they -- but for the grace of  
10 God -- go on.

11 I mean, I'm often asked when I speak about  
12 the prison system in promoting my book -- I'm going to  
13 be very brief -- I'm often why asked by people, "Why

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15 should I care about this? After all, my kids are never  
16 going to go there. I'm never going to go there.  
17 My neighbors are never going to go there."

18 Well, first off, "Don't be so sure." You know,  
19 one in every 30 Americans is going there, and your  
20 kid might be picked up on a DUI or something and given  
21 72 hours in a local jail. He might be thrown into a  
22 cell with a rapist, and that's happened.

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

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

4 MR. GREEN: Barbara --

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

14 I think we need to think about the ways in which  
15 we can come to understand the context and the pathways  
16 in the prisons for both women and men in order to fully  
17 address this picture. There's many advocacy

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18 org -- advocate organizations such as Families Against  
19 Mandatory Minimums, such as Stop Prison Rape Group that  
20 work very hard at trying to convey a different message.  
21 But the reality is that -- is as Alan describes it, and  
22 that is the media, Hollywood, the news makes us think  
23 everybody in prison is Charles Manson. And while we  
24 certainly do have a handful of Charles Manson types in  
25 the prisons, the sheer fact is that over 70 percent of

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

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

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

20 MS. WINTER: I think it was Senator Romero who

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22 this morning talked about giving prisoners themselves a  
23 voice, the importance of that. And I don't think  
24 anybody could have heard Garrett Cunningham or the  
25 other witnesses this morning without "getting it;"  
that these are human beings and that there -- and that

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

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

18 DR. OWEN: But I'd also like to add at the same  
19 time, researchers need to understand how prisons  
20 actually operate. I served during probably the last  
21 eight years on the California Department of Corrections  
22 Research Review Committee as an outside person, and  
23 very often researchers come in with a naive  
24 understanding thinking that prisoners are going to be

25 brought out from their cells and lined up for interview

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1 purposes. And one of the things you realize, a very  
2 small example, is that many prisoners work, and when  
3 you pull a prisoner off of his or her job, they're  
4 going to lose that very important 13 cents an hour  
5 they're making. And so researchers get very  
6 frustrated, "oh, they won't bring the prisoners out so  
7 I can talk to them," but at the same time researchers  
8 aren't realizing maybe the time to conduct their  
9 interviews is not during the prisoner workday.

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

19 MR. GREEN: Can each of you comment briefly on how  
20 your work in fact may help the men and women who manage  
21 and supervise our jails and prisons in this country? I  
22 know Dr. Owen talked about actually being enlisted to a  
23 certain extent by different institutions to work with  
24 wardens who wanted research done. But maybe if each  
25 of you could just briefly talk about that.

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1 Margaret, do you have a sense of how your work  
2 actually helps the management and supervision issue?

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

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

23 There are people who are so -- of such superior  
24 caliber in some corrections, high level and not so high  
25 level corrections positions, who know that they can't

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1 do it by themselves. There's got to be public support.  
2 If they're surrounded by a public -- of --

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(Unintelligible) -- who doesn't understand that these  
4 are human beings, they have no support for trying to  
5 treat prisoners humanely, and so they want it aired.  
6 And a very good way to air it, among other ways, is  
7 through litigation, through litigation, through  
8 journalism, through research.

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

14 MR. GREEN: Ms. Owen --

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

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

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1 that most contemporary managers aim to run a fair and  
2 humane system. Few managers want to cover up incidents  
3 in their facilities." It's my view that professional  
4 correctional systems are increasing to evidence-based  
5 practice, to empirical data to help them make  
6 decisions. And I feel that researchers, journalists,

7 litigators need to partner with these symptoms to  
8 collect and use this variety of data to help them solve  
9 the problems of safety and abuse.

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

21 What we need is to empower these people to speak  
22 out and think within the correctional industry, so to  
23 speak, that people realize that the system is  
24 dysfunctional and needs reform. The problem is coming  
25 from the politicians who keep passing it on man -- on

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1 these unfunded mandates and more and more laws and  
2 running on being tough on crime and on all the other  
3 easy slogans. And we need to empower them.

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

9 I think what Margaret said, you know, is -- is

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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.

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1 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

14 very -- very much describes the California system

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

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

25 MR. ELSNER: I wouldn't say I found a particular

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1 different difference in -- between one state and  
2 another. Although, I was able to go into San Quentin  
3 without any problem at all.

4 I think it really depends on the actual  
5 institution. I referred in my testimony to the  
6 difficulty in gaining access to the Supermax prisons,  
7 which I think is a huge problem. I mean, basically  
8 walling off these institutions to the extent that even  
9 family members have so-called video visits and can't  
10 have any face-to-face contact with their loved ones.  
11 It's -- and I know that from my discussions with  
12 various representatives from human rights organizations  
13 that they have had great difficulty in gaining access  
14 to these institutions. The idea that there are parts  
15 of America that are just walled off to everybody, not  
16 just to the press and, you know, allowing the media

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18 in is no panacea, but it would be a start.

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

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

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

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

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

18 How do you -- how do you control for that to  
19 ensure the safety of people with whom you might speak  
20 in prisons into which you go? What recommendations

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21 might you give us? And also, how do you check the  
22 accuracy of your sources?

23 MR. ELSNER: Well, I think that if people realize  
24 if you state up front, as you're ethically bound to do,  
25 that you are a reporter, that anything you say to me

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1 you know I'm going to write down and use, possibly, and  
2 you give people the opportunity if they would prefer  
3 not to be quoted by name or to be quoted anonymously or  
4 in some other form or to use a different name. And if  
5 you give everyone those choices, then they really  
6 have to take responsibility themselves as to whether  
7 they want to speak to you. I'm not there to act as the  
8 sensor. So, you know, I'm assuming that I'm speaking  
9 with responsible adults who can weigh the ramifications  
10 and try to make a judgment as to whether or not they  
11 want to speak to me.

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

20 SENATOR ROMERO: Dr. Owen --

21 DR. OWEN: I'd like to tell the Commission a  
22 little story. I spent three years in a very large  
23 women's prison in California writing my first book

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about women in prison. And when I first started coming  
25 into the prison -- and by the way, I was allowed

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

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

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

1 visit.

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

4 SENATOR ROMERO: Let me ask just one last  
5 question.

6 MR. ELSNER: Just one very briefly.

7 SENATOR ROMERO: Sure.

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

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

24 I know that at a later point we're going to have a  
25 Hollywood hearing talking somewhat about how the -- how

1 prisons and jails are presented to the public. If I  
2 just think about my images, I can go anywhere from

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3 Elvis swiveling his pelvis to the "Jailhouse Rock," you  
4 know, Catherine Zeta-Jones, "Dancing on Death Row,"  
5 "America Me," which perhaps could be a linear  
6 depiction in prison.

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

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

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

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

23 MR. ELSNER: I don't see any particular advantage  
24 to me answering that question. I'm not here to  
25 preach to other journalists, I'm really not, and

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1 certainly not to preach ethics to other journalists.  
2 I think the ethical standards of the U.S. media are  
3 extremely high, I really do.

4 I think that the problem is, having the desire to  
5 write the story in the first place. You know, there

6 have been some extraordinary journalistic efforts at  
7 exposing abuse and neglect in U.S. prisons. The New  
8 York Times series just recently on health care in the  
9 prison system. And I believe that health care is the  
10 single biggest abuse in the U.S. health -- prison  
11 system, bigger than rape, bigger than, God, brutality  
12 and violence, bigger than cell extractions. I think  
13 more people die of either outright inept or neglectful  
14 health care than any other single reason in U.S. prison  
15 systems. So I think that it can be done.

16 I just think that you -- having the media response  
17 to what they perceive as the public appetite. We just  
18 have a great example right now on the Michael  
19 Jackson trial. When everyone thought it was going to  
20 be a huge story, but the media is ramping down its  
21 coverage because the public just basically doesn't want  
22 to know about these yucky things that are going on in  
23 his ranch.

24 So the media responds to what they think the  
25 public wants to see. And we have to engage the public

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1 and make them realize that this affects them, and this  
2 affects all of us. The fact that 600,000 people come  
3 out of the prison system every year with tuberculosis,  
4 who carry tuberculosis. This affects all of us. We  
5 can get on a bus tomorrow and we don't know who is  
6 standing next to us. The fact that 600,000 people  
7 are released back into our communities every year is  
8 something which affects all of us. So our job -- and  
9 include all of us -- is to make people realize that

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10 this isn't some problem that is separated from them by  
11 walls. This affects all of us. There is no wall  
12 between them and us. They are moving backwards and  
13 forwards and they are us, and there's no barrier at  
14 all.

15 SENATOR ROMERO: Thank you.

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

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

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

11 DR. OWEN: First of all, let me say that the  
12 physical argument is one that I think many of us felt

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14 would be a winning argument as long -- when we could  
15 explain and describe how expensive imprisoning the  
16 millions of folks that are in prisons is. When we  
17 could explain the fact that -- just as Alan said --  
18 "every dollar you spend on corrections is a dollar not  
19 spent somewhere else." In the late '80s, the early  
20 '90s most of us thought that would be the winning  
21 argument.

22 Well, here we are 15 more years later, and the  
23 fact is that states aren't acting rationally when it  
24 comes to fiscal policy in prisons. The fears and  
25 concerns that the media has shaped, that politicians  
very often don't want to come off as "soft in crime,"

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1 these have really contributed to the irrationality of  
2 the physical issues.

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

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

16 Pairing researchers with correctional systems in a

Transcript of first hearing - FULL.TXT

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

23 In the next year I'm going to be working for the  
24 California Department of Corrections to help them  
25 develop what I'm calling "a more rational approach" to

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1 managing female offenders. However, in California we  
2 had a commission, the SER-3 Commission that issued its  
3 final report in 1992, that said some of the many things  
4 that are restated in the report that Barbara Bloom and  
5 Stephanie Covington and I have conducted on gender  
6 responsiveness. So the information is out there. It's  
7 how to connect it to the policymakers.

8 In these times of fiscal constraints, most  
9 Departments of Correction have denuded their research  
10 departments. California Department of Corrections had  
11 one of the best research departments in the nation in  
12 the '60s and the '70s. In the '80s it started being  
13 cut back. In the '90s it was cut back. I can show you  
14 a memo that said, "Due to fiscal constraints, we have  
15 now eliminated the research departments in the  
16 California Department of Corrections." So I think  
17 focusing on the importance of social science research,  
18 but equally important, having researchers and  
19 policymakers entering a dialogue, entering a

20 Transcript of first hearing - FULL.TXT  
conversati on.

21 I go to probably 15 conferences a year, and I've  
22 just started going, for example, to the American  
23 Correctional Association conference wherein that's  
24 where the policymakers are. That's where the  
25 decisionmakers are. So I think crossing these

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1 disciplines from the academic -- who, believe me, I  
2 understand we can be very tedious and esoteric on many,  
3 many matters -- and the policymakers who want to know  
4 the bottom line, just tell me what to do. I think  
5 creating dialogue, creating partnerships and cutting  
6 down this etherizing.

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

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

22 MS. ROBINSON: Yeah, I think your dialogue idea is  
23 terrific, and would also encourage you to start going

24 to the National Conference of State Legislators, that  
25 would be a good avenue as well.

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

3 MS. ROBINSON: Excellent. That's great.

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

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

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

20 So unfortunately, the United States seems to be  
21 influencing those policies that I might see as more  
22 rational policies. But I think that's another issue of  
23 dialogue. The inter -- a very important international  
24 conference on criminology is going to be held in  
25 Philadelphia in August, and I urge --

1 MS. ROBINSON: I'm glad to know you're coming  
2 since PENN is putting that on.

3 DR. OWEN: Oh, yes.

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

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

25 I wrote a little off pendulum in the Christian

1 Science Monitors pointing out this absurdity, and I got

2 Transcript of first hearing - FULL.TXT  
3 an irate e-mail from an official at the U.S. Embassy,  
4 Ray Clavich (Phonetic) saying, "How dare you cast  
5 dispersions on the very kind of work that I did in  
6 writing -- (Inaudible - laughter from panel and  
7 audience) -- prison system "

8 MS. ROBINSON: That is a great jail.

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

15 UNIDENTIFIED SPEAKER: All right. Bringing  
16 journal articles --

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

23 MS. WINTER: Well, there are, it seems to me,  
24 state legislative hearings are a very valuable  
25 possibility. There's all kinds of meaningful  
legislation that could be proposed and debated in state

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1 legislature. It would give an opportunity for there to  
2 be some real public debate on these issues, and I think  
3 that's a forum that I'm hoping that we will see more.

4 MR. ELSNER: I would say very briefly, Town Hall  
5 meetings involving the families of people who are

6 incarcerated is a very, very powerful tool. Because  
7 then you do see some of the human hardships that the  
8 prison system puts not only on the inmates but also on  
9 their families. And the Victims Rights Movement has  
10 really utilized this tool very, very powerfully.

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

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

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1 to have some of these people testify to you.

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

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

16 MS. WINTER: There is something else I think very  
17 important that could happen to give prisoners more of a  
18 voice. There's very, very -- actually, very little  
19 litigation -- contrary to popular opinion -- by  
20 prisoners, serious litigation about prison abuse that  
21 ever gets anywhere because they are not represented and  
22 they can't be represented. The prison  
23 litigation -- so-called Prison Litigation Reform Act  
24 has been a huge weapon for silencing prisoners. The  
25 provisions that mean that attorneys can't get the

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1 standard statutory attorneys' fees as prevailing  
2 parties, so they can't get civil rights attorneys to  
3 represent them. The provisions that make decrees  
4 terminate after two years after massive effort's gone  
5 into obtaining the decree. The provision that bars the  
6 door to so many prisoners like Garrett Cunningham  
7 because it requires them to exhaust bisontine  
8 administrative remedies that not even the best lawyer  
9 could figure out how in the world to do this within  
10 five days, and then exhaust stage II and the stage III  
11 appeals.

12 Prisoners can't get lawyers, partly because of

Transcript of first hearing - FULL.TXT

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

22 DR. OWEN: I only have two very quick suggestions.  
23 One is inviting a range of actors to the table, a  
24 range of folks who are concerned. We talked about  
25 families. There are advocacy groups in the community,

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1 there are union groups. I think we need to realize  
2 that safety and abuse in American's prisons is a  
3 multifaceted issue and that everyone has their story.

4 There seems to be little bit of evidence that  
5 the human brain is hard wired to hear stories. So I  
6 think by bringing folks together to talk at the same  
7 table -- which is a strategy that governments use all  
8 the time.

9 I also think that as a final word on research, we  
10 need to think about how prison research can be mutually  
11 beneficial to all the parties involved, to the system,  
12 to the theoretical and applied field of criminology  
13 into the community as well because so often  
14 researchers, advocates, union members, politicians, the  
15 media, prisoners, prison managers have been cast as

16 Transcript of first hearing - FULL.TXT  
17 oppositional groups. And I think the fact is, and I  
18 believe this very firmly, that most prison  
19 managers -- just as Margaret described, many prison  
20 managers are indeed fair-minded and are not happy about  
21 many of the things that go on in their systems.

22 So I think recognizing that there's multiple  
23 members of the prison community is one way to decrease  
24 abuse and danger in our prisons.

25 MS. WINTER: I wanted to add a little story to  
what Barbara just said.

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1 MS. ROBINSON: Very quickly.

2 MS. WINTER: A dozen years ago when I started  
3 doing prison litigation, I was visiting the lead  
4 plaintiff, and a very extraordinary-looking prison  
5 guard, a woman at least six foot four weighing about  
6 280 or 300 pounds came by with a terrible scowl on her  
7 face, and when she passed I said to my client, "Boy, I  
8 bet she's a real piece of work."

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

18 MS. ROBINSON: A good word to end that on. Thank  
19 you.

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20 MR. GREEN: As we began our year-long study, I'd  
21 like to ask each of you to give us your views about the  
22 prevalence of abuses and serious safety failures in  
23 American prisons and jails. And what are the most  
24 serious forms it takes in addition to the inadequate  
25 medical care that Mr. Elsner referred to earlier? So

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1 if each of you would -- in addition to the medical  
2 care, what you think the most serious issue is. We'd  
3 like to hear that. I don't know if you want to add to  
4 that at this point.

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

7 MR. GREEN: Margaret, what would you say?

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

19 MR. GREEN: Dr. Owen --

20 DR. OWEN: I think it is an area that we need  
21 to expand our definition of safety and abuse. I think  
22 we need to come to some understanding of the obvious

23 Transcript of first hearing - FULL.TXT  
24 and the subtle harms that prisons produce to human  
25 beings, both human beings who work there as well as  
human beings incarcerated there.

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

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

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

24 So I think that the abuse cases in a way  
25 are -- don't take this the wrong way -- sexier, from

1 a journalistic point of view than the silent killers  
2 which are spreading through the system. But I think  
3 that if you were to be presumptuous enough to offer you  
4 some advice to you, I would concentrate a lot on this  
5 health and hygiene aspect of things.

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

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

24 What I wanted to ask you is, if that's the purpose  
25 then, is there anything we've overlooked? Is there

1 anything where we could add to make prisons more

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

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

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

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

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

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

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

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1 So I think, you know, we could do a much better  
2 job if we cut out even the meager education and  
3 vocational side training that we had there and just  
4 warehouse them all all day doing nothing, that would

5 Transcript of first hearing - FULL.TXT  
answer your question.

6 DR. OWEN: I understand the spirit in which you  
7 raise this issue, but my answer is, for so many years  
8 there was a movement towards truth in sentencing. I  
9 think we should have truth in incarceration, and prison  
10 budgets, correctional budgets need to be much more  
11 transparent than they are. I don't think most people  
12 realize exactly how much money is being spent and what  
13 little bang folks are getting for their buck.

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

25 We actually know the point at which this harm is

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1 super-sized -- to use a current colloquialism -- and I  
2 think we need to start thinking about how we can  
3 satisfy -- and I agree with you, doctor -- that we do  
4 have a strong revenge component driving our corrections  
5 systems. We need to do some very specific calculations  
6 in thinking about exactly what are we doing, what are  
7 we getting; how much does it cost, and how can we do it  
8 differently.

Transcript of first hearing - FULL.TXT

9 MS. WINTER: Well, I think we all know -- it's no  
10 mystery here, there have been plenty of studies -- what  
11 it is that makes recidivism go down, education, drug  
12 treatment, vocational ed. We know it. There have been  
13 studies. There's no question about it. And with the  
14 amount that it costs to incarcerate someone in a high  
15 security prison, I think it's also been proven many  
16 times that they could be sent to Harvard for the same  
17 price.

18 In answer to your specific question, I was going  
19 to say, well, we could send them out naked in pink  
20 underwear, but, oh, whoops, no, they did that  
21 yesterday. I saw it on the news. It's very hard to  
22 think of anything that hasn't already been done that  
23 would make the situation worse, but the odd thing is  
24 we do know what would make it better. Drug treatment,  
25 my God, seems such a huge proportion. I don't want to

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1 say here, but I want to say 40 percent of people in  
2 prison it's strictly because of drug -- you know,  
3 addiction problems, it's addiction. And that people go  
4 into prison, they either are deprived of drugs while  
5 there and get them the minute they get out because  
6 they've had no serious treatment or they are  
7 plentifully supplied within because it's permeable for  
8 drugs.

9 So since we know what the answers are and since  
10 the resources are clearly there, all they have to be is  
11 reallocated. That seems to me one positive thing. No

12 Transcript of first hearing - FULL.TXT  
13 huge studies need to be done to prove what would make  
14 the situation better and what makes it worse and worse.  
15 DR. OWEN: But I would also caution the  
16 Commission, in thinking about those types of  
17 approaches, to understand the experience of programs in  
18 prisons. Just as Margaret was talking about, very  
19 often these oversight agencies become kind of neutered  
20 over time. Very often prison programs are just in fact  
21 paper programs. They say they have drug treatment,  
22 they say they have vocational training, they say they  
23 have forms of mental health, and without really paying  
24 for quality programs, without really putting the  
25 resources, very often you create treatment failures in  
which the individual's blamed, when in fact there was

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1 no viable treatment delivered at all.  
2 MR. GIBBONS: No more questions?  
3 Well, with that, this is the end of this  
4 afternoon's session. I want to thank everybody who has  
5 participated, attended today, the witnesses, the press,  
6 and the spectators for joining us.  
7 We'll begin tomorrow morning at 9:15. I'd ask for  
8 all of the commissioners to remain in their seats for a  
9 few minutes so our staff can review some logistical  
10 details with us.  
11 Thank you all.  
12 (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.

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Pamela J. Walker, CSR

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HEARING ONE  
COMMISSION ON SAFETY AND ABUSE  
IN AMERICA'S PRISONS

DATE: April 20, 2005  
TIME: 9:00 a.m. to 1:19 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 III  
Pages 228 - 359

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1           The following proceedings were had and taken:

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

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

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

19           Over the course of the next 90 minutes, we hope to  
20 discuss some of the various forms of violence in  
21 prisons and jails including inmate-on-inmate,  
22 inmate-on-officer, and officer-on-inmate violence,  
23 which I should add by no means exhausts the range of  
24 violence in prisons. I've seen visitors who have been  
25 killed in prisons. Non-infractional staff who have

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1           been raped, wardens who have been attacked, people  
2 taken hostage. Everybody who goes in and out of the

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4 prison is potentially vulnerable to this.

5 Some of the particular forms of violence that we  
6 will hopefully have the time to address include the  
7 excessive use of force by corrections officers, gang  
8 violence, and sexual violence; additionally, when  
9 talking about the prevalence of each type of violence,  
10 its causes, and the methods of control that are  
11 currently being used. We hope to begin to explore some  
12 possible methods to make the jail and prison  
13 environment safer and less abusive for both correction  
14 officers and inmates and everybody else who visits,  
15 works in or goes in and out of these institutions.

16 Before my colleague, Pat Nolan, introduces the  
17 panel, I want to stress one point: I believe that the  
18 vast majority of the men and women who work in our  
19 prisons and jails are committed, well-intentioned  
20 professionals doing their best under often very  
21 difficult circumstances and sometimes amazingly  
22 succeeding remarkably well.

23 While I'm certain we'll hear some powerful  
24 anecdotes drawn from the experiences of these  
25 witnesses, we must also make sure that we put  
these examples of abuse or misbehavior in context.

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1 MR. NOLAN: I'd like to start by noting that the  
2 discussion today will focus on male inmates. We have  
3 other panelists at subsequent hearings that will more  
4 thoroughly discuss the very important and distinct  
5 issues that confront women prisoners in our jails and  
6 prisons.

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7 We're pleased to have these distinguished  
8 gentlemen join us this morning.

9 In the 1980s, Donald Cabana served for five years  
10 as warden of the maximum security, death row prison in  
11 Parchman, Mississippi, until his distress of having to  
12 carry out executions overwhelmed him. He detailed his  
13 experience in a 1996 memoir, "Death at Midnight: The  
14 Confession of an Executioner." In 2004, he resumed  
15 control of Parchman before retiring in early 2005.  
16 Mr. Cabana has a long history in corrections, beginning  
17 as a guard at Parchman in 1972. He was also a warden  
18 in other facilities in Mississippi, as well as in  
19 Missouri and Florida, and was Acting Commissioner of  
20 the Mississippi Department of Corrections from 1986 to  
21 1987. Mr. Cabana is currently Chair the Criminal  
22 Justice Department at the University of Southern  
23 Mississippi in Hattiesburg.

24 Steve Martin is a corrections consultant and is  
25 actively involved in prison litigation in New York,

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1 Mississippi, Georgia, Ohio, Maryland, Utah, and Puerto  
2 Rico. He is involved in jail litigation in New York  
3 City, Ft. Lauderdale, and Gulfport, Mississippi. He  
4 serves as an expert to the U.S. Department of Justice,  
5 Civil Rights Division, in both prison and jail cases in  
6 Georgia, Mississippi, Maryland, Guam, and Saipan. He  
7 has worked as a consultant in more than 30 states and  
8 has visited or inspected more than 500 confinement  
9 facilities in the U.S. He has served, or currently

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11 serves as a federal court monitor in three prison  
12 systems and four large metropolitan jail systems.  
13 He's been involved in class action litigation involving  
14 staff use of force in Texas, California, New York,  
15 Puerto Rico, Wyoming, Montana, Pennsylvania, Maryland,  
16 Georgia, and Florida.

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

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1 universities including the University of Texas School  
2 of Law.

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

14 Quentin, and Vacaville.

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

17 We'll begin with Donald Cabana.

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

21 In thinking about the Commission's work, it occurs  
22 to me that you all have an opportunity to perhaps carry  
23 out the most important function relative to the  
24 corrections field in over a century. In 1870, a group  
25 of zealous prison reformers led by Isalien (Phonetic)

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1 and Brockway and future president Rutherford Hayes came  
2 together in Cincinnati, and they issued a Declaration  
3 of Principles that was intended to guide corrections  
4 and reform corrections, and out of that compost in  
5 1870, the first most immediate result was the evolution  
6 of the reformatory system, starting in Elmira, New  
7 York.

8 Over the years, the organizations that came  
9 together in 1870 served as the foundation for what  
10 today is the American Corrections Association. And  
11 over the years in the corrections field, there have  
12 been many who have labored long and hard in the  
13 vineyards, mostly in obscurity, who are professional,  
14 who are dedicated, who are honest and driven by  
15 integrity, and want to do the best jobs that they can  
16 and find ways to improve the system and make it what it

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18 should be; make it what its Quaker founders intended it  
19 to be.

20 In the 20th Century, a number of wardens have been  
21 very outspoken critics of the very systems that they  
22 were responsible for operating. Lewis Lawes at  
23 Sing Sing in the 1930s; Thomas Montosborn at  
24 Sing Sing in 1920s; Clinton Duffey in the 1950s and  
25 '60s at San Quentin. Even as they were on the payroll,  
something that would be difficult to imagine in today's

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1 political landscape.

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

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

16 My experience as a result of reporting that  
17 incident was not a particular happy one. I was not  
18 harassed or threatened by fellow staff, I was basically  
19 shunned and given the silent treatment. And I'm sure  
20 my departure several years later from the system made

21 quite a few people happy.

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

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

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

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

20 The level of violence in these places is  
21 unconscionable. What I found in the supermax units  
22 when I took the reins back as warden of the Mississippi  
23 State Penitentiary was extremely disturbing and I

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suspect very much typical of what you find in supermax  
25 units across the country.

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1 Thank you.

2 MR. NOLAN: Mr. Martin --

3 MR. MARTIN: Good morning.

4 I'm going to focus somewhat more narrowly. My  
5 remarks today commensurate with Don Cabana.

6 MR. SESSIONS: Pull the microphone up, please.

7 MR. MARTIN: Yes, sir.

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

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

18 In my statement, I have footnoted three separate  
19 systems to try to give the commissioners an idea of the  
20 scope. For instance, in Texas, I believe in 2001,  
21 there were in excess of 6,000 reported staff uses of  
22 force in that system. In the New York City jails, I  
23 believe in 2002, there were in excess of a thousand  
24 incidents. In the LA County Jail in 2004, there were  
25 in excess of 2000. So in three systems, admittedly

1 large confinement operations in one calendar year there  
2 were almost 10,000 incidents, reported incidents of  
3 force. So the commissioners should understand that  
4 it's a commonplace, frequently occurring phenomena in  
5 our institutions. Because it is one of the few  
6 commonplace events in prison, the jail environment in  
7 which there is immediately attached a risk of harm to  
8 both inmates and staff, it is an area of operation that  
9 tends to merit more scrutiny by the courts and by  
10 professional standards.

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

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

25 What I want to focus my remarks on is not the

1 rogue officer, the rogue commander or the rogue shift.  
2 Those cases, while they can fly under the radar, they

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

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

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1 So my experiences have been in large systemic  
2 cases in which what I found most difficult to deal with  
3 is to try to move a particular agency from just -- from  
4 the tandem of control and punishment strictly to  
5 control. Pelican Bay was a classic example, to which

6 Don made reference to it, that under the guise of  
7 enforcing lawful order, say, getting a dinner tray from  
8 an inmate locked securely in his cell, they routinely  
9 used very high degrees of force to do a relatively  
10 simple act of retrieving a tray, where they would use  
11 Tasers, wood blocks, gas all simultaneously to get a  
12 dinner tray back. Well, there's no question that the  
13 dinner tray needs to come out of the cell, that's  
14 the law and so forth, but the question is the  
15 proportionality: Was the objective risk in touch with  
16 the action. And it's a very, very -- sometimes very  
17 subtle phenomenon in our prisons. It's very difficult  
18 to detect and control. That's what I hope to maybe  
19 have a chance to talk about a little bit more in the  
20 question and answer session.

21 Thank you.

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

25 Before I talk specifically about violence, I want

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1 to talk -- I want to mention the intersection about  
2 violence and safety and health care and put violence in  
3 perspective for you all.

4 Mr. Martin, very eloquently, explained how  
5 many -- that uses of force there are in the prisons  
6 around the country. It's a fact of everyday life.  
7 But what is the harm? In California, I did a quick  
8 study for numbers and figures in 2003, and I found that  
9 14 prisoners were killed by force or violence by staff

10 or inmates in 2003. On the other hand, at least 13  
11 prisoners in that same year were killed from  
12 medical neglect, malpractice, and 25 were -- died from  
13 what has been called "preventable suicide." So We have  
14 a total of 38, at least 38 prisoners who died in 2003,  
15 which is almost three times as many prisoners who died  
16 from neglect as died from force and violence. So I  
17 just wanted to -- I just think that's an important fact  
18 when the Commission is discussing its recommendations.

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

22 In California we have had our -- more than our  
23 fair share of them from videotapes of beatings of young  
24 wards to people who have literally been boiled in water  
25 at Pelican Bay. I'm not going to also explain how

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1 violent prisons are because Mr. Martin and Mr. Cabana  
2 just did a very good point of that.

3 But my point is, that prisons are violent only  
4 because we want them to be, I believe. And they don't  
5 have to be as dangerous and as violent as they are. If  
6 you put poor underprivileged young men together in a  
7 large institution without anything meaningful to do all  
8 day, there will be violence. If that institution is  
9 overcrowded, there will be more violence. If that  
10 institution is badly managed such that some of its  
11 systems, such as poor mental health care, there will be  
12 more violence. And if there is inadequate supervision

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13 of the staff, if there is ineffective discipline, if  
14 there is a code of silence, if there are inadequate  
15 investigations, there will be even more violence.

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

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

11 So the question that comes up from that remark is,  
12 how do you change that culture? Well, I think there  
13 are two main ingredients to doing that: One are  
14 programs, and two is -- oddly enough -- conversation.

15 Programs make prison life more meaningful and they  
16 give people something to do and they help recidivism

17 and will reduce violence in the institution.

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

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1 prisoners in a useful way.

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

16 Thank you.

17 MR. RYAN: Thank you, gentlemen.

18 What I'd like to do is ask a couple of questions  
19 with my panelists and then open it up to the rest of

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20 the Commission to ask them a couple questions as well.

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

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

4 MR. CABANA: You know, it's kind of interesting  
5 that in the 1930s Lawes wrote a book while he was  
6 still a warden at Sing Sing called "Twenty thousand  
7 years in Sing Sing." It became a huge hit, made into a  
8 movie and stuff. Clinton Duffey at San Quentin in the  
9 '50s and '60s, an outspoken advocate of prison  
10 reform, "Abolition of Capital Punishment."

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

20 The political landscape has changed significantly.  
21 Any warden today that thinks that they can speak out  
22 publicly in terms of attacking the ills of the system  
23 without running the risk of political retribution

24 probably is coming from another planet.

25 What governors and the legislators consistently

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

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

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

23 At some point in time in the last 25 years, ACA  
24 should have been speaking loudly to, "We don't support  
25 the notion of building any more supermax prisons that

1 are going to take people and make them worse when they  
2 get out -- if they ever do -- than they were when they  
3 came in. We're not going to profligate the inhumanity,  
4 we're not going to profligate the inappropriate  
5 conduct.

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

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

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

1 their primary mission, that should not preclude still

2 Transcript of first hearing - FULL.TXT  
3 the approach that custody can be maintained alongside  
4 or in tandem with fair treatment, programming, and all  
5 the other things that hopefully prepare these offenders  
6 for ultimate release, because as we all -- most of us  
7 know, 95 percent plus of all offenders, incarcerated  
8 offenders -- whether they be in jails or prisons --  
9 ultimately are released to the street.

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

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1 they can work in a complimentary fashion where they  
2 both can be maintained. But we've come up with  
3 these wonderful phrases like "super-predators" and  
4 "supermax facilities," and it's been my  
5 observation -- you know, I've said this both in my

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6 writings and other testimony and presentations, I've  
7 worked probably around in as many maximum security  
8 facilities as pretty much anyone around, as far as  
9 having some limited exposure to a wide variety of them.

10 I don't know that our populations over those 35  
11 years are that much more difficult to manage.  
12 Certainly, there are dynamics, you know, of gangs,  
13 prevalence of gangs and so forth that made it more  
14 difficult, but I don't see offenders being dramatically  
15 more difficult to manage than they always have been.  
16 Yet, look at the rise of management devices that are  
17 omnifarious, limiting over that same 35-year time span  
18 of high tech weaponry, of supermax facilities, of all  
19 this equipment that we employ use and so forth and  
20 surveillance and everything else. So, you know, I  
21 think through, you know, is the population that much  
22 more difficult or do we compensate for our failures as  
23 administrators by building supermax facilities, by  
24 getting more equipment and so forth.

25 I think if we concentrate a little bit more on

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1 just shared improved management, fair play, listening,  
2 dialogue, common-sense type of approaches to treating  
3 people decently, that we might not have to rely so  
4 heavily on this supermax prisons and we might not have  
5 so many, quote, "super-predators."

6 I'll leave it at that.

7 MR. RYAN: Mr. Specter.

8 MR. SPECTER: Well, I have three points I want to

9  
10           One is, I empathize with the student who  
11 approached Warden Cabana because I have had numerous  
12 prison officials come up to me after the trial or after  
13 the case is over and express appreciation for what we  
14 have done or regretted what they haven't been able to  
15 do rather -- after the fact that they have actually  
16 been an adversary and prevented my ability to effect  
17 legal change because of their testimony. I attribute  
18 that quite a bit to the bureaucratization of America's  
19 prisons; where in Warden Duffey's's time the warden was  
20 pretty much the king of the prison then. And in the  
21 '60s and '70s and '80s, the control has shifted more  
22 from the wardens to the central office, so I agree with  
23 Warden Cabana that those people would be fired if they  
24 did what they thought, if they testified about what  
25 they thought.

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

5           The other part I want to echo is Steve Martin's  
6 point, which is that I think custody and control of  
7 prisoners is consistent with programming. If you  
8 program prisoners, it's not only -- it will reduce  
9 violence, it will increase public safety. And what  
10 we had in the -- especially in the '90s is this law  
11 and order approach and this mean approach which is  
12 exemplified by prisons like Pelican Bay, in which

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13 programs are taken away, just austere prisons were put  
14 in its place, restrictive. And I think if you talk to  
15 most, if not virtually all, prison administrators these  
16 days you will find that they all decry that and they  
17 don't believe it's working and they think it's inhumane  
18 and they think that we should go back to the days where  
19 we had more programs.

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

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1 means of administrative control.

2 The interesting thing that happened was that  
3 after Judge Henderson issued his order in  
4 '95 -- we tried the case in '93 or '94 -- Judge  
5 Henderson issued his opinion in '95 with those  
6 statements in it. They sent a new warden to Pelican  
7 Bay, and he went around -- he told me this later. He  
8 went around to all the units and all the watches and  
9 met with all the correctional officers, and he gave  
10 them one simple message, "The violence has to stop and  
11 it will stop, and you are not to commit these kind of  
12 violent acts with our prisoners anymore; and if you do,  
13 you're gone." And guess what? The violence plummeted  
14 overnight and Pelican Bay has never been the same,  
15 thankfully, since. So it's possible and it's

16 reasonable, and it can be done quickly if there's a  
17 will to do it.

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

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

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

15 After four years of monitoring, that response was  
16 virtually totally eliminated. They did not use  
17 hard-impact strikes to control the population. They  
18 had not compromised their security in any fashion. In  
19 fact, we contended to the Judge when he terminated that

20 remedial decree, I think had a record -- a factual  
21 record in which that was indeed a safer operation both  
22 for staff and inmates, and the injurious force was  
23 virtually totally eliminated.

24 It just so happened that when we started  
25 experiencing some success in monitoring term, it wasn't

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1 what Mr. Carlson and I were doing, it was an  
2 administrator, it was a corrections person that was  
3 made deputy warden and started going back to the  
4 facility itself and basically giving the message that  
5 the new warden did at Pelican Bay. And what that tells  
6 me is, it reaffirms my belief that the most insidious  
7 feature of use of force is not the rogue events, it's  
8 not those that clearly are an indefensible, it's those  
9 events that fly under the radar, under the rogue bridge  
10 of sanctioned -- I mean of lawful force, when it in  
11 fact is a pattern and practice of what I have come to  
12 term in my writings as "de facto corporal punishment."  
13 Officers know that they may be able to exaggerate or  
14 manufacture a reason to apply force, and under that  
15 guise actually what they're doing is inflicting  
16 punishment or they're engaging in an act of  
17 retaliation. That is what I've seen more in terms of  
18 patterns and practice and in systemic problems  
19 as opposed to that isolated rogue event.

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

22 There's two bottom lines here. One is leadership,

23 Transcript of first hearing - FULL.TXT  
24 and whether you're talking about correctional officers,  
25 case managers, clerks in the records office or  
whatever, the warden sets the tone.

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

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

17 The level of hostility between officers and staff,  
18 between inmates -- officers and inmates, between other  
19 staff and inmates, between inmates and inmates, was  
20 astonishing. Constant verbal and physical  
21 confrontations. Inmates throwing feces and urine and  
22 boiling hot water or whatever else they could get their  
23 hands on, constant confrontations that required use of  
24 force. And yet, in the time that I was there I went  
25 through that unit virtually every day. I never had the

1 first inmate so much as raise his voice at me in anger,  
2 let alone curse me or throw anything at me. And I  
3 think that's largely due to the fact that I was there  
4 to listen and let them vent some.

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

11 The bottom line in running a correctional  
12 institution, and I think especially a maximum security  
13 prison is, you cannot do it from behind a desk and do  
14 it effectively. You have to be visible. You have to  
15 listen to the officers, to the counselors, to the  
16 people who are on the frontlines. You have to listen  
17 to the inmates. The gangs are absolutely a concern and  
18 a rightful concern of any prison official, but you have  
19 to communicate with them. To lock them down and throw  
20 the key away, and say, "Until you get released from  
21 this institution you're not coming out into  
22 population," flies in the face of good practice. You  
23 have to communicate with them. I was discouraged from  
24 doing that, frankly, because communicating with gang  
25 leaders meant that you were giving them credibility,

1 and somehow the notion never occurred to some of my

2 superiors that if I locked down a hundred gang leaders,  
3 there were a hundred other lieutenants out there ready  
4 and willing to take their place, number 1.

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

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

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

19 I wondered if you could summarize for us what  
20 experience has shown the effect of these things has  
21 been on violence in prisons of all types, not just  
22 homicide but also suicide and the various other kinds  
23 of violence. And what would be a more recommendable,  
24 systemic response as a means of reducing the level of  
25 violence within prisons at a systems level so that

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1 we're not just a dependent on an individual either, a  
2 bad actor or an individual, you know, humane  
3 administrator or guardian?

4 MR. MARTIN: A very good question. The well-run

5 supermax prison can no doubt drive down significantly  
6 inmate-on-staff balance. Because a well-run supermax,  
7 such as Pelican Bay, the whole design and philosophy of  
8 that is to minimize physical contact between inmate and  
9 staff so there's barriers everywhere. So it can do  
10 that. It clearly can reduce the inmate-on-staff  
11 violence.

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

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

3 I believe that our custodial managers or  
4 correctional managers have an obligation -- in fact, I  
5 would suggest theoretically an argument could be made  
6 that their primary obligation is to render that inmate  
7 in a fashion where there's a higher likelihood that  
8 he will not re-offend when he hits the street and

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9 victimize further people; that's as important as the  
10 actual custodial function. So that answered the first  
11 part.

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

25 If, on the other hand, you had some type of step

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

8 If there's one thing I've learned in 35  
9 years -- my entire adult life of being in this  
10 business -- the inmate that is dangerous is the inmate  
11 that has literally no hope; for whatever reason, he has

12 Transcript of first hearing - FULL.TXT  
checked it and said, "I've got nothing to lose." And  
13 for the life of me, if you look at the mechanisms  
14 in the legislation and other strategies we employ,  
15 their effect basically is to remove that hope, the  
16 three strikes and you're out; the commitment to  
17 supermax. It seems like we always -- that  
18 pendulum constantly swings in our business from left to  
19 right, but seldom does it do it in a gradual,  
20 methodical, well-orchestrated manner. It's usually  
21 these hard swings. And that's to me -- you know, we  
22 had -- went through this law and order era in '70s  
23 and '80s and we had some problem in the Federal  
24 Bureau of Prisons at Marion; and what do we have, we  
25 have the supermax. That's where it came from. In

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1 Florence, Arizona, and into Pelican Bay, and now there  
2 was an explosion of that.

3 When you stop and think about the work that was  
4 done in conceiving and implementing that, which we  
5 researched in the Pelican Bay, Don, remember,  
6 we -- you know, it's one of the things, we traced  
7 the exact origin. It was done, I would suggest, almost  
8 haphazardly. It was not well thought out. And it  
9 was -- it had the facial validity and attractiveness to  
10 the public of supermax to put super dangerous  
11 predators, there you create an entire system from that  
12 kind of ideological, political type of blessing.  
13 That's what that was because -- Don, you pointed out  
14 Benjamin Rush, et cetera, would look at Pelican Bay as  
15 it's just a more modern version of the Eastern State

16 Penitentiary. The total bill came over and said, gosh,  
17 what are you all doing? I mean, this is -- you know.  
18 So we've been down that road and so forth.

19 So there is a way -- and I see it in systems all  
20 over the country that can successfully manage dangerous  
21 inmates, and we have them indeed, but I think they're a  
22 smaller minority than the average public. And I would  
23 be interested in your observations whether that's true.  
24 I think they're a smaller minority than we believe.  
25 But I'm in institutions all the time where those people

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1 are effectively and safely managed in a way that  
2 doesn't require their 23-hour lockdown.

3 MR. RYAN: Go ahead, Mr. Specter.

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

11 In California, for example, you have a few  
12 thousand -- well, a thousand -- 1500 of these cells and  
13 you have another couple of thousand of security housing  
14 unit cells. You have 165,000 prisoners in California.  
15 So you can't really control violence with those few  
16 cells with 165,000 prisoners and tens of thousands of  
17 gang members from street gangs and prison gangs in the  
18 system. It's just impossible. And in fact, the level

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of violence in California has been going up,  
20 notwithstanding these SHUs.

21 The second thing is, I think it's a failure in  
22 terms of gang violence because what you do when you put  
23 a gang member in a SHU with nothing else to do, with  
24 other gang members, is they will communicate with each  
25 other; and the since they have nothing, literally

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1 nothing else to do with their time, they will talk  
2 about gang activities. And the result of that is -- in  
3 California, for example, five of these gang leaders who  
4 are in the Pelican Bay SHU are now on trial for capital  
5 murder that they allegedly ordered in Los Angeles. So  
6 clearly it's not limiting their power or activities.

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

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

23 matter, or other things.

24 The last point I wanted to mention was your point  
25 about how do we reduce the dependency on the

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1 individuals and how do you create systems so that you  
2 don't have the warden that I mentioned that has to come  
3 in and say, "We're going to reduce violence, and  
4 that's the end of it." And my answer to you is, I  
5 don't think you can. Unfortunately -- and maybe my  
6 colleagues here have different experiences. I think  
7 it's a mixture of systems and people. If you have been  
8 or either you lose, which is maybe why there's such a  
9 great failure rate.

10 MR. CABANA: Commissioner, I'm not sure that you  
11 can't do that. What I am certain of is that it's  
12 impossible in the present circumstances because in the  
13 200-plus year history of American penology, despite  
14 great lip service, neither legislators nor governors  
15 nor the public has ever expressed a clear, concise,  
16 cohesive corrections policy. This is what we want  
17 corrections to do. This is what we want to have  
18 happen.

19 Last year ABC did a pole in which people were  
20 asked should -- "Do you support treatment sentencing,  
21 the high rate of incarceration in the United States?"  
22 And the 80 percent of the respondents said,  
23 "Absolutely, be tough on them. Send them up the river  
24 and throw the key away for an indefinite period of  
25 time." And the same 80 percent responded, "And by the

1 way, when they come out we want them better than they  
2 were when they went in." This kind of schizophrenic  
3 lack of cohesive policy prohibits us from doing the  
4 kind of thing that you're asking about. And Don's  
5 absolutely right. I think it can be done, but not in  
6 the environment that we're in right now.

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

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

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

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

21 MR. GIBBONS: Is that a positive thing?

22 MR. SPECTER: Well, in fact, we have actually  
23 gone to court to make the prison officials do that  
24 because otherwise they are luridly psychotic for months  
25 at a time, and they literally can kill themselves or

1 hurt somebody else. It's painful being psychotic, so  
2 you don't want -- it's not a humane thing to do.

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

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

20 You know, Parchman at the time I was running it  
21 was a 5,000-bed max prison, and I would estimate on any  
22 given day conservatively ten percent of the inmates  
23 were being maintained on psychotropic medications, some  
24 against their will. But the thing is, in terms of the  
25 kind of consistent follow up, the kind of therapy

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1 that's required, the kind of treatment that's required;  
2 administering the drugs every day is the easy part of  
3 it, but intervening to bring about some sense of  
4 improvement in this guy is not there. And frankly,

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5 unless you contract for mental health services, most  
6 state departments of mental health are going to stay as  
7 far away from corrections as they can. They don't want  
8 anything to do with it.

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

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

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

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1 nation today?

2 MR. CABANA: Well, Commissioner, I -- while you  
3 could sit and discuss all day cultural differences that  
4 impact how an institution's run, you look at the  
5 European nations and the rest of the western  
6 industrialized nations, and they have their problems.  
7 I've done consulting work for several systems in

8 Europe. Having said that, however, they also have a  
9 basic understanding that incarceration is the last  
10 resort, and it is reserved for the so-called baddest of  
11 the bad, the folks who because of the nature of their  
12 crime have to be removed for some period of time from  
13 society; some of them forever. Part of what "truth in  
14 sentencing" and "three strikes" and "get tough" in  
15 general has done is it has, unfortunately, put a damper  
16 on other programs that work. Community-based  
17 corrections, keeping the offender where there's a  
18 support structure.

19 You know, when I ran Parchman in the 1980s,  
20 people will probably react as they usually do, and say,  
21 "Mississippi of all places," but Mississippi instituted  
22 the first inmate furlough program in the United States  
23 in 1941. And every year between November 1st and  
24 February 1st, as warden and the commissioner, I would  
25 sign off on somewhere between four and 500 applications

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1 for inmates to receive up to ten-day Christmas  
2 furloughs between November and February. The worst  
3 year we ever had for violators was five people, three  
4 of whom did not commit new crimes, none of which were  
5 violent, but had violated administrative proceedings.  
6 And then all of a sudden we had the Bush - Dukakis  
7 election, and here comes Willie Horton. And  
8 immediately, no discussion, the order comes down,  
9 "Eliminate furloughs, get rid of them." They had  
10 worked for 40-something years extremely successfully.  
11 Other prison systems came to Mississippi to find out

Transcript of first hearing - FULL.TXT

12 what the heck there was about it that made it so  
13 successful. But one political venture and we had a  
14 knee-jerk reaction.

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

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1 students in K through 12. And the public has been  
2 given this -- has received a steady diet of feeding.

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

12 For the 150 years in American corrections, states  
13 built prisons on an as-needed basis, and they were  
14 fairly unplentiful. When I started my career in 1969,

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15 the total prison population in America was a little  
16 over 200,000, prisons and jails, federal system and  
17 state system. Whereas today, it's over two million.  
18 Now we build prisons as an economic engine. Well, this  
19 community has got a depressed economy, let's put a  
20 prison in there. It's kind of like the argument that  
21 those of us who love athletes at the university I  
22 teach at has been using the support of expanding our  
23 football stadium: "If you build it, folks will come."  
24 If you build the prisons, the prosecutors and the  
25 Judges will fill them.

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

10 MR. KRONE: Chairman, I had some up close and  
11 personal experience with prison. As you may or may not  
12 know, I spent over 3700 consecutive days behind bars.  
13 I had some time to observe acts, procedures. I'm not  
14 going to sugar coat it. Some of this violence that  
15 goes on in prison is officer induced. I know the  
16 public's not really concerned about inmates fighting  
17 inmates, but they're certainly concerned about their  
18 own police or correction officers being harmed.

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19           My question goes to the area of training. Now,  
20 I'm told there's anywhere from three weeks to three  
21 months training to be a correction officer, depending  
22 on what state. I'm not even sure you could get a job  
23 at McDonald's with that little amount of training.  
24 But nevertheless, I want to address the issue of just  
25 what have you experienced in the amount of training; Is

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1           there a follow-up training, are they brought back on  
2 an annual basis or a monthly basis; is it a voluntary,  
3 is it involuntary? Just how far has training come  
4 along, evolved into improving officers? Are they  
5 understanding of the job or the difficulties of the  
6 job? And again, in the case of making their life safer  
7 and as a prison warden easier for you to maintain  
8 security in that prison?

9           MR. CABANA: Well, my personal view of training  
10 has always been that it ranks up there. I think the  
11 single most important function in the prison to make it  
12 go right is classification. At the 1A is training.  
13 And over the years, of course, we in the field have  
14 learned the hard way -- with the help of the federal  
15 courts -- that training is something that we're  
16 responsible for. Our training academy is approximately  
17 three weeks of classroom time followed by a couple of  
18 weeks of mentor with folks at AT. We have officers as  
19 young as 18 years of age walking out of a three-week  
20 training academy and going to work in a maximum  
21 security environment.

22 I will mention as an aside that in a 500,000-bed  
23 male prison, 68 percent of the guard force that I had  
24 was female. So there were recruitment and retention  
25 problems. The training -- I think the training staff

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1 wanted to do the very best job that they could. But  
2 lack of resources, in many systems, a lack of  
3 commitment and, you know, training folks historically  
4 in corrections gets very frustrated because they'll put  
5 out a training schedule that says you've got to have  
6 40 hours of follow-up in-service training a year and  
7 stuff, and then administrators and supervisors will  
8 find all kinds of justifiable reasons to excuse people  
9 from going to the training; the security of the  
10 institution comes first or whatever.

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

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

25 In eight months' time, I slashed \$10 million out

1 of the institution's operating budget, sent 300 people  
2 home off the payroll because the state had a budget  
3 deficit and the Department of Corrections' part of that  
4 was \$34 million. And guess where part of the money  
5 came out of? Training.

6 MS. SCHLANGER: I have a question, which is, how  
7 do restraints of various kinds fit in this picture?  
8 I mean, it's not a real specific question, but  
9 different kinds of chairs and four-point restraints  
10 and this and that as uses of force that are used in  
11 both jails and prisons, I kind of wonder about both  
12 prevalence and problems and so forth.

13 MR. MARTIN: Well, there has been, as I've alluded  
14 to earlier, you know, with the advent of this high-tech  
15 weaponry. I put in that same category it's now a full  
16 kind of array of restraint devices, restraint chairs,  
17 the four-point, five-point restraint, the hobble  
18 devices. There's quite an array of fairly, you know,  
19 high-tech restraint mechanisms out there, restraint  
20 boards, et cetera. What I think comes from that is  
21 something that I think I referenced in my statement.

22 In the past five to seven years, I have worked  
23 probably 20-plus in custody restraint death cases in  
24 which inmates during the course of being placed in a  
25 restraint chair or a restraint board or four-points or

1 five-points, during that process have died. There's  
2 two things that are kind of common with my 20 or so  
3 plus cases:

4 One is, more often than not it's a mentally  
5 impaired inmate, and they'll act acutely, ill inmate.

6 And two, it's from either positional asphyxia,  
7 restraint asphyxia or compression asphyxia, all very  
8 similar.

9 So that's one of the principles, I think, that  
10 applies with all this weaponry. There's much of it  
11 that I believe has a rightful place in the  
12 administration of our facilities, and I do not take  
13 hard positions against, say, a restraint chair or a  
14 restraint board. But if you're going to use those  
15 devices, with that comes the responsibility to define  
16 the relatively narrow circumstances in which you use  
17 them and employ them, and enforce that, because if you  
18 don't, some of that weaponry is so attractive, it's  
19 like a kid that gets a new Play Station. It's there,  
20 it's -- you know, the type I can remember from when the  
21 Taser came out in the mid-'80s and our wardens in Texas  
22 were just so excited at the prospect of using that  
23 Taser. It's the same thing with the restraint chairs,  
24 it's the same thing with any type of weaponry that  
25 comes into -- you know, onto the market and into the

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1 system. And some of it, again, I believe has its  
2 place.

3 Pepper spray, for instance, I believe pepper spray

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4 is a very functional chemical agent device, but it is  
5 so functional that it has a tendency to be  
6 overemployed, or be used as a first strike weapon, and  
7 from that when -- well, it just creates you more  
8 opportunities to have more violent episodes when you  
9 pepper spray an acutely mentally ill person. All that  
10 does is escalate the matter into extreme violence and  
11 somebody is going to get hurt. So it's the same thing,  
12 Margo, with restraint devices, there are very, very  
13 few instances in which somebody has to be fully  
14 restrained. I mean totally, physically, immobilized  
15 into four-points, five-points or a restraint chair.  
16 But I can take you into facilities that at the drop of  
17 a hat are placing people in restraint chairs. And when  
18 you do that day in and day out with a high incidence of  
19 frequency, because of the nature and the force that it  
20 requires to do that sometimes -- and especially if you  
21 throw in and overlay it with a mentally impaired,  
22 you're going to have deaths. You're going to have  
23 serious injuries, more than we've seen in the past.  
24 So, again, as more of this weaponry comes into  
25 play and comes into use, I think the responsibility is

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1 greater that we have -- we employ very strict  
2 guidelines, very narrow circumstances, oversight and so  
3 forth within to use it. If it's done, it can be used  
4 very successfully; if it's not, it can be abused and  
5 misused so easily.

6 MR. CABANA: I think there is an irony to that  
7 misuse or overuse, and that is, an inmate's no

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8 different than anybody else. They're pretty ordinary  
9 folks in most respects. It's kind of like dealing with  
10 a recalcitrant teenage child, you ground them, you take  
11 privileges away, and the more you do the more the kid  
12 says, "I can do this. Take whatever you want." And  
13 what happens with use of force in an institution is the  
14 more frequently it's used, psychologically, the more  
15 you run the risk that the inmate population will get  
16 to that point where at least on an individual basis, "I  
17 can do this. I can do whatever time you put on me in  
18 the hole. I can handle the violence. Put it on me.  
19 It doesn't matter." So ultimately, the very  
20 effectiveness that you're looking for in terms of using  
21 this stuff ends up being exacerbated.

22 MR. NOLAN: I'd like to pick up on -- about the  
23 medication of mentally ill inmates.

24 During my incarceration, I saw plenty of folks  
25 doing the Thorazine shuffle in their Converse

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1 tennis shoes with no laces, but my observation was, it  
2 was for the convenience of the institution, not for  
3 their benefit. There were those who were medicated  
4 that didn't need it, but there were problems, and there  
5 were those that did need medication and treatment that  
6 didn't. And at least to a broader observation, which  
7 is that it appears some administrators view their job  
8 as the -- they wouldn't say this, they put it in terms  
9 of public safety, but it's really the convenience of  
10 the institution and the officers. Take the DMV office,

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12 string barbwire around it and give the clerks guns, and  
13 that's the mentality of some officers. That same  
14 philosophy leads to Pelican Bay, which was astounding  
15 to me to visit. David Akerman -- I took in there from  
16 Time Magazine -- said it was "a sanitary dungeon."

17 And to take an inmate that's been in SHU and then  
18 release them to the street is cruel to that inmate and  
19 dangerous to the public, but under one philosophy of  
20 management of prisons, that system has done its job.  
21 They contained him while he was in there, and it  
22 doesn't matter what happens once he gets out.

23 Yesterday Mr. Cowley suggested that in addition to  
24 institutional security, the wardens be graded also on  
25 recidivism. I'd like each of your reactions to that as  
a possible tool to make it in the interest of a warden,

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1 that he has a stake, not just in keeping the person  
2 from rioting or acting out inside prison, but in  
3 addition having the public safe once they're released.

4 MR. SPECTER: Well, I think your point about  
5 mental illness is very well taken and the treatment.

6 In my experience, the prisons do both things  
7 wrong. They give too many drugs to too many people,  
8 and they don't give enough of the right drugs to the  
9 right people. And I agree with Warden Cabana, that  
10 giving a pill to somebody is the easy part -- and  
11 in California, they don't even do that correctly -- but  
12 providing the staff and the therapy that you need for  
13 these very seriously mentally ill prisoners who, by the  
14 way, number between 16 and 25 percent of the prison

15 population depending on what definition you use, is  
16 really a problem. It's very expensive. Prisons are  
17 a difficult place to provide therapy in because of all  
18 the security constraints, and the prisoners are  
19 difficult, there's no question about all that.

20 So it -- you really need to develop a complete  
21 mental health system that functions properly in order  
22 to do that well. And unfortunately, as you probably  
23 know, we've been criminalizing mental illness and using  
24 our jails as mental hospitals and so what you have is  
25 an increased demand for services while the population

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1 skyrockets; typically the corrections budget doesn't  
2 proportionately with the mental health services that  
3 they need. So I think your observations are exactly  
4 accurate.

5 In term of grading wardens, I have been a  
6 proponent of report cards for wardens for many years.  
7 Everybody else gets performance evaluations but  
8 wardens, it seems to me, at least in California,  
9 they're not fired unless they embezzle or they do  
10 something politically unacceptable to their superiors  
11 Their prisons can run a deficit of ten and \$20  
12 million and nobody says a word to them.

13 And in terms of public safety, they -- most of  
14 them have absolutely no interest in promoting public  
15 safety because they're going to get in trouble if  
16 somebody escapes, if there's too much violence, if the  
17 staff get hurt. They don't get in trouble, they're not

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18 held accountable for high recidivism rates. They are  
19 given -- and in many states, to tell you the truth, it  
20 wouldn't be fair to do that because they're given  
21 absolutely no money or no help in providing these  
22 programs. You have to give them some help, too.

23 In California, for example, the now director of  
24 corrections is Jeannie Woodford, who has  
25 thousands -- when she left, had thousands of volunteers

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1 coming to at San Quentin on a monthly basis, and she  
2 did things without any money and, you know, she would  
3 get a high mark for that. But on the other hand, you  
4 have many prisons which were built in California in  
5 very rural areas, and they were purposefully put in in  
6 out-of-the-way places. You just don't have the  
7 resources to do that. So I agree completely you should  
8 do it, but they have to be given the resources before  
9 they can be held accountable.

10 MR. CABANA: This is going to sound like excuse  
11 making from an old prison bureaucrat. Report cards  
12 based on recidivism -- Um. Don Specter actually just  
13 made some of the excuses for me. I'm sitting here  
14 thinking about in state after state legislatures  
15 taking the carrots away from the wardens so that what  
16 you're left with is a bag of switches, no incentives.  
17 We've taken parole and decimated parole concepts in  
18 this country. We've taken away earned time, good time.  
19 We've taken away furloughs. We've reduced community  
20 corrections. We have the highest incarceration rate of  
21 any nation in the world. We incarcerate more of our

22 citizens longer than any country in the world. We  
23 incarcerate juveniles, kids with adults. Up until the  
24 Supreme Court got it right a couple weeks ago, we  
25 didn't hesitate to execute kids. So when I hear people

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1 talk about how we're not tough enough on crime, I  
2 wonder what else is left to do.

3 In Mississippi, for example, prison officials were  
4 directed a number of years ago, if somebody goes to  
5 lockdown, if he's bad enough to be in supermax, take  
6 everything away and he'll want to behave himself and  
7 get out. So in the summer months, in the Mississippi  
8 Delta where it's not unusual for the heat index to get  
9 up to 115 or higher, I am prohibited from letting  
10 inmates have a lousy fan in a cell that is an inferno.  
11 That is unconscionable. There is no excuse under the  
12 guise of being tough on crime for doing that sort of  
13 stuff. And that is not good public safety. But the  
14 problem is, this whole thing revolves around the fact  
15 that good politics doesn't always make good public  
16 policy, and that's where corrections is hurting so  
17 badly in many instances today.

18 But to answer another part of the question, my  
19 first message to the staff in any institution that I  
20 ever ran was, "Our first obligation here is to care for  
21 these people who are placed in this institution."

22 The first warden I ever worked for said, "If you  
23 don't ever remember another thing I tell you, you  
24 remember the greatest gift that God can ever give one

1 that's something that corrections really needs to try  
2 and remember from time to time.

3 But the other thing is public safety. Prisons are  
4 supposed to be about public safety. But in order to  
5 ensure that they do their part for public safety,  
6 that means that inmates have to come out better than  
7 they were when they went in instead of coming out worse  
8 than when we sent them away, if we're going to insist  
9 on sending all of them away, which is what we've been  
10 doing now for two decades.

11 Mr. Luttrell: Dr. Cabana, early in my career I  
12 worked for a warden who had loose lips and he talked  
13 about roughing up inmates, and as a result of that  
14 there were some inmates who were roughed up. It made  
15 me very sensitive when I became a warden to be very  
16 careful about the message that I sent to the troops and  
17 how I carry myself in the institution.

18 Could you talk a little bit about the  
19 responsibility that a jail administrator and a warden  
20 has when it comes to really conveying the message and  
21 how best to convey that message to the people that work  
22 in that institution because the warden or the jail  
23 administrator does not face the linchpin for everything  
24 we're talking about? Could you talk about that  
25 briefly?

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1 MR. CABANA: That's a great question.

2 And again, not to oversimplify it, but as I  
3 mentioned earlier, leadership, leadership, and  
4 leadership by example and demanding accountability and  
5 then taking action when it's required.

6 I have on more than one occasion in my career  
7 intervened personally when officers were assaulting an  
8 inmate, once coming upon it, to stop it. I actually  
9 handcuffed an inmate to myself on one occasion and got  
10 him out of the situation and took him to the hospital.  
11 I figured if he was handcuffed to me that we might both  
12 be safe for a while. I think it's something that has  
13 to be continually reinforced.

14 And again, it's not enough for a warden to sit on  
15 the witness stand in court and say, "Well, Your Honor,  
16 I wasn't there. Obviously, I don't count in this kind  
17 of conduct and behavior. But I wasn't there, so I'm  
18 not responsible." Of course the warden's responsible.  
19 And it doesn't go on at the high levels unless the  
20 administration -- at least in an oblique fashion --  
21 gives a wink and a nod, which indicates to the staff  
22 that it's okay.

23 One other thing, because we've talked a lot about  
24 violence, and officers always get thrown into the mix.  
25 But I want to make sure that folks understand that

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1 despite the fact that the correctional officer is the  
2 single most important influential person in the prison  
3 because he or she has contact with the inmates 24 hours

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4 a day, seven days a week, there are other staff who  
5 have critical roles to play, and who can by virtue of  
6 how they perform their duties, greatly contribute to an  
7 effective organization or it can muddy the waters  
8 tremendously.

9 I want to give you an example. At an institution  
10 that I ran, an inmate had been locked down as a sexual  
11 predator, and there was a program in place for inmates  
12 in this classification to be reviewed and over a period  
13 of so many days earn their way out of that lockdown  
14 status. This particular inmate had completed the  
15 process with no rule violations and had his review. A  
16 case manager didn't like him, and so she didn't put his  
17 name on the list of inmates who were ready to be  
18 released from this program. It doesn't sound like a  
19 huge big deal except four days later the inmate did  
20 everything he could to commit suicide. Fortunately, he  
21 did not succeed. I find that kind of action by  
22 somebody in that kind of position to be every bit  
23 egregious as some officer wailing away on some inmate's  
24 head with a stick or getting a charge out of using a  
25 Taser. Particularly, because classification is the

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1 engine that's supposed to drive the prison and make it  
2 safe.

3 So what I should have given you is the short  
4 answer. Basically, that wardens have to reinforce  
5 every day, day in and day out, they have to reinforce  
6 with staff. Some people would say, "Geez, it sounds

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8 like you're saying examples have to be made out of  
9 people." It got to the point at Parchman, frankly,  
10 where I had an officer that resigned one morning. She  
11 was very angry because she'd been questioned by  
12 Internal Affairs. But I found it somewhat  
13 illuminating. I said, "Why are you resigning?"  
14 Basically she was just, you know, getting started, and  
15 the purpose is to arrive at the truth. If that  
16 exonerates you, then that's to your advantage. Well,  
17 but the staff know that if they're called out to  
18 Internal Affairs that their job is probably on the line  
19 and in serious jeopardy and, unfortunately, I think  
20 that's necessary to a degree. And I think that has to  
21 be constantly reinforced.

22 SENATOR ROMERO: This has been a very profound,  
23 thought-provoking, stimulating discussion; a lot of  
24 food for thought, and some of it quite upsetting,  
25 but let me comment especially on Warden Cabana's  
comments that you made.

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1 You talked about the public was saying, "Take them  
2 in, lock the key, but make them better." I too want to  
3 say, speaking from at least from California where I  
4 hear in the legislature that sentiment exactly.  
5 There's a lot of stereotypes about California, it's  
6 left coast, but I would say it is a law and order  
7 state. I see it every Tuesday in public safety with  
8 the number of proposals coming forward to lock up, not  
9 only sentence, but to enhance now, super-size,  
10 maximize, et cetera.

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11           The banter that I've taken, though, in dealing  
12 with my fellow legislatures and with the California  
13 populous, and I think it's been effective is, I sort  
14 of champion the "we've been tough on crime, but we've  
15 got to be smart on crime" because I still do believe  
16 it's law and order to California elector it is, and  
17 probably the rest of the nation, that people  
18 understand taxes, they understand money. And budget  
19 deficit times the avenue that I've taken to talk about  
20 juvenile justice or prison reform is on the fiscal  
21 matters where we're seeing the fiscal safety issue to  
22 it more so than a public safety issue.

23           But I was surprised when I started chairing the  
24 Budget Committee that oversees corrections in  
25 California, I can't find line items. Over a \$7 billion

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1           agency in California and growing on health care --  
2 health care is a billion dollars and growing, not a  
3 single line item. My staff has to piece it together.

4           On the SHU, likewise. I can only estimate because  
5 there is no line item. And so what I've done in  
6 talking about it publicly is to suggest that to  
7 incarcerate somebody in a SHU costs over \$70,000.  
8 That's my best estimate. I think it's growing. For  
9 a typical inmate in California, it's about \$33,000.

10           The question I would have for you is, you know,  
11 what -- at least for me when I pose the question of,  
12 what are you getting, what's the return on the dollar  
13 from taxpayer perspective? People start to question.

14 The question I would have then is, can we, in working  
15 with legislature, advocate, perhaps, or suggest that  
16 legislation should break out line items, whether it's  
17 health care or the maximum units, and are there  
18 instances in different legislatures where you've seen  
19 better truth in reporting in their budgets as to the  
20 true costs for incarceration?

21 MR. CABANA: Yeah, that's a great question.

22 One of the things that led to my experience with  
23 legislators in half a dozen different states is  
24 that -- and I'm sure you know, the vast majority of  
25 them really want to do a good job, but a lot of times

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1 they don't have the information they need to work with.

2 And the other thing is this: We were required,  
3 you know, to submit as an agency a five-year plan which  
4 really didn't get anybody's attention because  
5 legislators have a short span of attention. Every four  
6 years they've got to give the voters some answers at  
7 the ballot box, so to ask them to engage with a state  
8 agency in what long-term means and the projections are  
9 is something that's largely going to be ineffective.

10 I think, frankly, that every government agency in  
11 the United States -- I happen to be a proponent --  
12 despite the headaches involved -- of zero-based  
13 budgeting, and I think also, frankly, for a number of  
14 years in Mississippi our Department of Corrections  
15 labored under a Sunset Provision. And every five years  
16 the agency was reviewed to determine whether it would  
17 continue to exist in its present form, and I kind of

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18 like that idea. In fact, I like it so much I think it  
19 would be good for a lot of agencies other than  
20 corrections. I think it makes you, it forces you to  
21 truthfully examine yourself and take a hard look from  
22 year to year.

23 Now, one problem is, our legislature finds itself  
24 consistently -- I can't recall a session in the last  
25 20 years in which they've not had to come back in

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1 session in January and deficit fund us for medical  
2 care, et cetera, because the department says, well,  
3 we just -- we can't project the budget for the year.  
4 If we have four inmates on renal dialysis for the year,  
5 unexpectedly, that's going to be a quarter of a million  
6 dollars for an inmate that we weren't able to project.  
7 The truth of the matter is, it's kind of like a shell  
8 game. I'm not sure -- well, the legislation knows that  
9 the Department of Corrections is going to have to be  
10 fully funded, but if they wait until January to engage  
11 in the deficit funding thing, then it equates better  
12 with the taxpayers back home.

13 The other problem I have is this: I debated with  
14 one of my senators, who was on an Education Committee,  
15 and I kind of took a chance because, you know, people  
16 tend to forget that prison bureaucrats -- like Don  
17 Cabana and Gary Maynard and other folks -- are  
18 taxpayers, too, and we feel the pinch. So I spoke to  
19 this taxpayer one day, and said, "You know what, if  
20 you'll start spending more money on K through 12, in

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22 ten years I'll come to you and tell you I don't need as  
23 much money to run the prison system. Why don't you  
24 start putting money into VoTech, into education, into  
the universities, et cetera?"

25 His response was, "I'll be painted out by some

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1 opponent at some point in time as being soft on crime  
2 and I'll stand to lose re-election."

3 And my response to that was, "The last time I  
4 checked, Senator, nobody guaranteed you guys a  
5 retirement off the backs of the taxpayers. Go to the  
6 legislature, and if you give them eight years or ten or  
7 12 or four, do the very best that you can." And I  
8 think where that becomes especially critical is that  
9 legislators sometimes have to lead and the public's not  
10 ready to follow, but the legislature has to take them  
11 where they need to go; and frequently that kind of  
12 thing is missing.

13 MR. GILLIGAN: I hate to interrupt, but I think  
14 we've run out of time. I want to thank you all  
15 extremely for having given us a remarkably productive  
16 and fruitful discussion.

17 I appreciate your presence here.

18 So we'll take a break for, what, about half an  
19 hour and resume.

20 Thank you all.

21 (There was a recess.)

WITNESS PANEL: ROUNDTABLE DISCUSSION ON VIOLENCE

22 MS. SCHLANGER: Like the other commissioners, I

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23 want to begin this session, which is our last one of  
24 the day, by welcoming and thanking our panelists, who  
25 are Ken Adams, John Boston, Andie Moss, and Doug

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1 Thompkins. I'll introduce them in just one  
2 minute.

3 As you can, perhaps, tell from the fact that I'm  
4 standing behind this podium, the format of this session  
5 is going to be a little bit different than the other  
6 ones that we've done. This will be a moderated round  
7 table discussion. So we're not going to begin with  
8 statements. Instead, I'm going to try to get some  
9 things going with questions, but we'll hope to get  
10 to a conversation among the panelists who have a wealth  
11 of knowledge and experience to share. And after a  
12 little while, like maybe 40 minutes, a conversation  
13 including the other commissioners, too, if you want to  
14 contribute to that conversation or you should feel free  
15 to ask questions instead of that's more something that  
16 you want to do.

17 I hope that -- what we'll be talking about are the  
18 complex issues of prison and jail violence, obviously.  
19 The second panel is directed to that topic. I hope  
20 that we'll particularly be able to gain some insights  
21 into what distinguishes systems with problem from  
22 systems that have gone some distance towards solving  
23 their problems.

24 We've been talking already this morning about  
25 dividing the broad topic of violence in jails and

1 prisons into three categories of intra-inmate violence,  
2 inmate violence against staff, and staff violence  
3 against inmates.

4 Let me start by just saying a word or two about  
5 this that can maybe help set our conversation  
6 going. It seems, from what people say, that  
7 intra-inmate violence is one of the most frequent and  
8 most serious categories of violence in jails and  
9 prisons, and it ranges from beatings to rape to murder,  
10 and it inevitably it's even more serious than its  
11 numbers because it casts this wide shadow of extortion  
12 and coercion around it. So we'll talk some about that.

13 Inmate violence against staff also can vary.  
14 It can be caused by predatory inmates, by difficult  
15 inmates or by disturbed inmates, and those are very  
16 different in their dynamic.

17 And then staff violence against inmates raises  
18 really particularly thorny problems in some ways  
19 because some frequency and degree of force is  
20 inevitable. This is what Mr. Martin was talking about  
21 before. At the same time, to line draw becomes  
22 important here in a way that's not so true of these  
23 other categories.

24 On the other hand, staff violence against inmates  
25 has this very nice feature that because so many prison

1 and jail officials and correctional officers try to do  
2 the right thing in their difficult work, you kind of  
3 expect training and investigation in other bureaucratic  
4 -- a word I mean in a very positive form. Other  
5 bureaucratic interventions to be especially efficacious  
6 solutions to overuse of staff violence against inmates.  
7 So it has some attractive features for solutions, too.

8 In any event, I guess what's clear and what I'm  
9 hoping to develop in the course of this conversation  
10 with the panel after this -- you know, all the talking,  
11 is that each of these sources of violence has its own  
12 dynamics that require its own policies and solutions,  
13 so we need to be careful to keep things separate  
14 sometimes; that gang and racialized fighting and  
15 predation are dissimilar in many ways for more  
16 individual situational violence, and that both of these  
17 are distinguished from the serious problems facing and  
18 caused by inmates with mental illness or mental  
19 retardation. It's sometimes useful to pull these  
20 things apart for the conversation.

21 In any event, I hope that in this panel we will  
22 gain some additional insights into these dynamics.

23 So again, the format. We'll run for 80 or 90  
24 minutes. We're ten minutes late, so probably will eat  
25 that time in this panel, I suppose, and run for 80

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1 minutes. We'll begin with something like 40 minutes of  
2 conversation among the panelists and then at that point  
3 we'll open it up for the commissioners to both ask  
4 questions or to also participate in the round table

5 discussion. So that's how we'll do things.

6 Okay. So let me move on to introductions. I'll  
7 try to do this in order. Ken Adams has been working to  
8 further understanding of violent misconduct in jails  
9 and prisons for other 20 years. His current academic  
10 appointment is at the University of Central Florida, so  
11 he, unlike some of us, was able to drive here today.

12 Professor Adams is a co-author with Hans Toch with  
13 three books about inmates' maladaptive behavior in  
14 prisons including most recently, "Acting Out:  
15 Maladaptive Behavior in Prison." It's a book that was  
16 published in 2002.

17 John Boston has been counsel at the Prisoners'  
18 Rights Project of the Legal Aid Society in New York  
19 since his graduation from NYU Law School in 1976. He  
20 served as the project's director since 1991. In that  
21 capacity, he's been part of litigation that has  
22 challenged conditions at the very large jails that make  
23 up the New York City jail system and other correctional  
24 facilities in New York State as well. He's an author  
25 of the Prisoners' Self-Help Litigation Manual" and

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1 numerous guides for prisoners' advocates, especially  
2 regarding the intricacies of the Prison Litigation  
3 Reform Act.

4 Andie Moss was Assistant Deputy Commissioner in  
5 the Georgia Department of Corrections in the early  
6 1990's, where she was responsible for ensuring  
7 compliance with the mandates of a major class action

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lawsuit, Cason vs. Seekinger, I think, which dealt with  
9 staff sexual misconduct. Since then, she's remained  
10 deeply involved in that issue, as well as intra-inmate  
11 sexual misconduct issues. She's worked for the  
12 National Institute of Corrections and also with the NIC  
13 on implementation of the new Prison Rape Elimination  
14 Act, which is one of the things that I hope she'll tell  
15 us about a little bit.

16 She's consulted on site with over 40 correctional  
17 institutions to help her come to grips with the  
18 assessments and solutions of sexual misconduct behind  
19 their walls.

20 Doug Thompkins is a faculty member of the John Jay  
21 College o Criminal Justice as well as a doctoral  
22 candidate at the University of Illinois. His academic  
23 work and teaching is focused on violence behind bars.  
24 He's done ethnographic work in the area and he also  
25 has personal experience to draw on. He served time in

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1 an Indiana prison and was a leader of the gang Gangster  
2 Disciples, street gang.

3 Okay. So now we'll get started. I think maybe  
4 I'd like to get started with Professor Adams. Maybe  
5 you could start us off with an overview, you know, how  
6 serious is inmate-on-inmate violence, in particular,  
7 and how wide spread and what are the basic dynamics  
8 that we need to understand if we're trying to know what  
9 that's all about?

10 MR. ADAMS: Well, in terms of inmate-on-inmate  
11 violence, it's difficult to give a precise figure or

12 estimate of how often this occurs or what the incidence  
13 rate might be in prisons throughout the United States.  
14 I can say generally that, A, it's a substantial and  
15 significant problem in that, B, the problem varies.  
16 There is considerable variation within prison systems,  
17 even within prisons by different settings within the  
18 system, different cell blocks, different arrangements.  
19 So there is no one figure that would capture all of  
20 that variety.

21 But let me give you just a few examples of things  
22 I came across yesterday just on a quick Internet  
23 search. The New York City Department of Corrections,  
24 which runs the jail system there, reported in 1995 that  
25 it had 1100 slashing and stabbings, so quite a large

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1 number.

2 A survey of U. S. prisons, in which 40 prison  
3 systems responded, in 2001 indicated that there were  
4 124 suicide attempts and 1830 attempted suicides, and  
5 that 17 inmates were killed by other inmates in the  
6 United States.

7 In the United Kingdom, one study found that 40  
8 percent of offenders reported being assaulted, robbed,  
9 or threatened with violence within the last month. So  
10 two-fifths of the prison population.

11 And a study in Nebraska found that about ten  
12 percent of the inmates reported being forced or  
13 pressured to have sexual conduct within the last month.  
14 So that give you some idea of the range of figures

15 Transcript of first hearing - FULL.TXT  
16 here.

17 Let me just briefly comment on why it's difficult  
18 to give precise estimates on this. First off,  
19 violence, even inmate-on-inmate violence that we now  
20 are concerned there, covers a wide range of behaviors,  
21 there's a wide spectrum of acts that are involved. For  
22 example, we have sort of standard-type crimes, murder  
23 assault, robbery. In prisons, as in the street  
24 setting, these can occur with weapons or without  
25 weapons. We have sexual violence, which is of special  
concern within prison. We have group violence, riots

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1 and disturbances. And while sometimes those violent  
2 acts are directed against staff, very often  
3 inmate-on-inmate violence that occurs in a riot or  
4 disturbance context. We have gang-related violence,  
5 which varies by the prison system, and we have  
6 self-directed violence, suicide and self-injury.

7 Now, in term of capturing the range of those  
8 behaviors, we generally look for official records.  
9 Those records might be misconduct or disciplinary  
10 reports. Some prison systems have special incident  
11 reports in which they have procedures for recording  
12 disturbances or other kinds of events like that. We  
13 might have hospital or injury records that could be  
14 used, and we also have surveys of victims within the  
15 prison context similar to what we do in the community.

16 Now, in terms of understanding the numbers, you  
17 know, we have to recognize that the official records do  
18 not capture all of the events. They're subject to a

19 number of non-reporting and other biases. In terms of  
20 the non-reporting bias, for example, inmates are not  
21 often willing to come forward and to admit or to make  
22 known that they've been victimized. Depending on the  
23 context, there may actually be norms in the prison  
24 against this. I mean, if you're a man, you take it as  
25 a man and you deal with it later, you don't go running

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1 to the authorities for help. Sometimes activities are  
2 sort of seemingly consensual, but they're actually the  
3 result of coercion and threats of violence. As in some  
4 sexual activities, they might seem on the surface to be  
5 consensual, but they're not. And sometimes incidents  
6 are presented in different lights such as inmates  
7 getting assaulted, and the incident gets reported as an  
8 injury or a fall or something like that, and it winds  
9 up on the hospital record. So in that context, there's  
10 a wide range of activities. We have very a imperfect  
11 and imprecise systems for monitoring this. In fact,  
12 it's very hard to know.

13 I'll just give you one quick example. I found a  
14 survey, which was sent to 50 states, and they were  
15 asked about the number of disturbances in their prison  
16 system. Ten of the states could not or would not  
17 report, representing 20 percent of the states. Among  
18 the other 40 states that reported, they had  
19 approximately 2800 incidents, disturbances that were  
20 reported as having occurred in that year, and of that  
21 2800, believe it or not, 2300 came from Tennessee.

22 Now, I don't know what's going on in Tennessee. I  
23 doubt it's that dangerous of a place. I haven't been  
24 to their prisons. But as you can see, how they define  
25 an incident, how they -- the kinds of systems and

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1 mechanisms they have for recording these behaviors  
2 have a large influence on this.

3 Let me just say also, quickly, in terms of  
4 thinking about violence and types of violence, very  
5 often psychologists make a distinction between what the  
6 call instrumental violence and expressive violence.  
7 Instrumental violence is premeditated, it's calculated,  
8 it's motive driven, and it's goal directed. Expressive  
9 violence tends to be impulsive, emotional, spontaneous.  
10 And both of these types of violence occur. And the  
11 situations are very different between express and  
12 instrumental.

13 Also, I'll just mention quickly, some of the  
14 themes, the motives or the psychological themes that  
15 often come up in these violent incidents -- and this  
16 has been documented in a variety of observational and  
17 other studies -- sometimes the violence involves anger  
18 or retaliation or revenge. This may be a particular  
19 characteristic of gang-related violence, or protests,  
20 protesting the conditions. Intoxication, believe it or  
21 not inmates find access to alcohol and drugs within  
22 prison context. Mental instability, a mentally ill or  
23 perhaps mentally retarded inmates. There is  
24 self-protection or preemptive strike that may occur.  
25 There's fear often coinciding with that self-protection

1 of preemptive strike. There's bullying, and then  
2 there's saving face, which has to do with how one is  
3 viewed and presented within the larger prison context,  
4 okay? And that actually is a very important theme  
5 because inmates are painfully aware of how they are  
6 viewed and how they are looked upon by other inmates.  
7 In fact, it's a very important feature of the prison  
8 setting. So this gives you some idea of the different  
9 themes and dynamics that go on. So, again, you would  
10 see that there's a lot of variety in terms of these  
11 behaviors. Different acts may have very different  
12 underlying themes. And if we're going to try to  
13 understand those behaviors, we have to dig a little  
14 deeper and try to figure out just what is going on.

15 MS. SCHLANGER: So I guess I'm interested just to  
16 build on that with Mr. Thompkins --

17 MR. THOMPKINS: Okay.

18 MS. SCHLANGER: -- Professor Thompkins.

19 So what's the connection do you find, the policy  
20 to the stuff that Professor Adams was just talking  
21 about?

22 MR. THOMPKINS: Excuse me.

23 When we talk about policy, my concern is with the  
24 effect of the policy changes over time and the changes  
25 in institutional structures. Some of these policies

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1 can in fact create new opportunities for types of  
2 prison violence and also increase levels of prison  
3 violence. When we think of -- as we heard earlier  
4 today -- shifts in policies such as are creating the  
5 supermax facilities, we have higher levels of violence,  
6 different types of violence across these types of  
7 institution, and a lot of the violence that is  
8 expressive is in response to increased levels of  
9 perceived deprivation and so forth.

10 MS. SCHLANGER: One of the things that  
11 Professor Adams just mentioned -- this is also for  
12 Professor Thompkins -- was about gang violence. And  
13 I've heard from a number of commissioners that they'd  
14 like to talk more about gangs and the particular  
15 issues. So I don't have a specific question, but could  
16 you tell us about that?

17 MR. THOMPKINS: Well, first of all, when we talk  
18 about gangs -- whether it's a prison gang or a street  
19 gang -- we have to consider that that term "gang" is  
20 not a catchall, okay? When you talk about prison  
21 communities, any group of two or more people could be  
22 classified a gang. They support each other. They  
23 defend each other. The correctional officials, the  
24 guards can also be considered a gang.

25 I recently came out of the field in June after

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1 three years of conducting research looking at some of  
2 this. And in response to that, we're finding that many  
3 guards within many states have now created or they're

4 acting out gang behavior in response to certain  
5 policies such as the tobacco ban. Every state in the  
6 country including the federal system now has a full or  
7 partial tobacco ban. So what we're seeing is that  
8 some guards in some states have come together and  
9 collectively worked to both traffic as well as they  
10 work to defend their turf.

11 The policies in terms of a cross-race, those gang  
12 policies that we find being implemented and used within  
13 society, those criminal justice policies, are used  
14 within correctional facilities. So if you look across  
15 race, for example, the largest percentage of persons  
16 within the supermax facilities happen to be men of  
17 color. And when you say they're "men of color," it's  
18 because we're talking about this racism proxy for  
19 dangerousness. It's uneven in terms of who's going to  
20 be placed within these facilities, and then once there,  
21 if you're talking about a facility within a rural  
22 community, the staff, they act out gang behavior  
23 because they know each other. So this us versus  
24 them ethos is created, and gang activity becomes a  
25 means by which offenders can survive.

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1 Not all members of gangs within prisons are  
2 actually full-fledged committed gang members. It's a  
3 means by which they can survive within the institution.  
4 If you have the us versus them ethos created where  
5 the guards defending themselves, the guards are acting  
6 out the inmate behavior, and they tend to unify a  
7 cross-race.

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8           Recently we're finding in some states that the  
9 differences that have divided in the population,  
10 they're going away. There's a common sense identity  
11 in terms of the pressures and the problems that are  
12 being encountered. So the policies, when I think of  
13 tobacco ban, the literature tells us when we talk  
14 about prison violence that it is management practices  
15 and changes that often lead to an increase in this type  
16 of behavior. It also tells us that the informal  
17 economic structure, the informal inmate organization  
18 has helped to reduce levels of violence.

19           Well, some of these policies for the first time  
20 since the Antisocial Organization was allowed to  
21 develop, we now see that the guards control the black  
22 market, not the inmates, the guards control the black  
23 market. Now, what does that mean?

24           MS. SCHLANGER: So are you saying that one of the  
25 things that a Commission like this should think about

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1           is recommending doing away with the tobacco ban?

2           MR. THOMPSON: I'm not here to promote smoking.  
3 What I'm saying to you is, if we look at mandatory  
4 minimum sentencing laws, all right, years after they  
5 were implemented we began to question the effect of  
6 these policies, okay? And I'm saying that when we talk  
7 about a tobacco ban, and not the tobacco ban, but it's  
8 an example, right, of a policy that's led to shifts in  
9 the organizational structure of these facilities.

10           We have to consider the potential harm. We know

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11 the Departments of Corrections are unwilling to  
12 allow us access to data, they're unwilling to allow us  
13 to go in and to question. So no, I'm not saying do  
14 away with the ban. I'm suggesting to you that we must  
15 step back and look at the real effect. The cost  
16 benefit analysis must be done.

17 MS. SCHLANGER: To sort of continue to lay the  
18 basis of this conversation that we're having, let me  
19 move to sexual violence in both men's and women's  
20 facilities. So this is a question really direct at  
21 Ms. Moss. And the question is just, you know, again,  
22 what are the general dynamics, how are they different?  
23 And maybe here, since you've been so involved in the  
24 solutions, what are the promising solutions?

25 MS. MOSS: that's sort of a big charge, but I am

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1 up to it.

2 First of all, let me thank the Commission for the  
3 work that they're doing and let you know how much I  
4 appreciate being here. I have had a journey of some 13  
5 years of being involved particularly in staff sexual  
6 misconduct. And as my bio included, I came out of the  
7 Georgia Department of Corrections in the early nineties  
8 before going to the National Institute of Corrections  
9 where I was given the opportunity to develop national  
10 initiatives to address staff sexual misconduct.

11 So let me respond. I think there has been a lot  
12 said in the two days. It's very consistent with my  
13 experience. And I think the thinking of really looking  
14 at how to build capacity -- capacities systemically to

15 deal with some of these issues.

16 I think in your introduction and the setup of this  
17 panel I have the following comments: It's very clear  
18 that there are -- it's multidimensional when we look at  
19 these dynamics, when we're talking about violence and  
20 then when we talked about sexual violence. And then  
21 you talk about male facilities and female facilities.  
22 So you're really looking at many sort of layers of  
23 issues. And I think that's really important in  
24 informing us because the strategies have to be multiple  
25 strategies. One size does not fit all. I think that

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1 what -- we've learned a lot, and I'm a great support  
2 and fan of Dr. Barbara Owen's work, and I know the  
3 Commission is going to look at women offenders more  
4 specifically later, but I think we have learned a good  
5 bit about women's cultures and women's' prisons and  
6 that they are dramatically different. The correctional  
7 goals are the same where we still want safety, we still  
8 want security, but when we look at the dynamics and the  
9 relationships that women form -- I mean, they are  
10 driven -- I mean anybody who's worked at both a male  
11 facility and a female facility in their career will  
12 tell you, as a practitioner, how dramatically different  
13 they are.

14 So what we've learned is that sexual activity and  
15 violence in each of those settings really needs to  
16 be looked at and understood as -- and in the path that  
17 they've already followed. So I think when we do that

18 we learn a lot more about who are the women, who's  
19 coming into the institution, what are they bringing in  
20 terms of their histories and what kind of dynamics  
21 does that setup in terms of interplay with the staff.  
22 And there are wide training indications for that.

23 And when we look at male violence or look at male  
24 institutions and sexual violence, I think we had  
25 some very intense testimony here yesterday. I think we

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1 understand that the dynamics do tend to bring more  
2 physical violence than you would see in a female  
3 facility, but I think they're great implications for  
4 how we look at working with our staff, preparing them  
5 to work with the population. And also I'm a great  
6 believer that we have to do inmate orientation. We  
7 have to give them multiple ways of reporting sexual  
8 activities and violence. There's a strategy that I  
9 think is very important for a leader to look at in  
10 terms of, do I have certain management tools in place  
11 to begin to address these issues. And I'd be happy to  
12 expand on those a little bit more when it's  
13 appropriate.

14 MS. SCHLANGER: Maybe now is a good time,  
15 actually. I guess, really, the question is, what  
16 are -- what seems to be the promising solutions to  
17 sexual violence or is sexual violence the wrong place  
18 to look at? Is it really sexual misconduct on the  
19 spectrum and sexual violence is not the right thing for  
20 us to be thinking about?

21 MS. MOSS: Well, I think it's both. I think you

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22 have to look at the sexual violence part of it because  
23 it's part of one continuum. I think to understand  
24 that -- we have to understand that there is sexual  
25 violence that is physical harm and coercive. I think

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1 we really understand, which we have to if you're going  
2 to look at violence in institutions, I think you have  
3 to unpeel the onion, you have to -- we've heard so many  
4 people talk about we have to look at the culture, and  
5 that's so critical.

6 So I would urge that you look at the full spectrum  
7 there because what is sexual misconduct that may be not  
8 coerced that can turn into a coercive relationship. So  
9 I don't think that you can separate those out  
10 particularly.

11 I would suggest several things: One is, I want to  
12 provide to the Commission some materials that I think  
13 will give you a really good overview of some of the  
14 work that's been done in the last decade as far as  
15 sexual misconduct. Those of us working -- who have  
16 been working on this feel like there is a -- one model  
17 to look at, and I'm going to go through these very  
18 quickly. If I were to go into an institution, I would  
19 look at several things: Do they have written policies  
20 that addresses staff sexual misconduct, sexual  
21 violence? A lot of people will raise their hand in  
22 training if you ask them if they have policy. And what  
23 they really have is policy that may say "don't be  
24 unduly familiar with the inmates," but they don't

1           And let me just go through, for the purposes of  
2 this discussion, and talk staff sexual misconduct and  
3 violence. So I would like to see if they have written  
4 policy, and is the staff trained on that policy, and  
5 not trained in a way that they're just signing off on a  
6 policy, but trained in a way that the dynamics are  
7 discussed in terms of staff inmate dynamics,  
8 professional boundaries are discussed; people  
9 understand what is appropriate behavior as well as  
10 understanding what's prohibited behavior. So look at  
11 training. Who gets training, and it should not just be  
12 custody staff, correctional officers. It's a myth to  
13 think that sexual misconduct, particularly in women's  
14 prisons, is about officers having sex with the women.  
15 It's about psychiatrists, about food service,  
16 maintenance, any -- you know, I've seen every job  
17 classification involved. So looking at the training,  
18 looking at the training for staff, looking at the  
19 training for inmates; are they oriented towards  
20 reporting mechanisms. Do they know how to record any  
21 misconduct or violence? Do they understand their  
22 role in creating a healthy environment and healthy  
23 culture? And that's very important training.

24           I would look to see if the programs are meeting  
25 the needs of the inmates or if they're programs that

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1 are on paper. And that's very critical, and someone  
2 else brought that up during our time here. That if the  
3 inmates are engaged with productive programs, they  
4 become very much a part of the solution.

5 Many, many of our inmates really want to turn  
6 their lives around. I'm very strong -- feel very  
7 strongly that if we can create hope-based environments  
8 instead of fear-based environments that all of these  
9 things will work together to provide the solutions that  
10 we're looking for.

11 In addition to -- a big piece that I would look at  
12 in a system, and other experts that I work closely  
13 with, is we would look at the investigative practice.  
14 And we would look at -- if there's an allegation, what  
15 happens to that allegation? How many steps does it  
16 take? What are the decision points? Who can stop an  
17 investigation or send it forward, and does the  
18 investigation come to a conclusion that then if there  
19 is misconduct or violence affirmed, is that sent on to  
20 prosecution or to the next step? So these are really  
21 important, I think, critical things to look at.

22 We've still got a lot of work to do, but I think  
23 if you look at the history of staff sexual misconduct  
24 in the last ten years, it will inform this  
25 conversation.

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1 A very concrete examples is in the early nineties  
2 there were less than ten states that had laws  
3 prohibiting staff sexual misconduct. Today there are

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4 only two that don't, and they've been working on their  
5 laws for the last three years, and that will soon  
6 happen.

7 And so when we talked about cultural change,  
8 whether it's organizational or institutional or working  
9 with the public, I think that we have to start with  
10 getting certain tools in place that sends the message  
11 that it is a new day and that staff understand the  
12 structure around what it is we're trying to create  
13 within the culture of the facility.

14 MS. SCHLANGER: I'm going to ask one more question  
15 related to this topic, which is, are there solutions  
16 that have been tried that don't work? I mean, are  
17 there false leads?

18 MS. MOSS: I think it's more -- it's more attitude  
19 and not following through. I understand why people  
20 say, "Well, this is about a few bad apples." And while  
21 that's true, because I'm a -- you know, I'm a very  
22 proud practitioner, I'm very proud of my  
23 profession and the people I work with. And so I  
24 understand that "it's about a few bad apples." But if  
25 we take that approach and don't put in systemic ways of

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1 addressing the issues, and if don't prepare ourselves  
2 and urge and hold ourselves accountable to create  
3 cultures where people can become healthy and the  
4 institutions can become healthy; then if we use the  
5 "few bad apples" theory and that we can't do anything  
6 about it, I think that's one of the things that is the

7 most difficult to break through because there is much  
8 that we can do, and much of what we can do does not  
9 cost money.

10 MS. SCHLANGER: I see you nodding, Mr. Thompkins.

11 MR. THOMPkins: I agree with what's been said. My  
12 concern is that for a long time we talked about prison  
13 communities as total institutions as though they were  
14 shut off from the outside world. Today, most of us  
15 who do this type of work would agree that they're not  
16 total institutions. There is great influence from the  
17 outside. At the same time, they are total closed  
18 institutions when it comes to illegal criminal deviant  
19 behavior within the facility. There is a push, a  
20 drive, a need to sort of hide, keep secret what takes  
21 place. So we can talk about the number of reported  
22 cases of X, Y, and Z, but the reality is, that's just a  
23 small percentage of what is actually going on.

24 Another point is, to date we now have women  
25 working in male facilities. So when we talk about

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1 sexual violence, we talk about sexual misconduct. We  
2 need to look at that as well. We need to look at the  
3 gender issue in terms of how a woman's sexuality, who  
4 is a staff member, how that's used to both gain  
5 information from offenders. We need to look at the  
6 relationships that are developing between male  
7 offenders and female staff.

8 Again, I'm drawing from the research I just  
9 recently conducted. I'm still trying -- not trying,  
10 I'm still having some of the interviews transcribed and

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11 looking at the documents and so forth. But the  
12 suggestion is that a lot of -- not a lot of them, but  
13 some of the prisoners' conduct is now linked to that  
14 relationship of female guard - male offender versus  
15 male guard - female offender. It depends on the  
16 institution. No two institutions are the same, all  
17 right?

18 MS. SCHLANGER: Let me bring John Boston into this  
19 conversation. Do you want to speak to that or should  
20 I?

21 MR. BOSTON: Well, I'd like to speak to that  
22 briefly. I think that the point that Andie was making  
23 about the systemic issues is correct. And I think that  
24 there's another question that you have to ask. Are  
25 there ways in which prison officials and prison systems

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1 incapacitate themselves from being able to deal with  
2 problems of sexual misconduct or other problems?

3 A very concrete example of that that we have  
4 encountered in New York State is that the state prison  
5 system takes the position, through its Inspector  
6 General's Office, that it cannot proceed on a formal  
7 disciplinary complaint of sexual abuse of inmates by  
8 staff unless it has physical evidence. Well, you can  
9 see that that's a problem. Some of the women that we  
10 represent, of course, do have physical evidence. In  
11 some cases they're several years old by now. But  
12 typically, physical evidence of those kinds of crimes  
13 is hard to come by. So you may say, okay, we

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14 understand the formal disciplinary process is a  
15 problem, and some of you want to accept that sort of  
16 excuse. But then their position is, well, our union  
17 contract says that we have to allow the staff members  
18 to bid on positions, so we cannot take somebody that we  
19 have good reason to believe has engaged in sexual  
20 misconduct with the inmates and move that officer  
21 somewhere else. If that officer wants to stay in that  
22 position supervising women and inmates on the night  
23 shift when there's nobody else around, there is nothing  
24 that we can do about that. Where it's the fact that  
25 they signed on to that union contract sort of gets lost

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1 in the discussion on the question of whether they  
2 should agree to it when the next contract signing comes  
3 around is another question that we hope to pursue.

4 But the result of this is that there can be, and  
5 are, serial sexual predators continuing to work in  
6 women's prisons with wide knowledge of that fact and  
7 nothing being done about it by the officials who claim  
8 that their hands are tied, and in some cases have acted  
9 to tie their own hands.

10 MS. SCHLANGER: Let me just continue on sort of  
11 the topic that I promised you we would we would get  
12 today, which is a continuation of the conversation from  
13 the panel before about the excessive use of force in  
14 jails and prisons.

15 I wonder two things: One is -- this is something  
16 that Don Specter said. Is this -- is excessive use of  
17 force a problem serious enough that we should put it

18 high on our agenda? How serious is it?

19 And then the second question is just, again, what  
20 are the dynamics and what are the solutions?

21 MR. BOSTON: Well, I think it's a pretty serious  
22 problem, and I think it's also serious to people like  
23 Mr. Sean Davis, who is involved in one of our pieces of  
24 litigation in New York City, who sustained a ruptured  
25 eyeball from being kicked in the face by a correctional

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1 officer while on the floor in a holding pen in one of  
2 the new York City jails. When he was kicked by a  
3 correctional officer, it was part of an incident where  
4 he was being beaten by several officers.

5 And I think that if you look at some of the  
6 materials that I have provided, particularly Steve  
7 Martin's expert report on staff-inmate violence in the  
8 New York City jails, and if you look at Exhibits  
9 particularly 6 and particularly 7 through 11, which  
10 gives the litany of injuries, the fractures, you know,  
11 the facial fractures, the lacerations requiring  
12 sutures, the internal injuries, the broken  
13 eardrum -- it's very difficult to break somebody's  
14 eardrum accidentally. But we have cases where  
15 prisoners will come out of encounters with staff with  
16 both eardrums broken. I think that, you know, the  
17 shear quantum of injuries that occurs to officer --  
18 prisoners in these incidents suggests that, yes, it's a  
19 very serious problem and, of course, staff members get  
20 injured, too.

21           Sometimes staff members are injured because they  
22 are the victims of violence, other times you'll see  
23 again in many cases in the New York City system, the  
24 prisoners will come away from a violent encounter with  
25 serious injuries, say, to their face, and the officers

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1           will come away with a broken hand. You can talk about  
2 that as being some sort of rough justice, but I don't  
3 think that that is a particularly good outcome for  
4 anybody to have an officer injured for whatever reason.  
5 So, yes, I think it's serious in that sense.

6           And I think there are other senses in which  
7 there's a serious problem. Whenever there is excessive  
8 force, there is likely to be false reporting or  
9 non-reporting. One of the cornerstones of correctional  
10 management is that when something serious happens the  
11 staff members involved have to say what it was,  
12 everybody has to speak up. Management has to review  
13 what happened, figure out if it was appropriate, if  
14 something should be done about it. And when you have  
15 non-reporting of excessive force by staff or false  
16 reporting, you strike really one of the foundations  
17 of correctional management. And it goes further than  
18 that because not only -- we talked about bad apples,  
19 and there may be a bad apple who beats somebody up and  
20 doesn't report it or falsely reports it, but chances  
21 are that person is not the only correctional staff  
22 member on the scene. So you have one or more other  
23 correctional staff members who are in the position of  
24 either blowing the whistle on their colleague -- which

25 you have heard there are intense pressures not to

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1 do -- or of lying.

2 So you have a situation where the actions of some  
3 staff members in effect have a widening, corrupting  
4 effect on the acts of other staff members. And it  
5 doesn't even stop at the use of force because if staff  
6 members become accustomed to lying or looking the other  
7 way, non-reporting about one thing, don't you think  
8 it's likely that they'll be prepared to lie, to look  
9 the other way about other things?

10 Doug's reference to staff gangs and staff's  
11 operation of, you know, of trafficking in contraband is  
12 pretty shocking, but you can see how that degree of  
13 corruption can start small with staff members who  
14 become accustomed to accepted dishonesty on the job in  
15 one respect and it broadens to become a way of life.

16 And the third aspect in which I think excessive  
17 force by staff members is important is, you know, these  
18 institutions are there ultimately for the purpose of  
19 trying to get people to obey the law. Even the  
20 pre-trial institutions -- such as the ones that I am  
21 primarily involved in -- are there as part of a process  
22 that is supposed to elicit lawful behavior from  
23 people in the long run. And what happens if the people  
24 that you are trying to correct go through the system  
25 and see lawless behavior that is covertly accepted and

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1 that goes unpunished? What do they think if the  
2 very institutions that are nominally trying to elicit  
3 lawful behavior from them engage in unlawful behavior  
4 themselves on a regular basis? I suggest to you that  
5 the credibility of the idea that once you lead a law  
6 abiding life is going to be seriously damaged when a  
7 criminal offenders and accused criminal offenders  
8 cement spectacle in the very institutions that are  
9 supposed to be correcting them.

10 MS. SCHLANGER: Let's get back to solutions a  
11 little bit. I mean, all of you must have experience  
12 with -- as I said, the instructional assistance that's  
13 gone some distance towards solving the problem. I'd  
14 be interested to hear on each of these problems what  
15 those systems -- you know, what seems to be the  
16 promising steps that those kinds of systems have  
17 taken?

18 MR. BOSTON: Well, let me follow up on my previous  
19 remarks because we have seen some examples of how these  
20 problems can be corrected in the New York City jails  
21 where my office is engaged in a series of pieces of  
22 litigation which have had very successful outcomes;  
23 not just in the sense that we have a favorable judgment  
24 that we can wave around, but that in fact they have  
25 gone considerable distance towards restoring lawfulness

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1 and peace to some of these institutions. And I say  
2 "some of the institutions." One of the sad lessons we

3 have learned is that in the system we are dealing  
4 with reform isn't rolled out. Reform is quarantined.  
5 But nonetheless, it has happened in limited ways.

6 First, I think the thing that you have already  
7 heard today from others is absolutely correct; that a  
8 commitment by the leadership of the institutions to  
9 stop excessive force and to require that force be used  
10 only to the extent necessary is the absolute essential  
11 sinequan known. That may sound paradoxical when I come  
12 to you as a litigator who is bringing coercive pressure  
13 from outside into the system, but it's not paradoxical  
14 because sometimes it takes external pressure over  
15 internal oversight to elicit internal leadership or to  
16 make it clear that only a leadership on this issue will  
17 make the external pressure go away. But within the  
18 broad structure, that there has to be a commitment by  
19 the people running the institution to curb lawless,  
20 violent behavior by their staff.

21 There are very identifiable steps that have to be  
22 taken in order for that leadership to have more than a  
23 rhetorical affect: One is supervision. The daily  
24 actions of the people in charge, the daily statements  
25 in dealing with their staff members; that is,

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1 commitment has to be expressed not in press releases or  
2 statements made when people are dragged into a  
3 courtroom, but also it has to be stated and acted out  
4 to the staff on a daily basis.

5 Second, the use of force incidents must be  
6 reliably reported and they must be fairly

7 investigated. One of the things that we have seen  
8 entirely too much of is the nod and wink investigation  
9 where, for example, when an inmate says, I was struck  
10 by an officer in a particular place, and there's no  
11 mark there; it didn't happen. But when an officer says  
12 the inmate struck me and I therefore had to use X  
13 amount of force to subdue him, they don't  
14 even ask whether the officer has a corresponding mark  
15 or injury to document the claim that the inmate  
16 initiated the violence.

17 These kinds of examples of double standards in use  
18 of force investigations can be multiplied. I've given  
19 other examples in my written testimony. But an honest  
20 investigation system is absolutely essentially.

21 One of the best tools for assisting an honest  
22 investigation system -- and in some cases making more  
23 extensive investigation unnecessary -- is the use of  
24 video recording in places where one knows from  
25 experience that excessive force and violent incidents

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1 are likely to take place. That is an analysis that  
2 will probably vary from institution to institution, but  
3 places immediately outside housing areas that are out  
4 of view of other prisoners, stairwells, intake areas,  
5 which are always high-tension areas in prisons and  
6 particularly in jails which have just a higher traffic  
7 of people in and out.

8 Frankly, I think it's our conclusion that the  
9 widespread use of video recording is probably the

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11 single most effective technique in bringing excessive  
12 force down, if not eliminating it. It's also a  
13 management tactic in which there are no losers because  
14 it not only protects prisoners against excessive force  
15 by staff, it protects staff members from false  
16 allegations of misconduct by prisoners, so there's no  
17 legitimate objection to that as a management tool.

18 Discipline of staff who violate the rules is  
19 absolutely essentially. And one of the things that one  
20 sees -- this crops up in police organizations as well  
21 as in prisons -- is that even when the organization  
22 gets to the point of making a judgment that this person  
23 has broken the rules and something ought to be done,  
24 somehow nothing happens. Somehow the disciplinary  
25 prosecution languishes, somehow a reason is found that  
it can't be pursued, and they are left to wither

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1 or they are left to odd. You know, they are delayed  
2 for so long that the move -- the delay itself becomes a  
3 reason to dismiss the disciplinary prosecution.

4 Disciplinary prosecution also must be carried  
5 out in a competent fashion, and this has been a major  
6 problem that we have observed in the New York City  
7 system, and I believe that it is prevalent in other  
8 systems as well.

9 When you are attempting to prove to an  
10 administrative tribunal that a correctional officer has  
11 used excessive force against a prisoner, you are  
12 pursuing the moral equivalent of a criminal prosecution  
13 for a violent crime, and that prosecution ought to be

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14 conducted with the same degree of care, the same  
15 preparation, the same resources that a prosecution for  
16 assault on the street would be carried out with. I  
17 think that very often that does not happen and that  
18 that is a weakness of administration controls that is  
19 not looked at often enough. That's half the problem.  
20 That's holding your staff accountable.

21 The other half of the problem is providing a  
22 decent environment in which prison staff can work and  
23 to avoid the sort of "occasions of sin," you might call  
24 them, the factors in the prison environment that may  
25 lead people to perform actions that while they are

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1 completely uncondonable, nonetheless they make the  
2 behavior understandable and they need to be dealt with  
3 in order to control the behavior:

4 No. 1 is, above all, to avoid overcrowding, a  
5 situation which puts enormous pressure on both staff  
6 and inmates, promotes violence by inmates, and promotes  
7 a sense on the part of the officers that they're  
8 overwhelmed and that they can only rule by  
9 intimidation.

10 Second, is classification. Dividing prisoners  
11 among those whom you know to be serious management  
12 problems and those who are not. Letting your officers  
13 know who they're dealing with and having architectural  
14 features of housing that promote greater control where  
15 that is needed. I think there also is essential to  
16 giving the correctional officer a manageable job.

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17 Providing inmate services reliably to eliminate the  
18 flash points that sometimes lead to staff-inmate  
19 violence. The person who can't get the medical care,  
20 the meal that is delivered late, cold or not at all,  
21 those things add up and create an adversary  
22 environment where very often a correction officer  
23 may be held responsible de facto for things that  
24 the officer has no control over.  
25 Training the staff adequately. Sometimes I

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1 question the importance of -- or I question the stress  
2 that some people put on the importance of training  
3 simply because training is kind of a kind of "mom and  
4 apple pie" issue that nobody can really be against.  
5 But nonetheless, there are very important aspects of  
6 training for solving this problem:  
7 One is, reinforcing what the rules are on a  
8 regular basis, and the other is giving the officers the  
9 tools to do the job. One of the things we have been  
10 struck by in our work in New York City is the number of  
11 correctional staff members who really don't remember  
12 their training very well and can't give you a coherent  
13 account of it, which I think tells you something about  
14 how effective it is.  
15 The other thing is that even though the New York  
16 City jail system teaches means of restraining prisoners  
17 without striking them by means of, you know, body holds  
18 and other techniques that are less likely to be  
19 injurious than punching them in the face; nonetheless,  
20 the standard response to a prisoner that's giving you a

21 problem is to punch them in the face.

22 In our litigation about the Central Community  
23 Segregation Unit, which Steve Martin talked about  
24 earlier and which he was most helpful in bringing  
25 about successful resolution, the Legal Aid Society

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1 suggested and persuaded the Department of Corrections  
2 that you require people to qualify every year in the  
3 use of firearms if they're going to carry a firearm.  
4 Well, you know, why don't you make them qualify in this  
5 unit that you say "holds the worst of the worse," why  
6 don't you make them qualify every year in the tactics  
7 of using their hands or not using their hands to  
8 control the prisoners, and that's been accepted, and I  
9 think that's made a contribution. Why that idea had to  
10 come from the Legal Aid Society as opposed to the  
11 Department of Corrections is a question that I leave as  
12 an exercise to the audience.

13 And finally, there must be a readily available  
14 supervisory backup for the correction officer at times  
15 of stress and conflict because very often the things  
16 that lead an argument to violence is simply that staff  
17 members and inmates get personally invested in what  
18 happens, and just having somebody with authority step  
19 in and tell everybody to "cool it" and let's deal with  
20 the problem will obviate the need for any further  
21 violent reaction from staff. And if staff members do  
22 not have available that kind of intervention, readily  
23 and quickly, then the consequence is likely to be a

24

25

So that in a nutshell is what I think our

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1 experience supports. I'm sure there are other things  
2 in other systems that need to be said.

3 MR. THOMPkins: Excuse me. I want to suggest to  
4 the Commission that we consider creating an independent  
5 office, okay? Creating an independent office for  
6 investigation of complaints. Currently we do have,  
7 most Departments of Corrections do have an office where  
8 inmates write their letters, family members write their  
9 letters alleging violence, et cetera, et cetera, but  
10 those offices were have not be empowered. The  
11 individual holding that office has very little power.  
12 The decisions, or rather the recommendations that are  
13 made by these persons are usually just pushed to the  
14 side. So if we can develop an independent office and  
15 empower that person, give that person open access to  
16 enter the institution to talk to people, both staff and  
17 to offenders, to talk to staff in private, in secrecy,  
18 we may come a long way and go a further distance than  
19 trying to resolve some of this.

20 Prison violence is something that is kept secret.  
21 When we talk about a peaceful facility, as long as  
22 there's a -- there are a few escapes, a few reported  
23 incidents of violence, there is a visible sign of  
24 control, but that visible sign of control is just on  
25 the surface. Within the prison community itself there

1 are many numerous acts of violence that go unreported.  
2 And when they are reported, they're just pushed to the  
3 side. So this independent office would be in a  
4 position to really do investigations and make  
5 recommend.

6 MS. SCHLANGER: Let me ask about possible  
7 solutions of one more issue, and this is for Ken Adams.

8 What about inmates with mental illness, mental  
9 retardation, are there solutions that you've seen that  
10 go some distance towards solving their vulnerability  
11 to other inmates or their -- the number of run-ins  
12 that they have with staff? What are some solutions  
13 there?

14 MR. ADAMS: Could I just make one quick comment?

15 MS. SCHLANGER: Absolutely.

16 MR. ADAMS: While I share my colleagues views in  
17 terms of thinking positively about things like  
18 reporting systems, investigation systems, particularly  
19 independent systems and things like that, I have done  
20 some work in terms of issues of excessive force and  
21 the mechanisms that are used there, and I can tell you  
22 that the track record in terms of the success of these  
23 mechanisms is not that great.

24 Even with video recordings, as you're talking  
25 about, which I endorse, and some systems

1 actually -- when the violence -- when the actions of  
2 the officers are planned, that they bring out the

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3 cameras and they set them up. I mean it's like a whole  
4 TV studio, and they get this on recording and it's very  
5 useful. You know, we can see what's happened in LA  
6 that was recorded on the television and broadcast to  
7 the nation, and people have very different views about  
8 that event and about their judgments of it. So it's a  
9 difficult -- it's a very difficult situation of drawing  
10 that line and saying something is excessive.

11 I think the other thing to keep in mind is  
12 that -- particularly in maximum security prisons, you  
13 are dealing with people who have histories of violence.  
14 I mean these are not -- you know, schools or hospitals  
15 or things like that, these are people who are in there  
16 because of these kinds of behaviors, and it's very  
17 difficult to try to control. That doesn't relieve  
18 anyone of the obligation to be lawful and to be  
19 professional in how they do it, but it is extremely  
20 difficult to try to manage some people's behaviors.

21 In any case, speaking about the mentally ill,  
22 we're in a position -- thanks to the  
23 deinstitutionalization, which happened in the  
24 1960's -- where many people were taken out of hospital  
25 settings, put in the community, and the support

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1 services are not there. Prisons tend to be the backup  
2 support service for just about everything in society.  
3 When we don't know what to do with people, they wind up  
4 usually in prison, and so prisons take on a whole host  
5 of social roles other than just punishment of

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offenders.

7 In this context with mentally ill, we've also  
8 moved to a sort of therapeutic regimens that heavily  
9 concentrate on drugs, on pharmaceuticals, and for the  
10 most part, this has been good. There are some  
11 wonderful pharmaceuticals out there that do amazing  
12 things in terms of helping people along, but that's not  
13 the sum total of treatment in terms of what these  
14 people need. They need more than that. Furthermore,  
15 we've gone to a system where we basically have acute  
16 care hospitalization for the mentally ill. They get  
17 committed, they do about 30 days or so, maybe 60 days  
18 in a hospital for the, quote, unquote, "criminally  
19 insane." They come back, they spend about -- as they  
20 used to -- as they used to say, "They go into the  
21 hospital for a tune-up." They're good for 10,000 steps  
22 when then come back, but then they have to go back for  
23 another tune-up. So you get this sort of shuffling  
24 back and forth between prison and the hospital, prison  
25 and the hospital where what you've got is a prison

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1 career that's punctuated by 30-day acute care  
2 hospital stays with no real follow up within the prison  
3 setting.

4 Many of the mental health professionals can't  
5 identify the needs of those people. They are committed  
6 professionals, they're working hard to try to deal with  
7 the very difficult problems, but the arrangements are  
8 not there. We need to think about a multiplicity of  
9 arrangements that provide different settings that are

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10 tailored to the needs of people, okay? And we can  
11 identify different groups of people with different  
12 needs and put them in that context.

13 For example, New York State reoriented its  
14 mental health care for inmates by turning it over to  
15 the Department of Mental Health. It is no longer the  
16 responsibility of the Department of Corrections. That  
17 made a tremendous change because now medical  
18 professionals who deal with mental health issues for a  
19 living are setting the treatment standards, are setting  
20 the standards for records and for use of  
21 pharmaceuticals and things like that. And they also  
22 established within the prison the group of units  
23 called Intermediate Care Units, which is sort of a  
24 halfway house, halfway between the prison and the  
25 hospital. These are less intensive than hospitals but

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1 provide more support than prisons, and this has made a  
2 big difference in terms of facilitating the adjustment  
3 of these people.

4 Mentally retarded, sometimes -- they were somewhat  
5 different and distinct group. Very often they are  
6 victimized within prisons because they're seen as  
7 slow and vulnerable. They can be taken advantage of,  
8 they can be conned or they can be manipulated.  
9 Sometimes they run into problems because they get  
10 frustrated because they don't understand what's going  
11 on and there's lot of pressure for them to act. But  
12 they tend to be need more of a protective setting,

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13 simpler, manageable settings where they can negotiate  
14 the environment in satisfactory ways.

15 So when we think about prisons, you know, we have  
16 to think about creating multiplicity of environments  
17 within the organization that are suited and adapted to  
18 the needs of particular groups of people, and if we  
19 start thinking that way -- and prison staff can be very  
20 instrumental in helping to think about that and how to  
21 implement that. Or we can breakdown this notion of  
22 sort of the monolithic prison -- "the prison,"  
23 right -- and think about the sub-environments within  
24 that prison and trying then to create environments that  
25 facilitate people's adaptation and increase their

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1 chances of success with them.

2 MS. SCHLANGER: Let me at this point open up to  
3 either questions or further discussion among the  
4 commissioners as well as the panel. I have been asked,  
5 although you can -- I'm just going to ask you to choose  
6 to try to keep us focused on violence so everybody gets  
7 to do their own thing, but that's what I've been asked.

8 Yes --

9 MR. MAYNARD: I have a question for Mr. Boston  
10 relative to violence. The training issue you talked  
11 about, I was not clear if you were saying the training  
12 was a good thing or that it was not effective or -- I  
13 may have misunderstood.

14 MR. BOSTON: I think the training is a good thing.  
15 I think that in these discussions of use of force by  
16 staff that sometimes an overemphasis is given to

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17 training because managers are unwilling to confront the  
18 more politically difficult issues of holding their  
19 staff accountable. But I absolutely think that  
20 training both before one walks in the door of a jail to  
21 work as an officer and repeated training, you know,  
22 in-service training during the career is essential.

23 MR. MAYNARD: And I would agree with the need for  
24 leadership in front of training to enforce that and  
25 make sure that it's understood and carried out.

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1 Do you think most corrections administrators move  
2 in a direction of organization improvement based on  
3 litigation or coercion or do you think a lot of them  
4 want to move that direction for it being the right  
5 thing to do?

6 MR. BOSTON: I think that it's a very mixed  
7 picture, and we have seen great progress made by people  
8 who were put in responsible positions just because they  
9 were responsible people, and we have also seen sabotage  
10 by people who not interested in improving the situation  
11 with respect to staff violence.

12 MS. SCHLANGER: Senator Romero --

13 SENATOR ROMERO: Again, thank you for everybody  
14 that's been presenting.

15 Let me ask, too -- this is more of an observation  
16 and maybe it's a little bit crazier, but I don't think  
17 violence is a secret at all. I think everybody knows  
18 it. We're well aware of it and many are graveling to  
19 change it. But I would also suggest that I think to

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some extent violence is dependent upon as a control  
21 mechanism.

22 I've visited many of the yards of our prisons in  
23 California, and I would say that if I go to our level 4  
24 yards, our more maximum yards that to some extent  
25 prison gangs play a role in maintaining the management

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1 of the prison. So even if we talk out of one side of  
2 our mouths about reducing violence, it has been my  
3 observation that violence plays a very profound  
4 role. If I lock-down, I don't have to program, and  
5 if I don't have to program -- especially at the end of  
6 the fiscal year when again two legislators are going to  
7 come to the wardens and say, "You've overspent your  
8 budget. I don't have to program, I saved money."  
9 So I'd like to hear your observations on that.

10 And then also again -- also on a grading note of  
11 12, with respect to women and sexual violence, sex also  
12 is a strategy. And in terms of looking at how inmates  
13 survive and cope and live and exchange and gain powers,  
14 sex is a very powerful tool, and I guess the question  
15 would be -- whether one condones or not -- do we need  
16 to also think about sexual strategies for living in a  
17 prison; and if we look at it in this sense, and  
18 it's hard to put it out, but I think that at least from  
19 what I've observed -- I want to go ahead and say it,  
20 how do we respond and then what recommendations might  
21 we have?

22 MS. MOSS: I'd like to take that.

23 You said a couple really important things, but I

24 think I want to speak to the violence, that we know  
25 about it, and sometimes I think the only surprise to me

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1 is that we're surprised because the violence is in our  
2 society. I mean, as we unpeel this onion, there are  
3 a lot of factors that we do know about.

4 And I had officer say to me recently, "You know, I  
5 know what's going on and I see it, but I don't know how  
6 to correct it because it's about -- in the housing  
7 unit, so that if I try to protect this guy and do  
8 something, the invisible retaliation is going to be so  
9 critical." I think we have to be real honest when we  
10 look at strategies about how we're really going to give  
11 real tools to the officers so that the part that the  
12 inmates play in keeping things in control I think that  
13 has to be really looked at very carefully.

14 In terms of the women, I think -- this is where  
15 I'm going to do my little thing on the Prison Rape  
16 Elimination Act. I think that the Prison Rape  
17 Elimination Act, which was signed into law in September  
18 of 2003, is going to force us to look at much more in  
19 terms of definitions and the research that we have and  
20 looking at more research. I think it is a very  
21 complicated piece, and I'll respond to the women's  
22 prisons piece, because I know, I've been involved in so  
23 many cases and situations in women's prisons, and it is  
24 a survival skill. And the women -- looking at the  
25 pathways of the women who come into our setting, to

1 look at the dynamics they bring, and then they feel  
2 like I have to have sex for cigarettes, you know, or  
3 sex to get money on my books, but -- you know, for some  
4 of the women this is not new behavior in terms of they  
5 don't expect any different treatment. And I don't want  
6 to overcharacterize that, but there are many women when  
7 you sit with them you realize that they need to know  
8 what are the boundaries, they don't understand that.

9 And it's also a very important training  
10 implication for staff. If we go with a trained staff  
11 and talk about that there's no such thing as consensual  
12 sex between staff and inmates, and of course there  
13 isn't, but immediately we go into, well, what about the  
14 false allegations and what about the women approaching  
15 us? You know, we've got women being raped that are  
16 approaching us.

17 And so I think your question really has great  
18 implications for how we talk about it. This  
19 Commission's concerned about violence. There is a lot  
20 that happens. The majority of sexual activity in a  
21 women's prison does not have the dramatic violence  
22 component to it. But I think that we have to be honest  
23 about the dynamics that you're talking about.

24 And yes, I think there will be recommendation. I  
25 think those of us who work in the area already have

1 some recommendations in terms of the -- that's why the

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2 importance of programming for women. If they start  
3 understanding their own victimization cycle -- I've  
4 seen it happen, it usually takes three to five years in  
5 a facility where the culture really shifts and where  
6 the women start monitoring themselves, when they really  
7 have the tools.

8 And the other thing is that the staff meet those  
9 tools. Many of our staff comes from very disturbed  
10 or -- you know, environments where they're experiencing  
11 some of the same issues.

12 MR. GREEN: How well prepared are we in our  
13 prisons and jails to deal with all of these  
14 complexities?

15 Mr. Adams talked about all of the different  
16 environments, and we've talked about issues of  
17 violence, we've talked about issues of sex and  
18 sexuality and how it's used. If we're expecting  
19 leadership to play an important role in this both in  
20 terms of people's preparedness to deal with all of the  
21 different issues that -- to a certain extent we talked  
22 about even being dumped on prisons such as the mental  
23 health issues, to the preparation and the resources  
24 that are necessary to provide that leadership, are they  
25 there? And anybody can --

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1 MR. ADAMS: Well, let me take a couple. You know,  
2 there are a whole range of possible solutions and  
3 avenues we could take. Some are expensive and some are  
4 not. I think what John talked about, some of the  
5 policies that he was talking about implementing, these

6 are not expensive things to implement.

7 But one think I can tell you is that correctional  
8 professionals from wardens on down are concerned about  
9 violence. They are looking for the tools to deal with  
10 it. They have a lot of experience in terms of trying  
11 to understand it. Sometimes that experience is not  
12 fully formed or in a form that they can implement,  
13 right? But if they choose to make violence reduction a  
14 priority and put that at the top of the list, I think  
15 that some really important strides can be made, and  
16 they don't have to involve tremendous outlays of money.

17 For examples, in New York State, at least some of  
18 the prisons that I've seen, the staff will routinely  
19 rely -- the correctional staff will routinely rely on  
20 the mental health staff to come in and try to diffuse  
21 situations and try to work through potentially violent  
22 scenarios. Now, those people are on call, anyway.  
23 They're being paid, you know, they're available. But  
24 what we have to do is talk to the officer about how do  
25 you recognize when situations escalate? How do you

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1 begin to understand when things are going to go out  
2 of control? How do you analyze your range of options  
3 that you have and then select the option that's most  
4 appropriate for the scenario?

5 When I talk to officers, a lot of them are not  
6 very gung-ho on the use of force because they recognize  
7 that they can get hurt in that situation. And their  
8 safety is very important to them, and they would prefer

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10 to have situations in which they didn't have to use  
11 force because it's better all around. So I think there  
12 are many things that they can do, reconfiguring roles,  
13 having different correction officers assigned specialty  
14 roles for specialty problems within that setting,  
15 giving them special training. Officers would love to  
16 have a group of people that they could call on to come  
17 in and help them with these problems. Similar to  
18 teachers, you know, where teachers are dealing with the  
19 kinds of situations in their classroom that might  
20 involve violence, they would love to have people they  
21 could call on to assist them, you know. So it doesn't  
22 have to be overly expensive.

23 MR. LUTTRELL: Kenneth, let me take issue with  
24 what you said just ever so slightly, if I could.

25 I would hope that I we would not get to the point  
where we consider it specialized training on how to

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1 deal with problematic inmates, but it becomes part of  
2 our routine training of staff and interpersonal  
3 personal communication skills that we don't take this  
4 and make it a mental health issue, we don't make it a  
5 special issue.

6 MR. ADAMS: Right.

7 MR. LUTTRELL: We make it an issue that  
8 correctional officers, counselors, teachers, nurses,  
9 all the thread that runs so through to all the training  
10 from interpersonal communication skills to how to  
11 diffuse problematic situations.

12 My concern is that we oftentimes say, okay, if you

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13 got violent inmates let's train a response team to deal  
14 with violent inmates, or if you've got an inmate that  
15 you can't communicate, let's bring the psychologist in  
16 to communicate. Let's bring some commonality to our  
17 training so we can try to get some common skills among  
18 all of our staff that can address these issues.

19 MR. ADAMS: I totally agree with you, and I think  
20 that -- well, I think that there should be some common  
21 level of training that deals with this issue and we  
22 should try to set that level high in order to address  
23 the problem.

24 In all these situations you're going to find some  
25 need for more specialized training. And I didn't mean

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1 to suggest it has to be turned into a mental health  
2 problem or bring in a psychologist. Other correction  
3 officers can be trained in terms of skills that they  
4 have. Not everyone is equally flexible, adaptable or  
5 suitable for dealing with all kinds of situations. So  
6 we can find specialty niches for officers to deal with  
7 this. But you're right, issues of communication of how  
8 to diffuse situations, how not to escalate them, how to  
9 know the warning signs, so to speak, the high risk  
10 factors for various scenarios, these are things that we  
11 should be teaching all officers. And in fact, I think  
12 someone mentioned not just officers, all staff because  
13 non-custodial staff are often in positions where  
14 they're observing inmate behavior and can make  
15 important contributions.

16 MR. THOMPkins: If we look at prison violence  
17 across institutional levels, we know that the lower  
18 security level facilities have lower rates of violence.  
19 So what's different? What's different is -- going to  
20 your question -- is if a group of offenders have  
21 something to believe in, something to work for, they're  
22 vested in that program, okay? So what we need to do is  
23 go back at a little bit and begin to reinstitute some  
24 of these treatment and educational programs because  
25 those are the facilities will receive lower rates of

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1 prison violence.

2 At the same time, if we talk about high rates of  
3 violence in supermax facilities, level 5, level 4  
4 facilities, what's different about that facility? You  
5 have violent offenders in institutions around this  
6 country, and prison managers are able to manage those  
7 facilities with low rates of violence. What's  
8 different? What's going on here?

9 If we looked at these maximum security facilities,  
10 and you ask an inmate, "What do you have to lose,"  
11 they say "nothing." So if you have nothing to lose and  
12 you're facing 20, 30, 40 years in a maximum security  
13 facility, you're acting out this behavior. So I think  
14 if we go back and we look at the programs that are  
15 working in certain facilities, if we duplicate that it  
16 would go a long ways in helping to solve the problem.  
17 But let's not get caught up in the idea that, well, it  
18 works because it's a lower level facility and we have  
19 less violent offenders. Violent offenders, right, will

20 act out appropriate behavior if they have something to  
21 lose.

22 All offenders for the most part are coming back  
23 to society, okay? I was sentenced the first time to  
24 two terms of life in prison, okay? I'm sitting here,  
25 okay? I was a leader of the Gangster Disciples, 2, 3,

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1 400 people under me, in the Indiana Department of  
2 Corrections.

3 Recently, I began to interview a lot of these  
4 people who are coming out. Most of them were going to  
5 college or involved in some type of program. So they  
6 had options. They had options. Let's use the programs  
7 we already have, add to them, come up with a  
8 way -- again, I say, create an independent office if  
9 you have want to investigate staff-on-inmate violence,  
10 empower that office.

11 On the other hand, let's create opportunities for  
12 offenders. Let's reinvest in the idea of  
13 rehabilitation and treatment. That's all we need to  
14 do. Not all offenders will follow through. But given  
15 an opportunity, most rational-thinking people will act  
16 out appropriate behavior.

17 MR. NOLAN: The Prison Rape Elimination Commission  
18 recently held our first public hearing, and the first  
19 witness was an inmate of slight stature who from the  
20 beginning of his term in prison was raped. And he made  
21 a fascinating, which frankly had never occurred to me;  
22 and that is, the inadequacy sometimes of formal

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reporting mechanisms. Several of our DOC folks said,  
24 "Oh, we have prison rape policy. We have big signs up  
25 that say report it."

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1 And Steve told a story of two different  
2 institutions he was in where he was being raped and  
3 sold. The first, when he went to his unit  
4 manager, he said, "I need to change cells." And the  
5 guy said, "Great. Find yourself somebody to move in  
6 with, and we'll do it." He knew what was going on and  
7 handled it.

8 The second one said, "Well, gee, do you have  
9 any -- have you been attacked? Is there anything you  
10 want to report?" And Steve immediately clammed up  
11 because he said he knew it would be a death sentence.  
12 So that guy condemned him to go back to his cell where  
13 he was continually beaten, raped, and sold because the  
14 guard officially wanted him to report it, and he wasn't  
15 willing to. The option was to go into protective  
16 custody, which condemns you to 23/7 custody, severely  
17 limited visits and other things, or suffer -- and  
18 alternatively, we've also had testimony of people who  
19 the guards say, "You've got a choice: Find yourself a  
20 husband or fight like a man or also tell them you'd  
21 probably enjoy it."

22 So the -- I guess it's -- from your experience, my  
23 question is, what are the informal mechanisms of  
24 dealing with some of this when the idea is to diffuse  
25 and get a person out of a dangerous situation as

1           opposed to a formal report which they probably will  
2           never do because they don't want to suffer the  
3           consequences of being a rat.

4           MS. MOSS: Commissioner Nolan, I appreciate that  
5           you brought up a couple of issues. One is the staff  
6           culture and what we need to do to work with staff  
7           culture. I think it's very much related back to  
8           Commissioner Nolan's question about, are the tools and  
9           resources there. I think we're talking about and  
10          addressing the violence. We're talking about culture  
11          change within the facility, and some of that culture  
12          change has to come with really working with staff  
13          around these issues. And so that the tool is the  
14          reporting mechanism, but making the tool work has to do  
15          with the staff's will and the inmate's belief and the  
16          credibility of that. So that having an objective  
17          process where people can report and know that that will  
18          happen, makes -- there's some gaps there, and it's  
19          going to take some time.

20          In facilities where I've seen that it really  
21          worked with the staff as well as the inmates around  
22          this, and have I been consistent and worked through  
23          these gaps -- I mean, we are seeing very positive  
24          results, I think, but it does take time, and we  
25          shouldn't fool ourselves; that if staff is hurting, if

1           their morale is in the pit because they're having to

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2 work doubles; they're missing the holidays with their  
3 families; they don't feel appreciated, then it just  
4 makes that even more serious. But I think having an  
5 investigative and reporting mechanism on paper does not  
6 mean that we have it in place, of course, but you have  
7 to start with having something on paper and in place,  
8 and I think that very structure is -- the investigative  
9 structure and the reporting structure is still on  
10 homework for a lot of agencies, and to make sure that  
11 the inmates know how to report and to look at what are  
12 the multiple reporting mechanisms; that they don't have  
13 to report only to their -- the officer in the housing  
14 unit, they that they can report to any staff member.  
15 And some systems have hot lines that they can report.  
16 Some systems have an outside phone contact they can  
17 call.

18 But I think we have to have ways and convince and  
19 build that confidence so that it can be done.

20 MR. NOLAN: But realize, Steve didn't want an  
21 investigation.

22 MS. MOSS: Right. I knew that.

23 MR. NOLAN: He wanted to be out of that situation.

24 MS. MOSS: And he wants out because he  
25 doesn't -- he can't have the confidence that he won't

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1 be hurt.

2 MR. NOLAN: Right.

3 MS. MOSS: Which is my point, is that we  
4 have -- that's a hard challenge, but that's the

5 challenge we have to take on is how you shift that and  
6 make that difference. And it's a difficult thing, but  
7 I believe -- I often tell people this is like -- if you  
8 think about drinking and driving, do people still drink  
9 and drive? Absolutely. Is there a different attitude  
10 about it? Absolutely.

11 And this is complicated, and I think we have to  
12 understand -- and it's often saying staff sexual  
13 misconduct -- it's a marathon, it's not a sprint. And  
14 we can be overwhelmed by all these issues, but I do  
15 think that there's some starting points that we can  
16 move forward on.

17 MR. GILLIGAN: I'd like to ask Mr. Thompkins  
18 a question, which I feel you partially answered  
19 already.

20 I wanted to raise the question of gang violence  
21 and what can be done about it? I feel one of the  
22 standard mechanisms, as I understand it, is try to  
23 separate people from -- who belong to different gangs  
24 so they're not under the same section of the prison or  
25 even in the same prison. And you've mentioned some

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1 ways of diminishing the level of violence.

2 I'm wondering what your thoughts are. How should  
3 we be dealing with the issues of rival gang members in  
4 the same prison?

5 MR. THOMPKINS: I don't think there's anything  
6 that we can do to eliminate the presence of gangs  
7 because we're log up gang members. I don't think  
8 that there's much we can do to eliminate totally gang

9 violence.

10 The first lines of defense, so to speak -- gangs  
11 monitor each other, okay? In a facility where you have  
12 two or three gangs, right, if both gang members are  
13 controlling the members, they're controlling each other  
14 as well, okay? How do we manage that? When I went  
15 from a maximum security facility, was transferred to a  
16 minimal security facility, I was surrounded by gang  
17 members. But again, they were vested in the program.  
18 They were able to take college classes, et cetera, et  
19 cetera, et cetera. And understanding they had this  
20 opportunity, they took advantage of it.

21 Now, if we look at the supermax facility, again,  
22 what do they have to lose, okay? And within these  
23 facilities, the guards are a gang, okay? The gang  
24 members coming into the facility, as someone said  
25 earlier today, they're sitting in a cell 23 hours a

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1 day, they're still able to communicate with the outside  
2 community.

3 I was asked to do something in LA for a radio  
4 station that was concerned with how it was the gang  
5 members in supermax facilities are still able to  
6 communicate with the outside world, and as they put it,  
7 continue their criminal enterprise. Well, it's only  
8 possible if you have a supportive staff, okay? We need  
9 to think about -- for example, I understand California  
10 was segregating offenders now by race. Some facilities  
11 were putting African-Americans together.

12 Well, come on. Just because we're  
13 African-American doesn't mean we all agree, okay? So  
14 you're putting people within these facilities who are  
15 members of rival groups. So that in itself is going to  
16 breed. Because, look, we're talking about competition  
17 for scarce resources. The prison community shares many  
18 similarities with outside intercity poor communities.  
19 Don't get away from that, don't ignore it.

20 So putting gang members of one race within a  
21 facility, that's not going to solve the problem, it's  
22 going to create it, okay?

23 I think that what we need to do is recognize that  
24 we have gangs in prisons and we hold them accountable,  
25 okay?

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1 David Kennedy, who is now at John Jay, helped  
2 develop a process whereby persons in the community were  
3 being held accountable. Help hold members and gang  
4 leaders accountable for their actions, okay? Make them  
5 responsible, because you're not going to eliminate the  
6 gangs. They're not going anywhere because that's who  
7 we're locking up. So let's recognize they're there and  
8 create a process where we make them accountable and use  
9 them to police each other. Use the leadership. I'm  
10 not saying that you sanction the gang or I'm not saying  
11 that you promote gang activity. I'm saying, let's  
12 be honest. Gang members are in prison. We need to  
13 make them accountable, and in doing that, some would  
14 say, well, you're empowering them. Maybe we are.  
15 Maybe we are, but let's make them accountable, and

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16 let's think about the strategies we're using such as  
17 putting African-Americans in one facility, white  
18 offenders in another facility, Hispanic, Latino in  
19 another. That's not the solution. That's not the  
20 solution.

21 I hope I answered your question to a degree.

22 MS. SCHLANGER: I see that it's one o'clock. And  
23 I have a feeling that the chairs of this Commission  
24 would like us to absorb the ten minutes extra from here  
25 rather than go late. So I think that we'll call it an

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1 end to this panel.

2 Let me one more time thank the panelists for  
3 coming. I know I learned a lot from this session.

4 MR. KATZENBACH: Just a few words in closing, and  
5 I'm sure John has something to say also.

6 It was less than two months ago that we announced  
7 the formation of the Commission on Safety and Abuse in  
8 America's Prisons. We were then and are now 21 people  
9 with 21 different experiences; 21 people with diverse  
10 views on what the problems are in our jails and  
11 prisons; 21 people who never even had a conversation  
12 about it. The past two days have been full of personal  
13 stories, professional accounts, lessons learned,  
14 opinions about what should be done. We have spoken  
15 with witnesses. We've spoken with each other. It's  
16 been an engaging, interesting, educational time talking  
17 and listening about our jails and prisons.

18 So as we conclude the first of the four hearings,

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the Commission will hold across the country over the  
20 course of the next year, I think we leave as a group  
21 who is whole and I believe will be and will become  
22 stronger than the sum of its parts.  
23 On behalf of the Commission all of you, I want to  
24 thank all the witnesses who have traveled from near and  
25 far to participate in the hearing. I want to thank all

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1 the welcome we've had from the people of Tampa, and I  
2 especially want to thank the staff who has worked so  
3 hard and so long to make it all look so easy.

4 Thanks.

5 MR. GIBBONS: Well, I certainly agree with Nick  
6 that we've learned a great deal over the course of the  
7 past two days. Some of that testimony was extremely  
8 troublesome to me, although not surprising. But there  
9 were also hopeful moments in which we heard the men and  
10 women who were working so hard to improve our jails and  
11 prisons, and that wasn't surprising either. I have  
12 renewed confidence that this Commission on Safety and  
13 Abuse in Prisons has the potential to make a difference  
14 in the lives of inmates, correction officers and their  
15 families, and in society at large.

16 As I listened to the concerns of those and the  
17 stories of those who work in our corrections world and  
18 of those who have served time in our jails and prisons,  
19 I'm certain that as this Commission develops our  
20 findings and recommendations, those findings and  
21 recommendations will lead to constructive change  
22 because of the skill, the strength, the commitment and

23 the openness to constructive suggestion of those  
24 men and women who work in corrections and who  
25 really want to do the right thing.

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1 One theme in particular that the Commission will  
2 be returning to in the future is the need for more  
3 transparency in the operation of our jails and prisons.  
4 Transparency will provide much of the data concerning  
5 safety and abuse that is sorely missing. It will allow  
6 the public and policymakers to move beyond the  
7 anecdotes of violence and the broad generalizations  
8 about inmates and corrections officers and to really  
9 understand in a concrete way what goes on behind the  
10 walls and behind the bars.

11 We look forward to our next meeting in New Jersey  
12 in July when the Commission on Safety and Abuse in  
13 American Prisons will look at some of the significant  
14 factors that influence the conditions of safety and  
15 abuse in our jails and prisons like overcrowding, poor  
16 medical care, and medical health treatment, and the  
17 excessive use of isolation and the privatization of  
18 certain correctional facilities.

19 Thank all of you for joining us this week in  
20 Tampa, Florida. We've only begun this important work  
21 and we look forward to working with both the members of  
22 the Commission and our future witnesses in  
23 concluding what we hope will be a valuable report.

24 We're adjourned.

25 (The hearing was concluded at 1:19 p.m.)

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REPORTER' S CERTIFICATE

STATE OF FLORIDA  
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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