MR. SESSIONS: Good afternoon. My name is Bill Sessions. I am sitting here with Gary Maynard and Stephen Bright on my right. We're very pleased to have before the Commission on Safety and Abuse in America's Prisons three exceptionally qualified witnesses: Glenn Fine, Mike Gennaco, and Jack Cowley. This distinguished group has been asked to help us
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understand two issues critical to this Commission's work:
First, what is the nature and prevalence of serious abuses of inmates and serious safety concerns for staff in our nation's prisons and jails?

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

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

To begin to tell us about the nature and prevalence of the problem and the ways of which we respond to those problems, we have two people who are charged with overseeing a correctional system. One, the U.S. Inspector General Glenn Fine
overssees federal prisons, and the other, Attorney Mike Gennaco, oversees the largest jail system in the United States. Additionally, we have as a witness a man who has as a warden was responsible for the operation of the state prison, and then as regional director oversaw internal oversight of more than one prison.

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

Glenn Fine is the first person who will testify for us. He was confirmed by the United States Senate as the Inspector General of the Department of Justice on December 15th, 2000. He served as Acting Inspector General since 1999 -- 2000 -- from August of 2000, and has worked for the Office of the Inspector General since January of 1995. Initially, he was Special

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

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

In the three years of its existence, the OIR has reviewed hundreds of internal investigations and has made numerous policy recommendations and implemented -- as implemented by the Sheriff's Department. Most recently, Mr. Gennaco was appointed by a federal judge as an expert consultant for the court to assist in designing an oversight body for the California Department of Corrections.
Mr. Gennaco served for over six years as an Assistant United States Attorney for the Central District of California. As Chief of the Civil Rights Section, Mr. Gennaco was responsible for overseeing all investigations and allegations for federal civil rights violations and has prosecuted judges, police officers, and white supremacists. Prior to that, Mr. Gennaco was a prosecutor with the Civil Rights Division of the United States Department of Justice.

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

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

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

MR. FINE: Thank you, Judge Sessions and members
I appreciate the opportunity to appear before the Commission to discuss the work of my office, the Department of Justice Office of the Inspector General relating to safety and abuse issues involving federal prisoners.

The OIG is an independent office within the Department of Justice that has broad authority to investigate violations of criminal and civil laws within the entire Department of Justice and to review department operations and programs. In furtherance of our duties, the OIG receives many allegations of misconduct both in the Federal Bureau of Prisons and throughout the entire Department of Justice. For example, the last two fiscal years the OIG received about 16,000 allegations of misconduct throughout the entire Department of Justice, and not just the BOP. But of those total allegations, approximately 10,000, or 60 percent, involved the BOP.

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

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

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

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

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

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

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

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

consider the wider use of this model.

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

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

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

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

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

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

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

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

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

MR. SESSIONS: Thank you, Mr. Fine.

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

MR. GENNACO: Thank you, Judge Sessions.

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

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

When this allegation became known, media interest
was directed at the jails. And unfortunately, this
murder was the fifth murder over the course of six

months in the downtown Los Angeles jail complex.

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

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

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

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

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

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

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

I think it's only through this transparency, only through this ability to provide a bridge of information from the shuttered world of the jails to the outside world that confidence can be re-established among the
public about the way in which an important part of our governmental functions; that is, the care and custody of people who have been incarcerated can be restored. I have to say that I'm pleased to report that on the anniversary of the murder of Mr. Tinajero, which will be tomorrow, God willing, that if we last another day there will not have been another murder in that downtown complex.

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

MR. SESSIONS: Thank you, Mr. Gennaco.

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

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

MR. COWLEY: Thank you.

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

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

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

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

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

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

Now, is that abuse?

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

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

Thank you very much.

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

Now, what do you do about reporting? What can you recommend for us that might be an encouragement to assure that those people who are the jailers and who are the prison officials actually know about and can
MR. FINE: I think one of the most important ways is to provide an outlet for those officers, to provide an entity that they can have confidence in that will not immediately turn over their names to management of the facility, but will take their allegation seriously; will try to get to the bottom of the allegations; will do it in a confidential and aggressive way, and then hold people accountable. Both of the other witnesses talked about accountability, and I agree with that tremendously.

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

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

MR. SESSIONS: Mr. Gennaco--

MR. GENNACO: Yes, Judge. Thank you.

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

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

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

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

MR. SESSIONS: Mr. Cowley --

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

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

MR. SESSIONS: Is there some times that an event
MR. COWLEY: Sure.

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

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

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

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

MR. COWLEY: That's correct.

MR. SESSIONS: Mr. Gennaco --

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

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

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

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

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

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

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

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

MR. SESSIONS: Thank you.

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

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

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

MR. MAYNARD: Mr. Gennaco --

MR. GENNACO: Yes, Mr. Maynard.

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

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

MR. MAYNARD: Thank you.

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

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

MR. GIBBONS: I have a question.

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

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

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

MR. GIBBONS: Even under FOIA?

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

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

MR. GENNACO: The Public Records Act of California does provide some relief to the media. Although, I have to say that the information that is made available...
is rather minuscule and is certainly -- for example, the identity of the deputies involved is redacted pursuant to other privacy statutes and exceptions to the Public Records Act in State of California. Even so, my perspective is that there are ways to provide access, if you wanted to provide access, if you were a correctional facility or an institutional organization in the State of California, but police managers, correctional managers are not so inclined. They read the interpretation of the statutes very narrowly and protect that privacy of their people as much as they can.

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

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

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

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

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

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

MR. BRIGHT: Could I follow up on that?

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

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

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

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

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

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

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

MR. FINE: Uh-huh.

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

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

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

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

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

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

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

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

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

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

MR. BRIGHT: Those wouldn't be prison cases.
MR. FINE: They are prison cases, yes.
MR. BRIGHT: They are.
MR. BRIGHT: A significant majority of them are
prison cases.
MR. BRIGHT: Oh, they are.
MR. FINE: In fact, we had one where it was

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

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

As a member of the State Assembly in California, I visited eight prisons. I was an inmate following that in two prisons, fed facilities, and since coming with Prison Fellowship I visited over 30 prisons. In fact, just like the U.S. Prison at Leavenworth. My observation is that while we call it a prison system it really isn't. They're individual death SHUs with the warden as Duke, and he rules everything within his domain. And my observation, too, is there are two types of wardens:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

for correctional officers is they use this book called "The Games Convicts Play." They're trained, don't touch, don't even shake hands, don't call them by their name, call them by their number. We've written books Page 116
on how inmates -- or how people become convicts, but we have -- there's not been a book written yet on how inmates can be people, normal people and still be confined in prison. It's not the paradigm that we have in corrections.

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

MR. KRONE: I have a question.

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

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

MR. FINNE: That's a good question. There are many ways that our work gets -- results of our work get implemented:
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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
discipline to the Bureau of Prisons and we follow up to
determine what kind of discipline has been imposed.
Now, we don't -- we don't have the ability to impose
the discipline, we provide that to them. But we do
monitor and follow and there is a significant number of
them who get removed or resign in lieu of removal or
get suspended for periods of time.

We also do, as I said, systemic reports. We look
at the BOP disciplinary system. We find problems in it
and make recommendations for improvement. And the
Bureau of Prisons is -- and we publish that. We
publish that on our website. If you look on our Web

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,
or they agree or disagree, and we follow up with that.
For the ones that disagree, we go back to them and ask
them why. On the ones that say they agreed, we ask
them, "Well, what are you going to do about it? What
8 is your corrective action plan?" And then we follow
through to determine whether they've implemented that.

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

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

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

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

Ms. Schlanger --

MS. SCHLANGER: Thank you.

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

So if these are the results in the systems that
have your kinds of offices at play, I guess I'm
wondering for us who are thinking about whether or not
that's a recommendation to make to other people, is
that -- I mean, is it that they're not entirely
successful because they're not implemented as deeply as
they need to be or because there's some things that are
beyond the scope of what you can do or -- I guess I'm
wondering, how do we come up with a system where you
don't have five murders in six months before you have
the solutions to that, you know?

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

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

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

Two, the simple fact of continuing to shine the
light through public reporting, through explaining to
the public what happened and what went wrong certainly
in and of itself provides, I think, a benefit because
it causes the jail and the jail managers to really think about ways to prevent future murders from happening.

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

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

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

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

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

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

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

You can't -- there's nothing wrong with
monitoring, but if you think -- if we have a piece
that, oh, now things are well because we're monitored,
believe me, it will not help a lot. It might give us
confidence for a while, but we know how to get around
the monitors, believe me. If we're so inclined to run institutions that way, we're going to get around them.

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

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

MR. SESSIONS: Okay. Questions.

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

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

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

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

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

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

MR. SESSIONS: Thank you.

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

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

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

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

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

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

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

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

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

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

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

MR. SESSIONS: We've got ten people and 15 minutes. Let's go.

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

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

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

MR. GENNACO: Judge Sessions.

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

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

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

MR. FINE: I think through the range of support for the Bureau of Prisons initiatives that we attempt
to address these problems. I think with adequate

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

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

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

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

MS. ROBINSON: Thank you.

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

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

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

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

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

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

MR. KATZENBACH: Well, it used to be.

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

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

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

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

I'll address that to all three of you.

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

Quite frankly, that's where our increasing incarceration is coming from that we're just keeping people a lot longer. I really don't -- it's not a matter of fairness on the part of -- on the part of the system to supply wardens with the resources that's necessary, and wardens march to the drummer, so to speak. The warden that had eight staff people there when she should have had 48 without working the post.

If nothing else, I think that we should say, "If we're going to incarcerate for the length and the extent that we do, that there really does have to be resources that match that program of incarceration."

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

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

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

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

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

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

Yes, go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GENNACO: Thank you.

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

(There was a recess.)