

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

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Barbara Owen.

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

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

For most of the 13 and a half million people who

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

What's the real extent of violence and abuse? How dangerous and stressful is it to be a corrections officer? How do families deal with their lives when their loved ones work or are housed inside a prison?

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

25 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.

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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:

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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

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23 conditions of confinement, resulting in a sweeping
24 injunction that was legally affirmed by the Fifth
25 Circuit.

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1 She helped prepared reports and
2 recommendations that resulted in an end of HIV prison
3 program segregation in Mississippi in 2001, and in
4 Alabama in 2003.

5 We look forward to your testimony as well.

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

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

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

3 MR. ELSNER: Thank you, Senator Romero.

4 SENATOR ROMERO: If you can please speak directly
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

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,
8 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
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 to speak to a reporter unless they wished to lose
16 access to lawyers.

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

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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

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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 its 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

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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 bisonline 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

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 bison-tine, 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
11 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 setake 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

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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.

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

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other mechanisms.

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

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

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

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

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

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

25 I've been going around the country talking about

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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

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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

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

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

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

22 But the second answer is that, you know, we all
23 are one people. Of course we should care. We care
24 about our education system even though many of us
25 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 transcript of first hearing_part 2.TXT
12 unemployment, the problems of substance abuse, the
13 problems that all of us who work in the criminal
14 justice system are well aware of.

15 I think we need to think about the ways in which
16 we can come to understand the context and the pathways
17 in the prisons for both women and men in order to fully
18 address this picture. There's many advocacy
19 org -- advocate organizations such as Families Against
20 Mandatory Minimums, such as Stop Prison Rape Group that
21 work very hard at trying to convey a different message.
22 But the reality is that -- is as Alan describes it, and
23 that is the media, Hollywood, the news makes us think
24 everybody in prison is Charles Manson. And while we
25 certainly do have a handful of Charles Manson types in
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 unetharize 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
21 this morning talked about giving prisoners themselves a
22 voice, the importance of that. And I don't think
23 anybody could have heard Garrett Cunningham or the
24 other witnesses this morning without "getting it;"
25 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

1 do it by themselves. There's got to be public support.
2 If they're surrounded by a public -- of --
3 (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

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
10 absolutely right, but we need to give people a voice.
11 And I'm hoping that -- that, you know, that my book
12 helped generate enough debate to give people a voice
13 because they have a voice, they just haven't had an
14 opportunity before to say what they think.

15 And again, this Commission is doing a wonderful
16 job on that.

17 MR. GREEN: Senator Romero --

18 SENATOR ROMERO: I want to direct my questions to
19 Mr. Elsner in particular. The last year I wrote
20 legislation ended up on Governor Schwarzenegger's desk
21 to facilitate and to basically open up the prisons
22 to allow media access in the California prisons.

23 The measure was vetoed. The governor did
24 come back and write me a vetoed message stating in part
25 my bill would help to glorify criminals.

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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

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

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

23 SENATOR ROMERO: But even in your written
24 testimony on your visit to San Quentin, you acknowledge
25 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

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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
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
24 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

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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

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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

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1 prisons and jails are presented to the public. If I
2 just think about my images, I can go anywhere from
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

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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
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
13 would be a winning argument as long -- when we could
14 explain and describe how expensive imprisoning the
15 millions of folks that are in prisons is. When we
16 could explain the fact that -- just as Alan said --
17 "every dollar you spend on corrections is a dollar not
18 spent somewhere else." In the late '80s, the early
19 '90s most of us thought that would be the winning
20 argument.

21 Well, here we are 15 more years later, and the
22 fact is that states aren't acting rationally when it
23 comes to fiscal policy in prisons. The fears and
24 concerns that the media has shaped, that politicians
25 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

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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
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 conversation.

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

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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 --

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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

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million inmates.

25 I wrote a little off pendulum in the Christian

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

7 MS. ROBINSON: That is a great jail.

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

14 UNIDENTIFIED SPEAKER: All right. Bringing
15 journal articles --

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

22 MS. WINTER: Well, there are, it seems to me,
23 state legislative hearings are a very valuable
24 possibility. There's all kinds of meaningful
25 legislation that could be proposed and debated in state

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

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

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7 door to so many prisoners like Garrett Cunningham
8 because it requires them to exhaust bisontine
9 administrative remedies that not even the best lawyer
10 could figure out how in the world to do this within
11 five days, and then exhaust stage II and the stage III
12 appeals.

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

23 DR. OWEN: I only have two very quick suggestions.
24 One is inviting a range of actors to the table, a
25 range of folks who are concerned. We talked about
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 oppositional groups. And I think the fact is, and I
17 believe this very firmly, that most prison
18 managers -- just as Margaret described, many prison
19 managers are indeed fair-minded and are not happy about
20 many of the things that go on in their systems.

21 So I think recognizing that there's multiple
22 members of the prison community is one way to decrease
23 abuse and danger in our prisons.

24 MS. WINTER: I wanted to add a little story to
25 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

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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.

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 and the subtle harms that prisons produce to human
24 beings, both human beings who work there as well as
25 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

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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

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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

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1 anything where we could add to make prisons more
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.

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 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

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.

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

14 DR. OWEN: But I would also caution the
15 Commission, in thinking about those types of
16 approaches, to understand the experience of programs in
17 prisons. Just as Margaret was talking about, very
18 often these oversight agencies become kind of neutered
19 over time. Very often prison programs are just in fact
20 paper programs. They say they have drug treatment,
21 they say they have vocational training, they say they
22 have forms of mental health, and without really paying
23 for quality programs, without really putting the
24 resources, very often you create treatment failures in
25 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

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10 few minutes so our staff can review some logistical
11 details with us.

12 Thank you all.

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