(Hearing resumed.)

The following proceedings were had and taken:

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

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

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

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

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

Alan Elsner is a journalist. Barbara Owen is a research and writer. Margaret Winter is an attorney who handles civil cases involving prisoners. While not representing the full spectrum of people who teach us about prison life, these three witnesses do represent some of the significant sources for the information we have about jails and prisons. So we want to thank each of them for taking the time to appear at our first hearing this afternoon.

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

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

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

So let me begin now by turning to Senator Romero.

SENATOR ROMERO: Thank you.

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

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

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

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

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

Barbara Owen is a Professor of Criminology at California State University, Fresno, and is a nationally known expert in the areas of women and crime, prison culture, gender-specific programming, and substance abuse and drug treatment systems.
She has provided training for the National Institute of Corrections in such areas as operational practices for women offenders, staff sexual misconduct, women and community corrections and improving health care for women offenders. Dr. Owen is the author of over 12 articles and two books, including "In the Mix: Struggle and Survival in a Women's Prison." She is developing an international Collective for the Study of Women’s Prisons.

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

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

She helped prepared reports and
recommendations that resulted in an end of HIV prison
program segregation in Mississippi in 2001, and in

We look forward to your testimony as well.

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

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

MR. ELSNER: Thank you, Senator Romero.

SENATOR ROMERO: If you can please speak directly into the mike and use -- from the diaphragm as loud as possible. I know it's after lunch, but you can do it.

MR. ELSNER: Thank you very much.

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

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

MR. SESSIONS: We can arrange for that.

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

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

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

To visit a prison, the procedure is something like this: You apply in writing to the Department of Corrections stating exactly what kind of a story you plan to write and who you want to talk to. When I went into a prison, I was usually accompanied by officials who controlled where in the facility I could go, who I could talk to, and what I could see. Before I spoke with a particular inmate, the official made sure that that inmate signed a personal release form. Often the inmates I spoke to were carefully selected in advance by prison administrators.
This obviously gave me a very limited idea of what was actually happening in a particular institution. For example, a few months after I visited Bedford Hills Women's Prison in New York State, I learned that several inmates there were complaining of brutal sexual abuse at the hands of correctional officers. I only discovered this because some of the women had launched a lawsuit against the State of New York, the Department of Corrections and individual guards. The alleged abuse was in full spate while I was visiting the facility but I had come and gone without even an inkling that it might have been going on.

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

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

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

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

Knowing that I'd be testifying before this Commission today, I submitted a request to the Alabama Department of Corrections on March 23rd, asking to visit Hamilton, and my request was turned down the following day. That means that I and other reporters have no way of verifying what's actually happening in that institution. In fact, if you guys want to make a field trip, it would be interesting to see what their response to you would be.
I should note here that turning down reporters' requests is all too common. I've never gained access to a so-called Supermax prison despite many requests. To extend my metaphor from the beginning of this testimony, if the prison system as a whole is like the former Soviet Union in its attitude toward reporters, the Supermax prisons are pretty much like North Korea. We basically have no idea what's going on in them today.

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

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

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

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

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

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

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

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

I would like to know how many times correctional officers use Tasers and stun guns, and how many times they carry out cell extractions.
What goes on in our prisons seems distant and removed, as if it's happening in another country, almost on another planet. And you all's major task, in my humble opinion, is to remind us that prisoners are not on another planet, they're not in another country, they're part of the United States and they're inhabitants and remain citizens of the United States and do not forfeit their human rights the minute they step behind bars.

Thank you.

SENATOR ROMERO: Thank you.

Dr. Owen --

DR. OWEN: Thank you, Senator Romero.

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

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

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

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

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

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

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

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

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

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

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

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

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

The two main points of my testimony are these:

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

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

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

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

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

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

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

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

Thank you very much.

SENATOR ROMERO: Thank you, Dr. Owen.

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

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

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

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

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

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

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

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

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

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

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

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

There is not time for more examples, but I believe
that the bottom answer that we are all looking for is,
light, light, and more light. I don't believe that
there's a single permanent monitoring independent
institution that we can set up that won't become
atrophied and have hardening of the arteries like the
What we need is the coming at it from different ways, the power of this Commission, the power of courageous reporting, a social scientist doing research; a litigation that depends on federal Judges who have lifetime tenure to take the heat; and responsible, good wardens and Commissioners and superintendents and correctional officers who say, you know, thank God that there's somebody who is going to look into this mess and give us the backing and the support that we need to change it.

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

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

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

Why don't we start -- actually, I'd like to start with you, Alan.
MR. ELSNER: Well, I've been doing this for a relatively short time. I really only wrote my first prison story I think in early 2001, so I don't have a lot of perspective to bring to this, but in my opinion the public basically knows very, very little about the U.S. prison system.

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

MR. GREEN: Ms. Owen --

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

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

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

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

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

It was a huge problem to get those records. And so it's again the question of how do people get the will and the energy, change it once they've got the information. And it's not just prison officials. I
mean, my God, it's state legislators, it's courts, it's the people, it's the public. Without the will and the energy, nothing changes. And I think that the will and the energy comes from occasions like this Commission where it's borne in on the public consciousness that they're real human beings who are suffering atrocities, absolute atrocities, and barbarisms. And if we -- you know, if the majority of the people open their eyes to that, then there is a difference.

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

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

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

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

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

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

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

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

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

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

MR. GREEN: Barbara --

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

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

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

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

Ms. Winter: I think it was Senator Romero who this morning talked about giving prisoners themselves a voice, the importance of that. And I don't think anybody could have heard Garrett Cunningham or the other witnesses this morning without "getting it;" that these are human beings and that there -- and that there are literally, you know, thousands of Garrett Cunninghams. And how their voices can be heard is for me a very big issue.

In litigation, the public education angle of civil rights litigation is tremendously important, and to get the press to cover it at all, to be interested is a big mountain to climb. And as our public education person is constantly telling me, "You've got to be able to get the reporter in to talk to the prisoners or you're not going to get a story." And of course, most prisons make that absolutely impossible for prisoners to talk directly to the press. And I actually think that that would make a huge -- I mean, to me that would be a very, very significant thing if prisoners had direct access to the press; not simply through letters, but by telephone, in person so that their voices could actually be heard.
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DR. OWEN: But I'd also like to add at the same
time, researchers need to understand how prisons
actually operate. I served during probably the last
eight years on the California Department of Corrections
Research Review Committee as an outside person, and
very often researchers come in with a naive
understanding thinking that prisoners are going to be
brought out from their cells and lined up for interview

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

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

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

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

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

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

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

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

MR. GREEN: Ms. Owen --

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

In my testimony, I said this, "I firmly believe
that most contemporary managers aim to run a fair and humane system. Few managers want to cover up incidents in their facilities." It's my view that professional correctional systems are increasing to evidence-based practice, to empirical data to help them make decisions. And I feel that researchers, journalists, litigators need to partner with these symptoms to collect and use this variety of data to help them solve the problems of safety and abuse.

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

What we need is to empower these people to speak out and think within the correctional industry, so to speak, that people realize that the system is dysfunctional and needs reform. The problem is coming from the politicians who keep passing it on man -- on these unfunded mandates and more and more laws and running on being tough on crime and on all the other easy slogans. And we need to empower them
Also, by looking at the financial aspects of the system because in a state which has to balance its budget, every dollar that's spent on corrections is a dollar that can't be spent on roads or recreation or education.

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

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

MR. GREEN: Senator Romero --

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

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

In researching this, and I'd like to ask you, Mr. Elsner, just as we talked about that there is no -- a prison system there's 50 different ways of doing things, probably. I too have learned in the research, because I am bringing back the legislation again this year, that states respond to media access in
very different ways.

Up until a few months ago California journalists couldn't even walk in with paper and pencil. Now you can have some paper and pencil, but your tools of the trade are not allowed. You also have to compete with family members in order to have access to inmates. And what you've described in your testimony is very -- very much describes the California system.

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

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

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

I think it really depends on the actual institution. I referred in my testimony to the difficulty in gaining access to the Supermax prisons, which I think is a huge problem. I mean, basically walling off these institutions to the extent that even family members have so-called video visits and can't have any face-to-face contact with their loved ones.
It's -- and I know that from my discussions with various representatives from human rights organizations that they have had great difficulty in gaining access to these institutions. The idea that there are parts of America that are just walled off to everybody, not just to the press and, you know, allowing the media in is no panacea, but it would be a start. So, I mean, I think that that's where we have to work. Even if we were able to gain access to, let's say, 75 percent of the prisons in California but we couldn't get into the other 25 percent, you would wonder what's going on in that other 25 percent.

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

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

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

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

How do you -- how do you control for that to ensure the safety of people with whom you might speak in prisons into which you go? What recommendations might you give us? And also, how do you check the accuracy of your sources?

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

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

SENATOR ROMERO: Dr. Owen --

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

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

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

Well, over a period of three years visiting this
same unit, this "best behavior" caution went away, and
one day the very same officer who said that earlier in
the period saw me -- because I always check in with the
officers when I come in, saw me and got over the
loudspeaker and said, "The yard's open. Get out. I'm

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sick of looking at you." So as I said in my earlier testimony, as you heard, when you spend a lot of time in an institution you're no longer an unusual thing. And I did observe officers saying things and doing things that you wouldn't observe in a one-shot kind of visit.

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

SENATOR ROMERO: Let me ask just one last question.

MR. ELSNER: Just one very briefly.

SENATOR ROMERO: Sure.

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

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

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

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

SENATOR ROMERO: Well, we're going to have to get that for the Hollywood hearing. But the media shapes that. You know, the media shapes that overall.

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

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

I think that the problem is, having the desire to write the story in the first place. You know, there have been some extraordinary journalistic efforts at exposing abuse and neglect in U.S. prisons. The New York Times series just recently on health care in the prison system. And I believe that health care is the single biggest abuse in the U.S. health -- prison system, bigger than rape, bigger than, God, brutality and violence, bigger than cell extractions. I think more people die of either outright inept or neglectful health care than any other single reason in U.S. prison systems. So I think that it can be done.

I just think that you -- having the media response to what they perceive as the public appetite. We just have a great example right now on the Michael Jackson trial. When everyone thought it was going to be a huge story, but the media is ramping down its coverage because the public just basically doesn't want to know about these yucky things that are going on in his ranch.

So the media responds to what they think the public wants to see. And we have to engage the public and make them realize that this affects them and this affects all of us. The fact that 600,000 people come
out of the prison system every year with tuberculosis, who carry tuberculosis. This affects all of us. We can get on a bus tomorrow and we don't know who is standing next to us. The fact that 600,000 people are released back into our communities every year is something which affects all of us. So our job -- and include all of us -- is to make people realize that this isn't some problem that is separated from them by walls. This affects all of us. There is no wall between them and us. They are moving backwards and forwards and they are us, and there's no barrier at all.

SENATOR ROMERO: Thank you.

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

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

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

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

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

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

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

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

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

In these times of fiscal constraints, most Departments of Correction have denuded their research departments. California Department of Corrections had one of the best research departments in the nation in the '60s and the '70s. In the '80s it started being cut back. In the '90s it was cut back. I can show you Page 45
a memo that said, "Due to fiscal constraints, we have now eliminated the research departments in the California Department of Corrections." So I think focusing on the importance of social science research, but equally important, having researchers and policymakers entering a dialogue, entering a conversation.

I go to probably 15 conferences a year, and I've just started going, for example, to the American Correctional Association conference wherein that's where the policymakers are. That's where the decisionmakers are. So I think crossing these disciplines from the academic -- who, believe me, I understand we can be very tedious and esoteric on many, many matters -- and the policymakers who want to know the bottom line, just tell me what to do. I think creating dialogue, creating partnerships and cutting down this etherizing.

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

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

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

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

MS. ROBINSON: Excellent. That's great.

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

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

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

So unfortunately, the United States seems to be
influencing those policies that I might see as more rational policies. But I think that's another issue of dialog. The inter -- a very important international conference on criminology is going to be held in Philadelphia in August, and I urge --

MR. ROBINSON: I'm glad to know you're coming since PENN is putting that on.

DR. OWEN: Oh, yes.

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

MR. ELSNER: Can I just say very quickly here and steal a story. The U.S. State Department issues its Human Rights Report every year, and it covers 196 countries this year. One of the criteria that we judge other countries on is their prison system. The state Department produces a report from the prison system of every single country in the world except our own. And I was just leafing through it. This was last year's version. I got to the chapter on Iceland, and I saw that they had 110 inmates. So we do a report on the Icelandic prison system and their 110 inmates. We don't do one on the U.S. prison system with its 2.2
Science Monitors pointing out this absurdity, and I got an irate e-mail from an official at the U.S. Embassy, Ray Clavich (Phonetic) saying, "How dare you cast dispersions on the very kind of work that I did in writing -- (Inaudible - laughter from panel and audience) -- prison system."

MS. ROBINSON: That is a great jail.

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

UNIDENTIFIED SPEAKER: All right. Bringing journal articles --

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

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

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

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

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

Another very small example, charging people
co-pays inside the prison system to see a nurse or a
doctor. Again, it sounds great, you know, politicians
stand up and say, "You have to pay to see a doctor; why
should they get health care scott free?" Well, of
course, they have no income. So charging them $9 to
see a nurse -- you know, what are they going to do?
They're not going to see a nurse. They're just going
to get sicker and then they're going to infect other
people and they're going wind up in the emergency room
If you explain that to people, get beyond the slogan
and say, "Look, this, not only is it not just, but it's
stupid, it's dumb," then I think the people can
understand it.

MS. WINTER: There is something else I think very
important that could happen to give prisoners more of a
voice. There's very, very -- actually, very little
litigation -- contrary to popular opinion -- by
prisoners, serious litigation about prison abuse that
ever gets anywhere because they are not represented and
they can't be represented. The prison
litigation -- so-called Prison Litigation Reform Act
has been a huge weapon for silencing prisoners. The
provisions that mean that attorneys can't get the

standard statutory attorneys' fees as prevailing
parties, so they can't get civil rights attorneys to
represent them. The provisions that make decrees
terminate after two years after massive effort's gone
into obtaining the decree. The provision that bars the
door to so many prisoners like Garrett Cunningham because it requires them to exhaust bisontine administrative remedies that not even the best lawyer could figure out how in the world to do this within five days, and then exhaust stage II and the stage III appeals.

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

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

I also think that as a final word on research, we
need to think about how prison research can be mutually
beneficial to all the parties involved, to the system,
to the theoretical and applied field of criminology
into the community as well because so often
researchers, advocates, union members, politicians, the
media, prisoners, prison managers have been cast as
oppositional groups. And I think the fact is, and I
believe this very firmly, that most prison
managers -- just as Margaret described, many prison
managers are indeed fair-minded and are not happy about
many of the things that go on in their systems.
So I think recognizing that there's multiple
members of the prison community is one way to decrease
abuse and danger in our prisons.

MS. WINTER: I wanted to add a little story to
what Barbara just said.

MS. ROBINSON: Very quickly.
MS. WINTER: A dozen years ago when I started
doing prison litigation, I was visiting the lead
plaintiff, and a very extraordinary-looking prison
guard, a woman at least six foot four weighing about
280 or 300 pounds came by with a terrible scowl on her
face, and when she passed I said to my client, "Boy, I
bet she's a real piece of work."
And he said, "Actually, she is a ray of light in a
dark place." And I kept that with me over -- and I
keep it with me 12 years later, not to stereotype
people, to try not to think that it's us and them but
to realize that riches are possible to build, but
there's dialogue and that there are people who are on
the other side, so to speak, who are very eager to
enter into a dialogue and worth trying to find a way
into it.

MR. ROBINSON: A good word to end that on. Thank
you.

MR. GREEN: As we began our year-long study, I'd
like to ask each of you to give us your views about the
prevalence of abuses and serious safety failures in
American prisons and jails. And what are the most
serious forms it takes in addition to the inadequate
medical care that Mr. Elsner referred to earlier? So

if each of you would -- in addition to the medical
care, what you think the most serious issue is. We'd
like to hear that. I don't know if you want to add to
that at this point.

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

MR. GREEN: Margaret, what would you say?

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

MR. GREEN: Dr. Owen --

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

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

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

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

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

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

MR. GILLIGAN: I'm wondering if we aren't proceeding on a basis of mistaken assumption, which is that the purpose of American prisons is to decrease the rate of crime and violence. If that were the purpose, then what we're doing, of course, is irrational, but what if we make the opposite assumption and say that pretty much the purpose is really to engage in a maximal amount of revenge on the part of the public regardless of whether that increases the rate of crime and violence, or even more, that perhaps the purpose is to -- how can I put it -- if the purpose were to increase the rate of crime and violence to the highest possible level in our society, one might have to say that we could hardly have designed a more effective system.
What I wanted to ask you is, if that's the purpose then, is there anything we've overlooked? Is there anything where we could add to make prisons more criminogenic and more violence provoking? Can you think of anything we could do that we're not already doing that might make them even worse from the standpoint of preventing violence?

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

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

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

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

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

So he goes into this room and he sits down and starts picking boxes, and there are these guys on either side of him and when he picks box A, they all picked box A, and when he picks box D, they all pick -- and as it goes up, he sees this graph on the wall, and it's "GED pass rate" in this particular prison.
So I think, you know, we could do a much better job if we cut out even the meager education and vocational side training that we had there and just warehouse them all all day doing nothing, that would answer your question.

DR. OWEN: I understand the spirit in which you raise this issue, but my answer is, for so many years there was a movement towards truth in sentencing. I think we should have truth in incarceration, and prison budgets, correctional budgets need to be much more transparent than they are. I don't think most people realize exactly how much money is being spent and what little bang folks are getting for their buck.

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

We actually know the point at which this harms super-sized -- to use a current colloquialism-- and I
think we need to start thinking about how we can satisfy -- and I agree with you, doctor -- that we do have a strong revenge component driving our corrections systems. We need to do some very specific calculations in thinking about exactly what are we doing, what are we getting; how much does it cost, and how can we do it differently.

MS. WINTER: Well, I think we all know -- it's no mystery here, there have been plenty of studies -- what it is that makes recidivism go down, education, drug treatment, vocational ed. We know it. There have been studies. There's no question about it. And with the amount that it costs to incarcerate someone in a high security prison, I think it's also been proven many times that they could be sent to Harvard for the same price.

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

So since we know what the answers are and since the resources are clearly there, all they have to be is reallocated. That seems to me one positive thing. No huge studies need to be done to prove what would make the situation better and what makes it worse and worse.

DR. OWEN: But I would also caution the Commission, in thinking about those types of approaches, to understand the experience of programs in prisons. Just as Margaret was talking about, very often these oversight agencies become kind of neutered over time. Very often prison programs are just in fact paper programs. They say they have drug treatment, they say they have vocational training, they say they have forms of mental health, and without really paying for quality programs, without really putting the resources, very often you create treatment failures in which the individual's blamed, when in fact there was no viable treatment delivered at all.

MR. GIBBONS: No more questions?

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

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

   Thank you all.

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