

Transcript of first hearing_part 3.TXT

FIRST WITNESS PANEL ON VIOLENCE

1 The following proceedings were had and taken:

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

6 This morning, I along with Tim Ryan and Pat Nolan
7 have the pleasure to lead a discussion with three
8 distinguished witnesses on the violence and the use of

9 Transcript of first hearing_part 3.TXT
excessive force in our jails and prisons. Following
10 this panel, Commission Margo Schlanger will conduct
11 a roundtable that will also involve a discussion of
12 violence in our jails and prisons.

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

19 Over the course of the next 90 minutes, we hope to
20 discuss some of the various forms of violence in
21 prisons and jails including inmate-on-inmate,
22 inmate-on-officer, and officer-on-inmate violence,
23 which I should add by no means exhausts the range of
24 violence in prisons. I've seen visitors who have been
25 killed in prisons. Non-infractional staff who have

232

1 been raped, wardens who have been attacked, people
2 taken hostage. Everybody who goes in and out of the
3 prison is potentially vulnerable to this.

4 Some of the particular forms of violence that we
5 will hopefully have the time to address include the
6 excessive use of force by corrections officers, gang
7 violence, and sexual violence; additionally, when
8 talking about the prevalence of each type of violence,
9 its causes, and the methods of control that are
10 currently being used. We hope to begin to explore some
11 possible methods to make the jail and prison
12 environment safer and less abusive for both correction

Transcript of first hearing_part 3.TXT

13 officers and inmates and everybody else who visits,
14 works in or goes in and out of these institutions.

15 Before my colleague, Pat Nolan, introduces the
16 panel, I want to stress one point: I believe that the
17 vast majority of the men and women who work in our
18 prisons and jails are committed, well-intentioned
19 professionals doing their best under often very
20 difficult circumstances and sometimes amazingly
21 succeeding remarkably well.

22 While I'm certain we'll hear some powerful
23 anecdotes drawn from the experiences of these
24 witnesses, we must also make sure that we put
25 these examples of abuse or misbehavior in context.

233

1 MR. NOLAN: I'd like to start by noting that the
2 discussion today will focus on male inmates. We have
3 other panelists at subsequent hearings that will more
4 thoroughly discuss the very important and distinct
5 issues that confront women prisoners in our jails and
6 prisons.

7 We're pleased to have these distinguished
8 gentlemen join us this morning.

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

16 Mr. Cabana has a long history in corrections, beginning
17 as a guard at Parchman in 1972. He was also a warden
18 in other facilities in Mississippi, as well as in
19 Missouri and Florida, and was Acting Commissioner of
20 the Mississippi Department of Corrections from 1986 to
21 1987. Mr. Cabana is currently Chair the Criminal
22 Justice Department at the University of Southern
23 Mississippi in Hattiesburg.

24 Steve Martin is a corrections consultant and is
25 actively involved in prison litigation in New York,

234

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

16 During his 32 years in the criminal justice field,
17 Mr. Martin has worked as a prison guard, probation
18 and parole officer, and prosecutor. He is the former
19 General counsel of the Texas prison system as well as

20 having held gubernatorial appointments in Texas on both
21 a sentencing commission and a council for mentally
22 impaired offenders. He co-authored the book "Texas
23 Prisons, The Walls Came Tumbling Down" and has written
24 numerous articles on criminal justice issues. He has
25 served as an adjunct faculty member at six different

235

1 universities including the University of Texas School
2 of Law.

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

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

17 We'll begin with Donald Cabana.

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

21 In thinking about the Commission's work, it occurs
22 to me that you all have an opportunity to perhaps carry

23 Transcript of first hearing_part 3.TXT
24 out the most important function relative to the
25 corrections field in over a century. In 1870, a group
of zealous prison reformers led by Isalien (Phonetic)

236

1 and Brockway and future president Rutherford Hayes came
2 together in Cincinnati, and they issued a Declaration
3 of Principles that was intended to guide corrections
4 and reform corrections, and out of that compost in
5 1870, the first most immediate result was the evolution
6 of the reformatory system, starting in Elmira, New
7 York.

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

19 In the 20th Century, a number of wardens have been
20 very outspoken critics of the very systems that they
21 were responsible for operating. Lewis Lawes at
22 Sing Sing in the 1930s; Thomas Montosborn at
23 Sing Sing in 1920s; Clinton Duffey in the 1950s and
24 '60s at San Quentin. Even as they were on the payroll,
25 something that would be difficult to imagine in today's

1 political landscape.

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

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

16 My experience as a result of reporting that
17 incident was not a particular happy one. I was not
18 harassed or threatened by fellow staff, I was basically
19 shunned and given the silent treatment. And I'm sure
20 my departure several years later from the system made
21 quite a few people happy.

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

1 violence in prisons, and what we have is a situation

Transcript of first hearing_part 3.TXT

2 that I like to refer to as "back to the future."

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

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

20 The level of violence in these places is
21 unconscionable. What I found in the supermax units
22 when I took the reins back as warden of the Mississippi
23 State Penitentiary was extremely disturbing and I
24 suspect very much typical of what you find in supermax
25 units across the country.

239

1 Thank you.

2 MR. NOLAN: Mr. Martin --

3 MR. MARTIN: Good morning.

4 I'm going to focus somewhat more narrowly. My

5 Transcript of first hearing part 3.TXT
6 remarks today commensurate with Don Cabana.

7 MR. SESSIONS: Pull the microphone up, please.

8 MR. MARTIN: Yes, sir.

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

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

19 In my statement, I have footnoted three separate
20 systems to try to give the commissioners an idea of the
21 scope. For instance, in Texas, I believe in 2001,
22 there were in excess of 6,000 reported staff uses of
23 force in that system. In the New York City jails, I
24 believe in 2002, there were in excess of a thousand
25 incidents. In the LA County Jail in 2004, there were
in excess of 2000. So in three systems, admittedly

240

1 large confinement operations in one calendar year there
2 were almost 10,000 incidents, reported incidents of
3 force. So the commissioners should understand that
4 it's a commonplace, frequently occurring phenomena in
5 our institutions. Because it is one of the few
6 commonplace events in prison, the jail environment in
7 which there is immediately attached a risk of harm to
8 both inmates and staff, it is an area of operation that

9 tends to merit more scrutiny by the courts and by
10 professional standards.

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

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

25 What I want to focus my remarks on is not the

241

1 rogue officer, the rogue commander or the rogue shift.
2 Those cases, while they can fly under the radar, they
3 don't tend to fly under the radar for long. Once
4 they're discovered, they speak for themselves. I mean,
5 they bring about certain responses from the confinement
6 operations; people were fired or policies are
7 revisited or whatever. Hopefully, those events, while
8 they've always been with us and they always will be,
9 will be relatively infrequent where you just have the
10 type of Hudson v. McMillan beatup where somebody was
11 just singled out and they're whooped on. Those are

12 Transcript of first hearing_part 3.TXT
deplorable and speak for themselves.

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

242

1 So my experiences have been in large systemic
2 cases in which what I found most difficult to deal with
3 is to try to move a particular agency from just -- from
4 the tandem of control and punishment strictly to
5 control. Pelican Bay was a classic example, to which
6 Don made reference to it, that under the guise of
7 enforcing lawful order, say, getting a dinner tray from
8 an inmate locked securely in his cell, they routinely
9 used very high degrees of force to do a relatively
10 simple act of retrieving a tray, where they would use
11 Tasers, wood blocks, gas all simultaneously to get a
12 dinner tray back. Well, there's no question that the
13 dinner tray needs to come out of the cell, that's
14 the law and so forth, but the question is the
15 proportionality: Was the objective risk in touch with

Transcript of first hearing_part 3.TXT

16 the action. And it's a very, very -- sometimes very
17 subtle phenomenon in our prisons. It's very difficult
18 to detect and control. That's what I hope to maybe
19 have a chance to talk about a little bit more in the
20 question and answer session.

21 Thank you.

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

25 Before I talk specifically about violence, I want

243

1 to talk -- I want to mention the intersection about
2 violence and safety and health care and put violence in
3 perspective for you all.

4 Mr. Martin, very eloquently, explained how
5 many -- that uses of force there are in the prisons
6 around the country. It's a fact of everyday life.
7 But what is the harm? In California, I did a quick
8 study for numbers and figures in 2003, and I found that
9 14 prisoners were killed by force or violence by staff
10 or inmates in 2003. On the other hand, at least 13
11 prisoners in that same year were killed from
12 medical neglect, malpractice, and 25 were -- died from
13 what has been called "preventable suicide." So We have
14 a total of 38, at least 38 prisoners who died in 2003,
15 which is almost three times as many prisoners who died
16 from neglect as died from force and violence. So I
17 just wanted to -- I just think that's an important fact
18 when the Commission is discussing its recommendations.

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

22 In California we have had our -- more than our
23 fair share of them from videotapes of beatings of young
24 wards to people who have literally been boiled in water
25 at Pelican Bay. I'm not going to also explain how

244

1 violent prisons are because Mr. Martin and Mr. Cabana
2 just did a very good point of that.

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

16 And as we saw at Pelican Bay and as we've seen
17 in other places, which Mr. Martin alluded to, if the
18 administrators of the facility passively approve of the
19 violence, there will be chaos. All of this means, I
20 believe, that controlling violence in prison is not a
21 secret, it's not difficult; it's well known how you do
22 it. You need adequate resources in terms of staff and

23 you need to use standard management techniques that
24 have been around for a very long time, and you will be
25 able to reduce violence to acceptable levels.

245

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

11 So the question that comes up from that remark is,
12 how do you change that culture? Well, I think there
13 are two main ingredients to doing that: One are
14 programs, and two is -- oddly enough -- conversation.

15 Programs make prison life more meaningful and they
16 give people something to do and they help recidivism
17 and will reduce violence in the institution.

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

1 prisoners in a useful way.

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

16 Thank you.

17 MR. RYAN: Thank you, gentlemen.

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

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

Transcript of first hearing_part 3.TXT
1 years ago? Where are the leaders today and what would
2 you recommend to this Commission at the end of our
3 process to assist us in moving ahead?

4 MR. CABANA: You know, it's kind of interesting
5 that in the 1930s Lawes wrote a book while he was
6 still a warden at Sing Sing called "Twenty thousand
7 years in Sing Sing." It Became a huge hit, made into a
8 movie and stuff. Clinton Duffey at San Quentin in the
9 '50s and '60s, an outspoken advocate of prison
10 reform, "Abolition of Capital Punishment."

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

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

25 What governors and the legislators consistently

248

1 send is a message to prison officials, is, number 1, I
2 want a system that's run well, and my definition of a
3 well-run prison is one that I don't read about on the
4 front pages of the newspaper. And generally speaking,

Transcript of first hearing_part 3.TXT

5 of course, what good things do occur inside these
6 places are not reported and the negative things are.

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

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

23 At some point in time in the last 25 years, ACA
24 should have been speaking loudly to, "We don't support
25 the notion of building any more supermax prisons that

249

1 are going to take people and make them worse when they
2 get out -- if they ever do -- than they were when they
3 came in. We're not going to profligate the inhumanity,
4 we're not going to profligate the inappropriate
5 conduct.

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

7 MR. MARTIN: I know would just briefly add, I know

8 what drew me into the profession over 35 years ago was
9 basically as a caregiver. Rehabilitation was a model
10 employee in correctional administration, and that's
11 what drew me into the business as a caregiver. I've
12 written articles in which I have said, "We have
13 abandoned that caregiving era of correctional
14 administration, and we now are in the caretaking
15 industry." We've placed tremendous emphasis on the
16 pure literal custody of offender populations. I think
17 that can be demonstrated by the rise of high-tech
18 weaponry; that is, non-legal weaponry that is employed
19 in our prison environments that is all geared towards,
20 you know, controlling, luting, et cetera, that I have
21 characterized that -- as others have -- as where I
22 believe in what could be fairly described as the "mean
23 season" of correctional administration.

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

250

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

9 So I -- it disturbs me that we build prisons and
10 we build supermax prisons, and I think that exemplifies
11 what I'm talking about. The supermax prison really

Transcript of first hearing_part 3.TXT

12 is an exemplar of pure literal custody, of taking large
13 populations and limiting their movement to the extent
14 possible by the physical architecture to minimize
15 movement, and it has consequences. It has consequences
16 especially when you flood some of these facilities with
17 the mentally impaired, mentally ill offenders, in which
18 you put them in a setting where the natural progression
19 is decompensation, and then you move into a cycle of
20 balance with those folks. So it's that type of thing,
21 I think, that -- Don, that you were talking about
22 maybe, and I'd like to cast it as -- I'd like to see a
23 little bit more balance between caregiving and
24 programming and rehabilitation and the custody
25 function. I think they can work in tandem. I think

251

1 they can work in a complimentary fashion where they
2 both can be maintained. But we've come up with
3 these wonderful phrases like "super-predators" and
4 "supermax facilities," and it's been my
5 observation -- you know, I've said this both in my
6 writings and other testimony and presentations, I've
7 worked probably around in as many maximum security
8 facilities as pretty much anyone around, as far as
9 having some limited exposure to a wide variety of them.

10 I don't know that our populations over those 35
11 years are that much more difficult to manage.
12 Certainly, there are dynamics, you know, of gangs,
13 prevalence of gangs and so forth that made it more
14 difficult, but I don't see offenders being dramatically

Transcript of first hearing_part 3.TXT
15 more difficult to manage than they always have been.
16 Yet, look at the rise of management devices that are
17 omnifarious, limiting over that same 35-year time span
18 of high tech weaponry, of supermax facilities, of all
19 this equipment that we employ use and so forth and
20 surveillance and everything else. So, you know, I
21 think through, you know, is the population that much
22 more difficult or do we compensate for our failures as
23 administrators by building supermax facilities, by
24 getting more equipment and so forth.
25 I think if we concentrate a little bit more on

252

1 just shared improved management, fair play, listening,
2 dialogue, common-sense type of approaches to treating
3 people decently, that we might not have to rely so
4 heavily on this supermax prisons and we might not have
5 so many, quote, "super-predators."

6 I'll leave it at that.

7 MR. RYAN: Mr. Specter.

8 MR. SPECTER: Well, I have three points I want to
9 make:

10 One is, I empathize with the student who
11 approached Warden Cabana because I have had numerous
12 prison officials come up to me after the trial or after
13 the case is over and express appreciation for what we
14 have done or regretted what they haven't been able to
15 do rather -- after the fact that they have actually
16 been an adversary and prevented my ability to effect
17 legal change because of their testimony. I attribute
18 that quite a bit to the bureaucratization of America's

Transcript of first hearing_part 3.TXT

19 prisons; where in Warden Duffey's's time the warden was
20 pretty much the king of the prison then. And in the
21 '60s and '70s and '80s, the control has shifted more
22 from the wardens to the central office, so I agree with
23 Warden Cabana that those people would be fired if they
24 did what they thought, if they testified about what
25 they thought.

253

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

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

20 The third point which ties into the violence, I
21 just wanted to give anecdote about the violence at

Transcript of first hearing_part 3.TXT
22 Pelican Bay, which Steve described and which we tried
23 in our case in the early '80s, which were just
24 horrendous levels of violence in which the court found
25 there was a pattern and practice of using violence as a

254

1 means of administrative control.

2 The interesting thing that happened was that
3 after Judge Henderson issued his order in
4 '95 -- we tried the case in '93 or '94 -- Judge
5 Henderson issued his opinion in '95 with those
6 statements in it. They sent a new warden to Pelican
7 Bay, and he went around -- he told me this later. He
8 went around to all the units and all the watches and
9 met with all the correctional officers, and he gave
10 them one simple message, "The violence has to stop and
11 it will stop, and you are not to commit these kind of
12 violent acts with our prisoners anymore; and if you do,
13 you're gone." And guess what? The violence plummeted
14 overnight and Pelican Bay has never been the same,
15 thankfully, since. So it's possible and it's
16 reasonable, and it can be done quickly if there's a
17 will to do it.

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

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

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

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

24 It just so happened that when we started
25 experiencing some success in monitoring term, it wasn't

Transcript of first hearing_part 3.TXT

1 what Mr. Carlson and I were doing, it was an
2 administrator, it was a corrections person that was
3 made deputy warden and started going back to the
4 facility itself and basically giving the message that
5 the new warden did at Pelican Bay. And what that tells
6 me is, it reaffirms my belief that the most insidious
7 feature of use of force is not the rogue events, it's
8 not those that clearly are an indefensible, it's those
9 events that fly under the radar, under the rogue bridge
10 of sanctioned -- I mean of lawful force, when it in
11 fact is a pattern and practice of what I have come to
12 term in my writings as "de facto corporal punishment."
13 Officers know that they may be able to exaggerate or
14 manufacture a reason to apply force, and under that
15 guise actually what they're doing is inflicting
16 punishment or they're engaging in an act of
17 retaliation. That is what I've seen more in terms of
18 patterns and practice and in systemic problems
19 as opposed to that isolated rogue event.

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

22 There's two bottom lines here. One is leadership,
23 and whether you're talking about correctional officers,
24 case managers, clerks in the records office or
25 whatever, the warden sets the tone.

257

1 I spent about 25 years officiating high school and
2 college football, and I learned early on when you
3 stepped on the field that the behavior of the athletes

4 told you what kind of leadership the coaching staff
5 provided. Now, that's a management principle that
6 flies across the board. Corrections isn't so different
7 that it can't adhere to that kind of principle.

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

17 The level of hostility between officers and staff,
18 between inmates -- officers and inmates, between other
19 staff and inmates, between inmates and inmates, was
20 astonishing. Constant verbal and physical
21 confrontations. Inmates throwing feces and urine and
22 boiling hot water or whatever else they could get their
23 hands on, constant confrontations that required use of
24 force. And yet, in the time that I was there I went
25 through that unit virtually every day. I never had the

258

1 first inmate so much as raise his voice at me in anger,
2 let alone curse me or throw anything at me. And I
3 think that's largely due to the fact that I was there
4 to listen and let them vent some.

5 The other thing is that they knew that we were
6 working hard to put some programs into place to give
7 them the opportunity to get out of there, to change the

8 classification structure. So that everybody wasn't
9 regarded as a rogue inmate who required supermax
10 confinement.

11 The bottom line in running a correctional
12 institution, and I think especially a maximum security
13 prison is, you cannot do it from behind a desk and do
14 it effectively. You have to be visible. You have to
15 listen to the officers, to the counselors, to the
16 people who are on the frontlines. You have to listen
17 to the inmates. The gangs are absolutely a concern and
18 a rightful concern of any prison official, but you have
19 to communicate with them. To lock them down and throw
20 the key away, and say, "Until you get released from
21 this institution you're not coming out into
22 population," flies in the face of good practice. You
23 have to communicate with them. I was discouraged from
24 doing that, frankly, because communicating with gang
25 leaders meant that you were giving them credibility,

259

1 and somehow the notion never occurred to some of my
2 superiors that if I locked down a hundred gang leaders,
3 there were a hundred other lieutenants out there ready
4 and willing to take their place, number 1.

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

10 MR. GILLIGAN: I want to ask the question of

11 Mr. Martin, but I also want to open up the question to
12 or all three of the witnesses this morning.

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

19 I wondered if you could summarize for us what
20 experience has shown the effect of these things has
21 been on violence in prisons of all types, not just
22 homicide but also suicide and the various other kinds
23 of violence. And what would be a more recommendable,
24 systemic response as a means of reducing the level of
25 violence within prisons at a systems level so that

260

1 we're not just a dependent on an individual either, a
2 bad actor or an individual, you know, humane
3 administrator or guardian?

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

12 It likewise, I think, can reduce inmate-on-inmate
13 violence because of the same reasons, because they're
14 single cell, typically they're often recreated

15 individually in individual cages or rec pens, whatever.
16 But the consequences of that I believe are higher
17 rates of mental illness manifested by attempted
18 suicides, manifested by when those folks return either
19 to the general population or to the streets that they
20 oftentimes quickly and seriously re-offend, and we
21 saw that in Pelican Bay when they were releasing
22 mentally -- seriously mentally impaired, ill people
23 directly from the SHU lockup, too. Now, they've held
24 them successfully while they were in SHU lockup, it
25 just so happened they deteriorated to such a degree

261

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

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

12 The second part of "what could we do," I
13 think -- what both Don's have made reference to and
14 what Warden/Professor Cabana attempted to do at the
15 supermax in Mississippi or what he had in mind when he
16 supported the construction of that, was this phased
17 type of -- that there's a way out. What disturbs me

18 is, it's been my experience, being involved in quite a
19 number of these cases, that once that label is applied
20 to that offender, that he needs to be in SHU lockup or
21 in the supermax, it is very, very difficult for him to
22 shed that label. So what you end up with are very,
23 very extended terms of very lengthy 23-hour-a-day
24 confinement.

25 If, on the other hand, you had some type of step

262

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

8 If there's one thing I've learned in 35
9 years -- my entire adult life of being in this
10 business -- the inmate that is dangerous is the inmate
11 that has literally no hope; for whatever reason, he has
12 checked it and said, "I've got nothing to lose." And
13 for the life of me, if you look at the mechanisms
14 in the legislation and other strategies we employ,
15 their effect basically is to remove that hope, the
16 three strikes and you're out; the commitment to
17 supermax. It seems like we always -- that
18 pendulum constantly swings in our business from left to
19 right, but seldom does it do it in a gradual,
20 methodical, well-orchestrated manner. It's usually
21 these hard swings. And that's to me -- you know, we

22 had -- went through this law and order era in '70s
23 and '80s and we had some problem in the Federal
24 Bureau of Prisons at Marion; and what do we have, we
25 have the supermax. That's where it came from. In

263

1 Florence, Arizona, and into Pelican Bay, and now there
2 was an explosion of that.

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

19 So there is a way -- and I see it in systems all
20 over the country that can successfully manage dangerous
21 inmates, and we have them indeed, but I think they're a
22 smaller minority than the average public. And I would
23 be interested in your observations whether that's true.
24 I think they're a smaller minority than we believe.

1 are effectively and safely managed in a way that
2 doesn't require their 23-hour lockdown.

3 MR. RYAN: Go ahead, Mr. Specter.

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

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

21 The second thing is, I think it's a failure in
22 terms of gang violence because what you do when you put
23 a gang member in a SHU with nothing else to do, with
24 other gang members, is they will communicate with each
25 other; and the since they have nothing, literally

Transcript of first hearing_part 3.TXT

1 nothing else to do with their time, they will talk
2 about gang activities. And the result of that is -- in
3 California, for example, five of these gang leaders who
4 are in the Pelican Bay SHU are now on trial for capital
5 murder that they allegedly ordered in Los Angeles. So
6 clearly it's not limiting their power or activities.

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

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

24 The last point I wanted to mention was your point
25 about how do we reduce the dependency on the

266

1 individuals and how do you create systems so that you
2 don't have the warden that I mentioned that has to come
3 in and say, "We're going to reduce violence, and

Transcript of first hearing_part 3.TXT

4 that's the end of it." And my answer to you is, I
5 don't think you can. Unfortunately -- and maybe my
6 colleagues here have different experiences. I think
7 it's a mixture of systems and people. If you have been
8 or either you lose, which is maybe why there's such a
9 great failure rate.

10 MR. CABANA: Commissioner, I'm not sure that you
11 can't do that. What I am certain of is that it's
12 impossible in the present circumstances because in the
13 200-plus year history of American penology, despite
14 great lip service, neither legislators nor governors
15 nor the public has ever expressed a clear, concise,
16 cohesive corrections policy. This is what we want
17 corrections to do. This is what we want to have
18 happen.

19 Last year ABC did a pole in which people were
20 asked should -- "Do you support treatment sentencing,
21 the high rate of incarceration in the United States?"
22 And the 80 percent of the respondents said,
23 "Absolutely, be tough on them. Send them up the river
24 and throw the key away for an indefinite period of
25 time." And the same 80 percent responded, "And by the

267

1 way, when they come out we want them better than they
2 were when they went in." This kind of schizophrenic
3 lack of cohesive policy prohibits us from doing the
4 kind of thing that you're asking about. And Don's
5 absolutely right. I think it can be done, but not in
6 the environment that we're in right now.

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

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

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

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

21 MR. GIBBONS: Is that a positive thing?

22 MR. SPECTER: Well, in fact, we have actually
23 gone to court to make the prison officials do that
24 because otherwise they are luridly psychotic for months
25 at a time, and they literally can kill themselves or

268

1 hurt somebody else. It's painful being psychotic, so
2 you don't want -- it's not a humane thing to do.

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

11 intervene, to provide assistance.

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

20 You know, Parchman at the time I was running it
21 was a 5,000-bed max prison, and I would estimate on any
22 given day conservatively ten percent of the inmates
23 were being maintained on psychotropic medications, some
24 against their will. But the thing is, in terms of the
25 kind of consistent follow up, the kind of therapy

269

1 that's required, the kind of treatment that's required;
2 administering the drugs every day is the easy part of
3 it, but intervening to bring about some sense of
4 improvement in this guy is not there. And frankly,
5 unless you contract for mental health services, most
6 state departments of mental health are going to stay as
7 far away from corrections as they can. They don't want
8 anything to do with it.

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

12 It seems to be one consensus that's emerging here
13 is that the sort of "tough on crime approach" where

14 Transcript of first hearing_part 3.TXT
15 that's meant as retribution or just the infliction of
16 pain as -- for the purposes of punishing inmates really
17 has not been effective in reducing the level of
18 violence either within the prisons or after people
19 return to the community. If anything, it seems to
20 exacerbate it.

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

270

1 nation today?

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

18 support structure.

19 You know, when I ran Parchman in the 1980s,
20 people will probably react as they usually do, and say,
21 "Mississippi of all places," but Mississippi instituted
22 the first inmate furlough program in the United States
23 in 1941. And every year between November 1st and
24 February 1st, as warden and the commissioner, I would
25 sign off on somewhere between four and 500 applications

271

1 for inmates to receive up to ten-day Christmas
2 furloughs between November and February. The worst
3 year we ever had for violators was five people, three
4 of whom did not commit new crimes, none of which were
5 violent, but had violated administrative proceedings.
6 And then all of a sudden we had the Bush - Dukakis
7 election, and here comes Willie Horton. And
8 immediately, no discussion, the order comes down,
9 "Eliminate furloughs, get rid of them." They had
10 worked for 40-something years extremely successfully.
11 Other prison systems came to Mississippi to find out
12 what the heck there was about it that made it so
13 successful. But one political venture and we had a
14 knee-jerk reaction.

15 The "get tough on crime" thing has resulted in
16 most states, as with mine, taking advantage of
17 inducements dangled out through the Clinton Crime Bill
18 for building prisons if you change your parole laws.
19 And so in an eight-year period of time we doubled our
20 prison population in the poorest state in America. And

Transcript of first hearing_part 3.TXT
21 at a time when, frankly, right now, there is not enough
22 money to adequately fund K through 12, when
23 universities are being slashed by hundreds of millions
24 of dollars, we spend four times as much to incarcerate
25 each and every inmate in the system than we do on

272

1 students in K through 12. And the public has been
2 given this -- has received a steady diet of feeding.

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

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

25 Judges will fill them.

273

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

10 MR. KRONE: Chairman, I had some up close and
11 personal experience with prison. As you may or may not
12 know, I spent over 3700 consecutive days behind bars.
13 I had some time to observe acts, procedures. I'm not
14 going to sugar coat it. Some of this violence that
15 goes on in prison is officer induced. I know the
16 public's not really concerned about inmates fighting
17 inmates, but they're certainly concerned about their
18 own police or correction officers being harmed.

19 My question goes to the area of training. Now,
20 I'm told there's anywhere from three weeks to three
21 months training to be a correction officer, depending
22 on what state. I'm not even sure you could get a job
23 at McDonald's with that little amount of training.
24 But nevertheless, I want to address the issue of just
25 what have you experienced in the amount of training; Is

274

Transcript of first hearing_part 3.TXT

1 there a follow-up training, are they brought back on
2 an annual basis or a monthly basis; is it a voluntary,
3 is it involuntary? Just how far has training come
4 along, evolved into improving officers? Are they
5 understanding of the job or the difficulties of the
6 job? And again, in the case of making their life safer
7 and as a prison warden easier for you to maintain
8 security in that prison?

9 MR. CABANA: Well, my personal view of training
10 has always been that it ranks up there. I think the
11 single most important function in the prison to make it
12 go right is classification. At the 1A is training.
13 And over the years, of course, we in the field have
14 learned the hard way -- with the help of the federal
15 courts -- that training is something that we're
16 responsible for. Our training academy is approximately
17 three weeks of classroom time followed by a couple of
18 weeks of mentor with folks at AT. We have officers as
19 young as 18 years of age walking out of a three-week
20 training academy and going to work in a maximum
21 security environment.

22 I will mention as an aside that in a 500,000-bed
23 male prison, 68 percent of the guard force that I had
24 was female. So there were recruitment and retention
25 problems. The training -- I think the training staff

275

1 wanted to do the very best job that they could. But
2 lack of resources, in many systems, a lack of

3 commitment and, you know, training folks historically
4 in corrections gets very frustrated because they'll put
5 out a training schedule that says you've got to have
6 40 hours of follow-up in-service training a year and
7 stuff, and then administrators and supervisors will
8 find all kinds of justifiable reasons to excuse people
9 from going to the training; the security of the
10 institution comes first or whatever.

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

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

25 In eight months' time, I slashed \$10 million out

276

1 of the institution's operating budget, sent 300 people
2 home off the payroll because the state had a budget
3 deficit and the Department of Corrections' part of that
4 was \$34 million. And guess where part of the money
5 came out of? Training.

6 MS. SCHLANGER: I have a question, which is, how

7 do restraints of various kinds fit in this picture?
8 I mean, it's not a real specific question, but
9 different kinds of chairs and four-point restraints
10 and this and that as uses of force that are used in
11 both jails and prisons, I kind of wonder about both
12 prevalence and problems and so forth.

13 MR. MARTIN: Well, there has been, as I've alluded
14 to earlier, you know, with the advent of this high-tech
15 weaponry. I put in that same category it's now a full
16 kind of array of restraint devices, restraint chairs,
17 the four-point, five-point restraint, the hobble
18 devices. There's quite an array of fairly, you know,
19 high-tech restraint mechanisms out there, restraint
20 boards, et cetera. What I think comes from that is
21 something that I think I referenced in my statement.

22 In the past five to seven years, I have worked
23 probably 20-plus in custody restraint death cases in
24 which inmates during the course of being placed in a
25 restraint chair or a restraint board or four-points or

277

1 five-points, during that process have died. There's
2 two things that are kind of common with my 20 or so
3 plus cases:

4 One is, more often than not it's a mentally
5 impaired inmate, and they'll act acutely, ill inmate.

6 And two, it's from either positional asphyxia,
7 restraint asphyxia or compression asphyxia, all very
8 similar.

9 So that's one of the principles, I think, that

10 Transcript of first hearing_part 3.TXT
11 applies with all this weaponry. There's much of it
12 that I believe has a rightful place in the
13 administration of our facilities, and I do not take
14 hard positions against, say, a restraint chair or a
15 restraint board. But if you're going to use those
16 devices, with that comes the responsibility to define
17 the relatively narrow circumstances in which you use
18 them and employ them, and enforce that, because if you
19 don't, some of that weaponry is so attractive, it's
20 like a kid that gets a new Play Station. It's there,
21 it's -- you know, the type I can remember from when the
22 Taser came out in the mid-'80s and our wardens in Texas
23 were just so excited at the prospect of using that
24 Taser. It's the same thing with the restraint chairs,
25 it's the same thing with any type of weaponry that
comes into -- you know, onto the market and into the

278

1 system. And some of it, again, I believe has its
2 place.

3 Pepper spray, for instance, I believe pepper spray
4 is a very functional chemical agent device, but it is
5 so functional that it has a tendency to be
6 overemployed, or be used as a first strike weapon, and
7 from that when -- well, it just creates you more
8 opportunities to have more violent episodes when you
9 pepper spray an acutely mentally ill person. All that
10 does is escalate the matter into extreme violence and
11 somebody is going to get hurt. So it's the same thing,
12 Margo, with restraint devices, there are very, very
13 few instances in which somebody has to be fully

Transcript of first hearing_part 3.TXT

14 restrained. I mean totally, physically, immobilized
15 into four-points, five-points or a restraint chair.
16 But I can take you into facilities that at the drop of
17 a hat are placing people in restraint chairs. And when
18 you do that day in and day out with a high incidence of
19 frequency, because of the nature and the force that it
20 requires to do that sometimes -- and especially if you
21 throw in and overlay it with a mentally impaired,
22 you're going to have deaths. You're going to have
23 serious injuries, more than we've seen in the past.

24 So, again, as more of this weaponry comes into
25 play and comes into use, I think the responsibility is

279

1 greater that we have -- we employ very strict
2 guidelines, very narrow circumstances, oversight and so
3 forth within to use it. If it's done, it can be used
4 very successfully; if it's not, it can be abused and
5 misused so easily.

6 MR. CABANA: I think there is an irony to that
7 misuse or overuse, and that is, an inmate's no
8 different than anybody else. They're pretty ordinary
9 folks in most respects. It's kind of like dealing with
10 a recalcitrant teenage child, you ground them, you take
11 privileges away, and the more you do the more the kid
12 says, "I can do this. Take whatever you want." And
13 what happens with use of force in an institution is the
14 more frequently it's used, psychologically, the more
15 you run the risk that the inmate population will get
16 to that point where at least on an individual basis, "I

17 Transcript of first hearing_part 3.TXT
18 can do this. I can do whatever time you put on me in
19 the hole. I can handle the violence. Put it on me.
20 It doesn't matter." So ultimately, the very
21 effectiveness that you're looking for in terms of using
22 this stuff ends up being exacerbated.

23 MR. NOLAN: I'd like to pick up on -- about the
24 medication of mentally ill inmates.

25 During my incarceration, I saw plenty of folks
doing the Thorazine shuffle in their Converse

280

1 tennis shoes with no laces, but my observation was, it
2 was for the convenience of the institution, not for
3 their benefit. There were those who were medicated
4 that didn't need it, but there were problems, and there
5 were those that did need medication and treatment that
6 didn't. And at least to a broader observation, which
7 is that it appears some administrators view their job
8 as the -- they wouldn't say this, they put it in terms
9 of public safety, but it's really the convenience of
10 the institution and the officers. Take the DMV office,
11 string barbwire around it and give the clerks guns, and
12 that's the mentality of some officers. That same
13 philosophy leads to Pelican Bay, which was astounding
14 to me to visit. David Akerman -- I took in there from
15 Time Magazine -- said it was "a sanitary dungeon."

16 And to take an inmate that's been in SHU and then
17 release them to the street is cruel to that inmate and
18 dangerous to the public, but under one philosophy of
19 management of prisons, that system has done its job.
20 They contained him while he was in there, and it

21 doesn't matter what happens once he gets out.

22 Yesterday Mr. Cowley suggested that in addition to
23 institutional security, the wardens be graded also on
24 recidivism. I'd like each of your reactions to that as
25 a possible tool to make it in the interest of a warden,

281

1 that he has a stake, not just in keeping the person
2 from rioting or acting out inside prison, but in
3 addition having the public safe once they're released.

4 MR. SPECTER: Well, I think your point about
5 mental illness is very well taken and the treatment.

6 In my experience, the prisons do both things
7 wrong. They give too many drugs to too many people,
8 and they don't give enough of the right drugs to the
9 right people. And I agree with Warden Cabana, that
10 giving a pill to somebody is the easy part -- and
11 in California, they don't even do that correctly -- but
12 providing the staff and the therapy that you need for
13 these very seriously mentally ill prisoners who, by the
14 way, number between 16 and 25 percent of the prison
15 population depending on what definition you use, is
16 really a problem. It's very expensive. Prisons are
17 a difficult place to provide therapy in because of all
18 the security constraints, and the prisoners are
19 difficult, there's no question about all that.

20 So it -- you really need to develop a complete
21 mental health system that functions properly in order
22 to do that well. And unfortunately, as you probably
23 know, we've been criminalizing mental illness and using

24 Transcript of first hearing_part 3.TXT
our jails as mental hospitals and so what you have is
25 an increased demand for services while the population

282

1 skyrockets; typically the corrections budget doesn't
2 proportionately with the mental health services that
3 they need. So I think your observations are exactly
4 accurate.

5 In term of grading wardens, I have been a
6 proponent of report cards for wardens for many years.
7 Everybody else gets performance evaluations but
8 wardens, it seems to me, at least in California,
9 they're not fired unless they embezzle or they do
10 something politically unacceptable to their superiors
11 Their prisons can run a deficit of ten and \$20
12 million and nobody says a word to them.

13 And in terms of public safety, they -- most of
14 them have absolutely no interest in promoting public
15 safety because they're going to get in trouble if
16 somebody escapes, if there's too much violence, if the
17 staff get hurt. They don't get in trouble, they're not
18 held accountable for high recidivism rates. They are
19 given -- and in many states, to tell you the truth, it
20 wouldn't be fair to do that because they're given
21 absolutely no money or no help in providing these
22 programs. You have to give them some help, too.

23 In California, for example, the now director of
24 corrections is Jeannie Woodford, who has
25 thousands -- when she left, had thousands of volunteers

1 coming to at San Quentin on a monthly basis, and she
2 did things without any money and, you know, she would
3 get a high mark for that. But on the other hand, you
4 have many prisons which were built in California in
5 very rural areas, and they were purposefully put in in
6 out-of-the-way places. You just don't have the
7 resources to do that. So I agree completely you should
8 do it, but they have to be given the resources before
9 they can be held accountable.

10 MR. CABANA: This is going to sound like excuse
11 making from an old prison bureaucrat. Report cards
12 based on recidivism -- Um. Don Specter actually just
13 made some of the excuses for me. I'm sitting here
14 thinking about in state after state legislatures
15 taking the carrots away from the wardens so that what
16 you're left with is a bag of switches, no incentives.
17 We've taken parole and decimated parole concepts in
18 this country. We've taken away earned time, good time.
19 We've taken away furloughs. We've reduced community
20 corrections. We have the highest incarceration rate of
21 any nation in the world. We incarcerate more of our
22 citizens longer than any country in the world. We
23 incarcerate juveniles, kids with adults. Up until the
24 Supreme Court got it right a couple weeks ago, we
25 didn't hesitate to execute kids. So when I hear people

1 talk about how we're not tough enough on crime, I
2 wonder what else is left to do.

Transcript of first hearing_part 3.TXT

3 In Mississippi, for example, prison officials were
4 directed a number of years ago, if somebody goes to
5 lockdown, if he's bad enough to be in supermax, take
6 everything away and he'll want to behave himself and
7 get out. So in the summer months, in the Mississippi
8 Delta where it's not unusual for the heat index to get
9 up to 115 or higher, I am prohibited from letting
10 inmates have a lousy fan in a cell that is an inferno.
11 That is unconscionable. There is no excuse under the
12 guise of being tough on crime for doing that sort of
13 stuff. And that is not good public safety. But the
14 problem is, this whole thing revolves around the fact
15 that good politics doesn't always make good public
16 policy, and that's where corrections is hurting so
17 badly in many instances today.

18 But to answer another part of the question, my
19 first message to the staff in any institution that I
20 ever ran was, "Our first obligation here is to care for
21 these people who are placed in this institution."

22 The first warden I ever worked for said, "If you
23 don't ever remember another thing I tell you, you
24 remember the greatest gift that God can ever give one
25 human being is to be responsible for another one," and

285

1 that's something that corrections really needs to try
2 and remember from time to time.

3 But the other thing is public safety. Prisons are
4 supposed to be about public safety. But in order to
5 ensure that they do their part for public safety,

6 that means that inmates have to come out better than
7 they were when they went in instead of coming out worse
8 than when we sent them away, if we're going to insist
9 on sending all of them away, which is what we've been
10 doing now for two decades.

11 Mr. Luttrell: Dr. Cabana, early in my career I
12 worked for a warden who had loose lips and he talked
13 about roughing up inmates, and as a result of that
14 there were some inmates who were roughed up. It made
15 me very sensitive when I became a warden to be very
16 careful about the message that I sent to the troops and
17 how I carry myself in the institution.

18 Could you talk a little bit about the
19 responsibility that a jail administrator and a warden
20 has when it comes to really conveying the message and
21 how best to convey that message to the people that work
22 in that institution because the warden or the jail
23 administrator does not face the linchpin for everything
24 we're talking about? Could you talk about that
25 briefly?

286

1 MR. CABANA: That's a great question.

2 And again, not to oversimplify it, but as I
3 mentioned earlier, leadership, leadership, and
4 leadership by example and demanding accountability and
5 then taking action when it's required.

6 I have on more than one occasion in my career
7 intervened personally when officers were assaulting an
8 inmate, once coming upon it, to stop it. I actually
9 handcuffed an inmate to myself on one occasion and got

Transcript of first hearing_part 3.TXT

10 him out of the situation and took him to the hospital.
11 I figured if he was handcuffed to me that we might both
12 be safe for a while. I think it's something that has
13 to be continually reinforced.

14 And again, it's not enough for a warden to sit on
15 the witness stand in court and say, "Well, Your Honor,
16 I wasn't there. Obviously, I don't count in this kind
17 of conduct and behavior. But I wasn't there, so I'm
18 not responsible." Of course the warden's responsible.
19 And it doesn't go on at the high levels unless the
20 administration -- at least in an oblique fashion --
21 gives a wink and a nod, which indicates to the staff
22 that it's okay.

23 One other thing, because we've talked a lot about
24 violence, and officers always get thrown into the mix.
25 But I want to make sure that folks understand that

287

1 despite the fact that the correctional officer is the
2 single most important influential person in the prison
3 because he or she has contact with the inmates 24 hours
4 a day, seven days a week, there are other staff who
5 have critical roles to play, and who can by virtue of
6 how they perform their duties, greatly contribute to an
7 effective organization or it can muddy the waters
8 tremendously.

9 I want to give you an example. At an institution
10 that I ran, an inmate had been locked down as a sexual
11 predator, and there was a program in place for inmates
12 in this classification to be reviewed and over a period

13 Transcript of first hearing_part 3.TXT
of so many days earn their way out of that lockdown
14 status. This particular inmate had completed the
15 process with no rule violations and had his review. A
16 case manager didn't like him, and so she didn't put his
17 name on the list of inmates who were ready to be
18 released from this program. It doesn't sound like a
19 huge big deal except four days later the inmate did
20 everything he could to commit suicide. Fortunately, he
21 did not succeed. I find that kind of action by
22 somebody in that kind of position to be every bit
23 egregious as some officer wailing away on some inmate's
24 head with a stick or getting a charge out of using a
25 Taser. Particularly, because classification is the

288

1 engine that's supposed to drive the prison and make it
2 safe.

3 So what I should have given you is the short
4 answer. Basically, that wardens have to reinforce
5 every day, day in and day out, they have to reinforce
6 with staff. Some people would say, "Geez, it sounds
7 like you're saying examples have to be made out of
8 people." It got to the point at Parchman, frankly,
9 where I had an officer that resigned one morning. She
10 was very angry because she'd been questioned by
11 Internal Affairs. But I found it somewhat
12 illuminating. I said, "Why are you resigning?"
13 Basically she was just, you know, getting started, and
14 the purpose is to arrive at the truth. If that
15 exonerates you, then that's to your advantage. Well,
16 but the staff know that if they're called out to

Transcript of first hearing_part 3.TXT

17 Internal Affairs that their job is probably on the line
18 and in serious jeopardy and, unfortunately, I think
19 that's necessary to a degree. And I think that has to
20 be constantly reinforced.

21 SENATOR ROMERO: This has been a very profound,
22 thought-provoking, stimulating discussion; a lot of
23 food for thought, and some of it quite upsetting,
24 but let me comment especially on Warden Cabana's
25 comments that you made.

289

1 You talked about the public was saying, "Take them
2 in, lock the key, but make them better." I too want to
3 say, speaking from at least from California where I
4 hear in the legislature that sentiment exactly.
5 There's a lot of stereotypes about California, it's
6 left coast, but I would say it is a law and order
7 state. I see it every Tuesday in public safety with
8 the number of proposals coming forward to lock up, not
9 only sentence, but to enhance now, super-size,
10 maximize, et cetera.

11 The banter that I've taken, though, in dealing
12 with my fellow legislatures and with the California
13 populous, and I think it's been effective is, I sort
14 of champion the "we've been tough on crime, but we've
15 got to be smart on crime" because I still do believe
16 it's law and order to California elector it is, and
17 probably the rest of the nation, that people
18 understand taxes, they understand money. And budget
19 deficit times the avenue that I've taken to talk about

20 Transcript of first hearing_part 3.TXT
juvenile justice or prison reform is on the fiscal
21 matters where we're seeing the fiscal safety issue to
22 it more so than a public safety issue.

23 But I was surprised when I started chairing the
24 Budget Committee that oversees corrections in
25 California, I can't find line items. Over a \$7 billion

290

1 agency in California and growing on health care --
2 health care is a billion dollars and growing, not a
3 single line item. My staff has to piece it together.

4 On the SHU, likewise. I can only estimate because
5 there is no line item. And so what I've done in
6 talking about it publicly is to suggest that to
7 incarcerate somebody in a SHU costs over \$70,000.
8 That's my best estimate. I think it's growing. For
9 a typical inmate in California, it's about \$33,000.

10 The question I would have for you is, you know,
11 what -- at least for me when I pose the question of,
12 what are you getting, what's the return on the dollar
13 from taxpayer perspective? People start to question.
14 The question I would have then is, can we, in working
15 with legislature, advocate, perhaps, or suggest that
16 legislation should break out line items, whether it's
17 health care or the maximum units, and are there
18 instances in different legislatures where you've seen
19 better truth in reporting in their budgets as to the
20 true costs for incarceration?

21 MR. CABANA: Yeah, that's a great question.

22 One of the things that led to my experience with
23 legislators in half a dozen different states is

24 that -- and I'm sure you know, the vast majority of
25 them really want to do a good job, but a lot of times

291

1 they don't have the information they need to work with.

2 And the other thing is this: We were required,
3 you know, to submit as an agency a five-year plan which
4 really didn't get anybody's attention because
5 legislators have a short span of attention. Every four
6 years they've got to give the voters some answers at
7 the ballot box, so to ask them to engage with a state
8 agency in what long-term means and the projections are
9 is something that's largely going to be ineffective.

10 I think, frankly, that every government agency in
11 the United States -- I happen to be a proponent --
12 despite the headaches involved -- of zero-based
13 budgeting, and I think also, frankly, for a number of
14 years in Mississippi our Department of Corrections
15 labored under a Sunset Provision. And every five years
16 the agency was reviewed to determine whether it would
17 continue to exist in its present form, and I kind of
18 like that idea. In fact, I like it so much I think it
19 would be good for a lot of agencies other than
20 corrections. I think it makes you, it forces you to
21 truthfully examine yourself and take a hard look from
22 year to year.

23 Now, one problem is, our legislature finds itself
24 consistently -- I can't recall a session in the last
25 20 years in which they've not had to come back in

1 session in January and deficit fund us for medical
2 care, et cetera, because the department says, well,
3 we just -- we can't project the budget for the year.
4 If we have four inmates on renal dialysis for the year,
5 unexpectedly, that's going to be a quarter of a million
6 dollars for an inmate that we weren't able to project.
7 The truth of the matter is, it's kind of like a shell
8 game. I'm not sure -- well, the legislation knows that
9 the Department of Corrections is going to have to be
10 fully funded, but if they wait until January to engage
11 in the deficit funding thing, then it equates better
12 with the taxpayers back home.

13 The other problem I have is this: I debated with
14 one of my senators, who was on an Education Committee,
15 and I kind of took a chance because, you know, people
16 tend to forget that prison bureaucrats -- like Don
17 Cabana and Gary Maynard and other folks -- are
18 taxpayers, too, and we feel the pinch. So I spoke to
19 this taxpayer one day, and said, "You know what, if
20 you'll start spending more money on K through 12, in
21 ten years I'll come to you and tell you I don't need as
22 much money to run the prison system. Why don't you
23 start putting money into VoTech, into education, into
24 the universities, et cetera?"

25 His response was, "I'll be painted out by some

1 opponent at some point in time as being soft on crime

2 Transcript of first hearing_part 3.TXT
and I'll stand to lose re-election."

3 And my response to that was, "The last time I
4 checked, Senator, nobody guaranteed you guys a
5 retirement off the backs of the taxpayers. Go to the
6 legislature, and if you give them eight years or ten or
7 12 or four, do the very best that you can." And I
8 think where that becomes especially critical is that
9 legislators sometimes have to lead and the public's not
10 ready to follow, but the legislature has to take them
11 where they need to go; and frequently that kind of
12 thing is missing.

13 MR. GILLIGAN: I hate to interrupt, but I think
14 we've run out of time. I want to thank you all
15 extremely for having given us a remarkably productive
16 and fruitful discussion.

17 I appreciate your presence here.

18 So we'll take a break for, what, about half an
19 hour and resume.

20 Thank you all.

21 (There was a recess.)