Like the other commissioners, I want to begin this session, which is our last one of the day, by welcoming and thanking our panelists, who are Ken Adams, John Boston, Andie Moss, and Doug Thompkins. I'll introduce them in just one minute.

As you can, perhaps, tell from the fact that I'm...
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standing behind this podium, the format of this session is going to be a little bit different than the other ones that we've done. This will be a moderated round table discussion. So we're not going to begin with statements. Instead, I'm going to try to get some things going with questions, but we'll hope to get to a conversation among the panelists who have a wealth of knowledge and experience to share. And after a little while, like maybe 40 minutes, a conversation including the other commissioners, too, if you want to contribute to that conversation or you should feel free to ask questions instead of that's more something that you want to do.

I hope that -- what we'll be talking about are the complex issues of prison and jail violence, obviously. The second panel is directed to that topic. I hope that we'll particularly be able to gain some insights into what distinguishes systems with problem from systems that have gone some distance towards solving their problems.

We've been talking already this morning about dividing the broad topic of violence in jails and prisons into three categories of intra-inmate violence, inmate violence against staff, and staff violence against inmates.

Let me start by just saying a word or two about this that can maybe can help set our conversation going. It seems, from what people say, that
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intra-inmate violence is one of the most frequent and
most serious categories of violence in jails and
prisons, and it ranges from beatings to rape to murder,
and it inevitably it's even more serious than its
numbers because it casts this wide shadow of extortion
and coercion around it. So we'll talk some about that.

Inmate violence against staff also can vary.
It can be caused by predatory inmates, by difficult
inmates or by disturbed inmates, and those are very
different in their dynamic.

And then staff violence against inmates raises
really particularly thorny problems in some ways
because some frequency and degree of force is
inevitable. This is what Mr. Martin was talking about
before. At the same time, to line draw becomes
important here in a way that's not so true of these
other categories.

On the other hand, staff violence against inmates
has this very nice feature that because so many prison

and jail officials and correctional officers try to do
the right thing in their difficult work, you kind of
expect training and investigation in other bureaucratic
-- a word I mean in a very positive form Other
bureaucratic interventions to be especially efficacious
solutions to overuse of staff violence against inmates.
So it has some attractive features for solutions, too.

In any event, I guess what's clear and what I'm
hoping to develop in the course of this conversation
with the panel after this -- you know, all the talking,
is that each of these sources of violence has its own
dynamics that require its own policies and solutions,
so we need to be careful to keep things separate
sometimes; that gang and racialized fighting and
predation are dissimilar in many ways for more
individual situational violence, and that both of these
are distinguished from the serious problems facing and
caused by inmates with mental illness or mental
retardation. It's sometimes useful to pull these
things apart for the conversation.

In any event, I hope that in this panel we will
gain some additional insights into these dynamics.
So again, the format. We'll run for 80 or 90
minutes. We're ten minutes late, so probably will eat
that time in this panel, I suppose, and run for 80

minutes. We'll begin with something like 40 minutes of
conversation among the panelists and then at that point
we'll open it up for the commissioners to both ask
questions or to also participate in the round table
discussion. So that's how we'll do things.

Okay. So let me move on to introductions. I'll
try to do this in order. Ken Adams has been working to
further understanding of violent misconduct in jails
and prisons for other 20 years. His current academic
appointment is at the University of Central Florida, so
he, unlike some of us, was able to drive here today.
Professor Adams is a co-author with Hans Toch with
three books about inmates' maladaptive behavior in
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Prisons including most recently, "Acting Out: Maladaptive Behavior in Prison." It's a book that was published in 2002.

John Boston has been counsel at the Prisoners' Rights Project of the Legal Aid Society in New York since his graduation from NYU Law School in 1976. He served as the project's director since 1991. In that capacity, he's been part of litigation that has challenged conditions at the very large jails that make up the New York City jail system and other correctional facilities in New York State as well. He's an author of the Prisoners' Self-Help Litigation Manual" and numerous guides for prisoners' advocates, especially regarding the intricacies of the Prison Litigation Reform Act.

Andie Moss was Assistant Deputy Commissioner in the Georgia Department of Corrections in the early 1990's, where she was responsible for ensuring compliance with the mandates of a major class action lawsuit, Cason vs. Seekinger, I think, which dealt with staff sexual misconduct. Since then, she's remained deeply involved in that issue, as well as intra-inmate sexual misconduct issues. She's worked for the National Institute of Corrections and also with the NIC on implementation of the new Prison Rape Elimination Act, which is one of the things that I hope she'll tell us about a little bit.

She's consulted on site with over 40 correctional institutions to help her come to grips with the
Doug Thompkins is a faculty member of the John Jay College of Criminal Justice as well as a doctoral candidate at the University of Illinois. His academic work and teaching is focused on violence behind bars. He's done ethnographic work in the area and he also has personal experience to draw on. He served time in an Indiana prison and was a leader of the gang Gangster Disciples, street gang.

Okay. So now we'll get started. I think maybe I'd like to get started with Professor Adams. Maybe you could start us off with an overview, you know, how serious is inmate-on-inmate violence, in particular, and how widespread and what are the basic dynamics that we need to understand if we're trying to know what that's all about?

MR. ADAMS: Well, in terms of inmate-on-inmate violence, it's difficult to give a precise figure or estimate of how often this occurs or what the incidence rate might be in prisons throughout the United States. I can say generally that, A, it's a substantial and significant problem in that, B, the problem varies. There is considerable variation within prison systems, even within prisons by different settings within the system, different cell blocks, different arrangements. So there is no one figure that would capture all of that variety.
But let me give you just a few examples of things I came across yesterday just on a quick Internet search. The New York City Department of Corrections, which runs the jail system there, reported in 1995 that it had 1100 slashing and stabblings, so quite a large number.

A survey of U.S. prisons, in which 40 prison systems responded, in 2001 indicated that there were 124 suicide attempts and 1830 attempted suicides, and that 17 inmates were killed by other inmates in the United States.

In the United Kingdom, one study found that 40 percent of offenders reported being assaulted, robbed, or threatened with violence within the last month. So two-fifths of the prison population.

And a study in Nebraska found that about ten percent of the inmates reported being forced or pressured to have sexual conduct within the last month. So that give you some idea of the range of figures here.

Let me just briefly comment on why it's difficult to give precise estimates on this. First off, violence, even inmate-on-inmate violence that we now are concerned there, covers a wide range of behaviors, there's a wide spectrum of acts that are involved. For example, we have sort of standard-type crimes, murder assault, robbery. In prisons, as in the street setting, these can occur with weapons or without weapons. We have sexual violence, which is of special
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We have group violence, riots and disturbances. And while sometimes those violent acts are directed against staff, very often inmate-on-inmate violence that occurs in a riot or disturbance context. We have gang-related violence, which varies by the prison system and we have self-directed violence, suicide and self-injury.

Now, in terms of capturing the range of those behaviors, we generally look for official records. Those records might be misconduct or disciplinary reports. Some prison systems have special incident reports in which they have procedures for recording disturbances or other kinds of events like that. We might have hospital or injury records that could be used, and we also have surveys of victims within the prison context similar to what we do in the community.

Now, in terms of understanding the numbers, you know, we have to recognize that the official records do not capture all of the events. They're subject to a number of non-reporting and other biases. In terms of the non-reporting bias, for example, inmates are not often willing to come forward and to admit or to make known that they've been victimized. Depending on the context, there may actually be norms in the prison against this. I mean, if you're a man, you take it as a man and you deal with it later, you don't go running
to the authorities for help. Sometimes activities are sort of seemingly consensual, but they're actually the result of coercion and threats of violence. As in some sexual activities, they might seem on the surface to be consensual, but they're not. And sometimes incidents are presented in different lights such as inmates getting assaulted, and the incident gets reported as an injury or a fall or something like that, and it winds up on the hospital record. So in that context, there's a wide range of activities. We have very a imperfect and imprecise systems for monitoring this. In fact, it's very hard to know.

I'll just give you one quick example. I found a survey, which was sent to 50 states, and they were asked about the number of disturbances in their prison system. Ten of the states could not or would not report, representing 20 percent of the states. Among the other 40 states that reported, they had approximately 2800 incidents, disturbances that were reported as having occurred in that year, and of that 2800, believe it or not, 2300 came from Tennessee. Now, I don't know what's going on in Tennessee. I doubt it's that dangerous of a place. I haven't been to their prisons. But as you can see, how they define an incident, how they -- the kinds of systems and mechanisms they have for recording these behaviors have a large influence on this.
Let me just say also, quickly, in terms of thinking about violence and types of violence, very often psychologists make a distinction between what they call instrumental violence and expressive violence. Instrumental violence is premeditated, it's calculated, it's motive driven, and it's goal directed. Expressive violence tends to be impulsive, emotional, spontaneous. And both of these types of violence occur. And the situations are very different between express and instrumental.

Also, I'll just mention quickly, some of the themes, the motives or the psychological themes that often come up in these violent incidents -- and this has been documented in a variety of observational and other studies -- sometimes the violence involves anger or retaliation or revenge. This may be a particular characteristic of gang-related violence, or protests, protesting the conditions. Intoxication, believe it or not inmates find access to alcohol and drugs within prison context. Mental instability, a mentally ill or perhaps mentally retarded inmates. There is self-protection or preemptive strike that may occur. There's fear often coinciding with that self-protection of preemptive strike. There's bullying, and then there's saving face, which has to do with how one is viewed and presented within the larger prison context, okay? And that actually is a very important theme because inmates are painfully aware of how they are viewed and how they are looked upon by other inmates.
In fact, it's a very important feature of the prison setting. So this gives you some idea of the different themes and dynamics that go on. So, again, you would see that there's a lot of variety in terms of these behaviors. Different acts may have very different underlying themes. And if we're going to try to understand those behaviors, we have to dig a little deeper and try to figure out just what is going on.

MS. SCHLANGER: So I guess I'm interested just to build on that with Mr. Thompkins --

MR. THOMPKINS: Okay.

MS. SCHLANGER: -- Professor Thompkins.

So what's the connection do you find, the policy to the stuff that Professor Adams was just talking about?

MR. THOMPKINS: Excuse me.

When we talk about policy, my concern is with the effect of the policy changes over time and the changes in institutional structures. Some of these policies can in fact create new opportunities for types of prison violence and also increase levels of prison violence. When we think of -- as we heard earlier today -- shifts in policies such as are creating the supermax facilities, we have higher levels of violence, different types of violence across these types of institution, and a lot of the violence that is expressive is in response to increased levels of perceived deprivation and so forth.
Ms. Schlangers: One of the things that Professor Adams just mentioned -- this is also for Professor Thompkins -- was about gang violence. And I've heard from a number of commissioners that they'd like to talk more about gangs and the particular issues. So I don't have a specific question, but could you tell us about that?

Mr. Thompkins: Well, first of all, when we talk about gangs -- whether it's a prison gang or a street gang -- we have to consider that that term "gang" is not a catchall, okay? When you talk about prison communities, any group of two or more people could be classified a gang. They support each other. They defend each other. The correctional officials, the guards can also be considered a gang.

I recently came out of the field in June after three years of conducting research looking at some of this. And in response to that, we're finding that many guards within many states have now created or they're acting out gang behavior in response to certain policies such as the tobacco ban. Every state in the country including the federal system now has a full or partial tobacco ban. So what we're seeing is that some guards in some states have come together and collectively worked to both traffic as well as they work to defend their turf.

The policies in terms of a cross-race, those gang policies that we find being implemented and used within society, those criminal justice policies, are used...
within correctional facilities. So if you look across race, for example, the largest percentage of persons within the supermax facilities happen to be men of color. And when you say they're "men of color," it's because we're talking about this racism proxy for dangerousness. It's uneven in terms of who's going to be placed within these facilities, and then once there, if you're talking about a facility within a rural community, the staff, they act out gang behavior because they know each other. So this us versus them ethos is created, and gang activity becomes a means by which offenders can survive.

Not all members of gangs within prisons are actually full-fledged committed gang members. It's a means by which they can survive within the institution. If you have the us versus them ethos created where the guards defending themselves, the guards are acting out the inmate behavior, and they tend to unify a cross-race.

Recently we're finding in some states that the differences that have divided in the population, they're going away. There's a common sense identity in terms of the pressures and the problems that are being encountered. So the policies, when I think of tobacco ban, the literature tells us when we talk about prison violence that it is management practices and changes that often lead to an increase in this type of behavior. It also tells us that the informal
economic structure, the informal inmate organization has helped to reduce levels of violence.

Well, some of these policies for the first time since the Antisocial Organization was allowed to develop, we now see that the guards control the black market, not the inmates, the guards control the black market. Now, what does that mean?

MS. SCHLANGER: So are you saying that one of the things that a Commission like this should think about is recommending doing away with the tobacco ban?

MR. THOMPSON: I'm not here to promote smoking. What I'm saying to you is, if we look at mandatory minimum sentencing laws, all right, years after they were implemented we began to question the effect of these policies, okay? And I'm saying that when we talk about a tobacco ban, and not the tobacco ban, but it's an example, right, of a policy that's led to shifts in the organizational structure of these facilities.

We have to consider the potential harm. We know the Departments of Corrections are unwilling to allow us access to data, they're unwilling to allow us to go in and to question. So no, I'm not saying do away with the ban. I'm suggesting to you that we must step back and look at the real effect. The cost benefit analysis must be done.

MS. SCHLANGER: To sort of continue to lay the basis of this conversation that we're having, let me move to sexual violence in both men's and women's facilities. So this is a question really direct at...
Ms. Moss. And the question is just, you know, again, what are the general dynamics, how are they different? And maybe here, since you've been so involved in the solutions, what are the promising solutions?

Ms. Moss: that's sort of a big charge, but I am up to it.

First of all, let me thank the Commission for the work that they're doing and let you know how much I appreciate being here. I have had a journey of some 13 years of being involved particularly in staff sexual misconduct. And as my bio included, I came out of the Georgia Department of Corrections in the early nineties before going to the National Institute of Corrections where I was given the opportunity to develop national initiatives to address staff sexual misconduct.

So let me respond. I think there has been a lot said in the two days. It's very consistent with my experience. And I think the thinking of really looking at how to build capacity -- capacities systematically to deal with some of these issues.

I think in your introduction and the setup of this panel I have the following comments: It's very clear that there are -- it's multidimensional when we look at these dynamics, when we're talking about violence and then when we talked about sexual violence. And then you talk about male facilities and female facilities. So you're really looking at many sort of layers of issues. And I think that's really important in
informing us because the strategies have to be multiple
strategies. One size does not fit all. I think that

what -- we've learned a lot, and I'm a great support
and fan of Dr. Barbara Owen's work, and I know the
Commission is going to look at women offenders more
specifically later, but I think we have learned a good
bit about women's cultures and women's prisons and
that they are dramatically different. The correctional
goals are the same where we still want safety, we still
want security, but when we look at the dynamics and the
relationships that women form -- I mean, they are
driven -- I mean anybody who's worked at both a male
facility and a female facility in their career will
tell you, as a practitioner, how dramatically different
they are.

So what we've learned is that sexual activity and
violence in each of those settings really needs to
be looked at and understood as -- and in the path that
they've already followed. So I think when we do that
we learn a lot more about who are the women, who's
coming into the institution, what are they bringing in
terms of their histories and what kind of dynamics
does that setup in terms of interplay with the staff.
And there are wide training indications for that.

And when we look at male violence or look at male
institutions and sexual violence, I think we had
some very intense testimony here yesterday. I think we
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understand that the dynamics do tend to bring more physical violence than you would see in a female facility, but I think they're great implications for how we look at working with our staff, preparing them to work with the population. And also I'm a great believer that we have to do inmate orientation. We have to give them multiple ways of reporting sexual activities and violence. There's a strategy that I think is very important for a leader to look at in terms of, do I have certain management tools in place to begin to address these issues. And I'd be happy to expand on those a little bit more when it's appropriate.

MS. SCHLANGER: Maybe now is a good time, actually. I guess, really, the question is, what are -- what seems to be the promising solutions to sexual violence or is sexual violence the wrong place to look at? Is it really sexual misconduct on the spectrum and sexual violence is not the right thing for us to be thinking about?

MS. MOSS: Well, I think it's both. I think you have to look at the sexual violence part of it because it's part of one continuum I think to understand that -- we have to understand that there is sexual violence that is physical harm and coercive. I think we really understand, which we have to if you're going to look at violence in institutions, I think you have
to unpeel the onion, you have to -- we've heard so many people talk about we have to look at the culture, and that's so critical.

So I would urge that you look at the full spectrum there because what is sexual misconduct that may be not coerced that can turn into a coercive relationship. So I don't think that you can separate those out particularly.

I would suggest several things: One is, I want to provide to the Commission some materials that I think will give you a really good overview of some of the work that's been done in the last decade as far as sexual misconduct. Those of us working -- who have been working on this feel like there is a -- one model to look at, and I'm going to go through these very quickly. If I were to go into an institution, I would look at several things: Do they have written policies that addresses staff sexual misconduct, sexual violence? A lot of people will raise their hand in training if you ask them if they have policy. And what they really have is policy that may say "don't be unduly familiar with the inmates," but they don't really have specific policy to staff sexual misconduct.

And let me just go through, for the purposes of this discussion, and talk staff sexual misconduct and violence. So I would like to see if they have written policy, and is the staff trained on that policy, and not trained in a way that they're just signing off on a
policy, but trained in a way that the dynamics are discussed in terms of staff inmate dynamics, professional boundaries are discussed; people understand what is appropriate behavior as well as understanding what's prohibited behavior. So look at training. Who gets training, and it should not just be custody staff, correctional officers. It's a myth to think that sexual misconduct, particularly in women's prisons, is about officers having sex with the women. It's about psychiatrists, about food service, maintenance, any -- you know, I've seen every job classification involved. So looking at the training, looking at the training for staff, looking at the training for inmates; are they oriented towards reporting mechanisms. Do they know how to record any misconduct or violence? Do they understand their role in creating a healthy environment and healthy culture? And that's very important training.

I would look to see if the programs are meeting the needs of the inmates or if they're programs that are on paper. And that's very critical, and someone else brought that up during our time here. That if the inmates are engaged with productive programs, they become very much a part of the solution.

Many, many of our inmates really want to turn their lives around. I'm very strong -- feel very strongly that if we can create hope-based environments instead of fear-based environments that all of these things will work together to provide the solutions that
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10 we're looking for.
11 In addition to -- a big piece that I would look at
12 in a system and other experts that I work closely
13 with, is we would look at the investigative practice.
14 And we would look at -- if there's an allegation, what
15 happens to that allegation? How many steps does it
16 take? What are the decision points? Who can stop an
17 investigation or send it forward, and does the
18 investigation come to a conclusion that then if there
19 is misconduct or violence affirmed, is that sent on to
20 prosecution or to the next step? So these are really
21 important, I think, critical things to look at.
22 We've still got a lot of work to do, but I think
23 if you look at the history of staff sexual misconduct
24 in the last ten years, it will inform this
25 conversation.

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A very concrete example is in the early nineties
there were less than ten states that had laws
prohibiting staff sexual misconduct. Today there are
only two that don't, and they've been working on their
laws for the last three years, and that will soon
happen.

And so when we talked about cultural change,
whether it's organizational or institutional or working
with the public, I think that we have to start with
getting certain tools in place that sends the message
that it is a new day and that staff understand the
structure around what it is we're trying to create
MS. SCHLANGER: I'm going to ask one more question related to this topic, which is, are there solutions that have been tried that don't work? I mean, are there false leads?

MS. MOSS: I think it's more -- it's more attitude and not following through. I understand why people say, "Well, this is about a few bad apples." And while that's true, because I'm a -- you know, I'm a very proud practitioner, I'm very proud of my profession and the people I work with. And so I understand that "it's about a few bad apples." But if we take that approach and don't put in systemic ways of addressing the issues, and if don't prepare ourselves and urge and hold ourselves accountable to create cultures where people can become healthy and the institutions can become healthy; then if we use the "few bad apples" theory and that we can't do anything about it, I think that's one of the things that is the most difficult to break through because there is much that we can do, and much of what we can do does not cost money.

MS. SCHLANGER: I see you nodding, Mr. Thompkins.

MR. THOMPKINS: I agree with what's been said. My concern is that for a long time we talked about prison communities as total institutions as though they were shut off from the outside world. Today, most of us who do this type of work would agree that they're not total institutions. There is great influence from the
outside. At the same time, they are total closed institutions when it comes to illegal criminal deviant behavior within the facility. There is a push, a drive, a need to sort of hide, keep secret what takes place. So we can talk about the number of reported cases of X, Y, and Z, but the reality is, that's just a small percentage of what is actually going on.

Another point is, to date we now have women working in male facilities. So when we talk about sexual violence, we talk about sexual misconduct. We need to look at that as well. We need to look at the gender issue in terms of how a woman's sexuality, who is a staff member, how that's used to both gain information from offenders. We need to look at the relationships that are developing between male offenders and female staff.

Again, I'm drawing from the research I just recently conducted. I'm still trying -- not trying, I'm still having some of the interviews transcribed and looking at the documents and so forth. But the suggestion is that a lot of -- not a lot of them, but some of the prisoners' conduct is now linked to that relationship of female guard - male offender versus male guard - female offender. It depends on the institution. No two institutions are the same, all right?

MS. SCHLANGER: Let me bring John Boston into this conversation. Do you want to speak to that or should
MR. BOSTON: Well, I'd like to speak to that briefly. I think that the point that Andie was making about the systemic issues is correct. And I think that there's another question that you have to ask. Are there ways in which prison officials and prison systems incapacitate themselves from being able to deal with problems of sexual misconduct or other problems?

A very concrete example of that that we have encountered in New York State is that the state prison system takes the position, through its Inspector General's Office, that it cannot proceed on a formal disciplinary complaint of sexual abuse of inmates by staff unless it has physical evidence. Well, you can see that that's a problem. Some of the women that we represent, of course, do have physical evidence. In some cases they're several years old by now. But typically, physical evidence of those kinds of crimes is hard to come by. So you may say, okay, we understand the formal disciplinary process is a problem and some of you want to accept that sort of excuse. But then their position is, well, our union contract says that we have to allow the staff members to bid on positions, so we cannot take somebody that we have good reason to believe has engaged in sexual misconduct with the inmates and move that officer somewhere else. If that officer wants to stay in that position supervising women and inmates on the night shift when there's nobody else around, there is nothing...
that we can do about that. Where it's the fact that
they signed on to that union contract sort of gets lost

in the discussion on the question of whether they
should agree to it when the next contract signing comes
around is another question that we hope to pursue.

But the result of this is that there can be, and
are, serial sexual predators continuing to work in
women's prisons with wide knowledge of that fact and
nothing being done about it by the officials who claim
that their hands are tied, and in some cases have acted
to tie their own hands.

MS. SCHLANGER: Let me just continue on sort of
the topic that I promised you we would get
today, which is a continuation of the conversation from
the panel before about the excessive use of force in
jails and prisons.

I wonder two things: One is -- this is something
that Don Specter said. Is this -- is excessive use of
force a problem serious enough that we should put it
high on our agenda? How serious is it?

And then the second question is just, again, what
are the dynamics and what are the solutions?

MR. BOSTON: Well, I think it's a pretty serious
problem and I think it's also serious to people like
Mr. Sean Davis, who is involved in one of our pieces of
litigation in New York City, who sustained a ruptured
eyeball from being kicked in the face by a correctional
officer while on the floor in a holding pen in one of
the New York City jails. When he was kicked by a
correctional officer, it was part of an incident where
he was beaten by several officers.

And I think that if you look at some of the
materials that I have provided, particularly Steve
Martin's expert report on staff-inmate violence in the
New York City jails, and if you look at Exhibits
particularly 6 and particularly 7 through 11, which
gives the litany of injuries, the fractures, you know,
the facial fractures, the lacerations requiring
sutures, the internal injuries, the broken
ear drum--it's very difficult to break somebody's
ear drum accidentally. But we have cases where
prisoners will come out of encounters with staff with
both ear drums broken. I think that, you know, the
shear quantum of injuries that occurs to officer --
prisoners in these incidents suggests that, yes, it's a
very serious problem and, of course, staff members get
injured, too.

Sometimes staff members are injured because they
are the victims of violence, other times you'll see
again in many cases in the New York City system the
prisoners will come away from a violent encounter with
serious injuries, say, to their face, and the officers

will come away with a broken hand. You can talk about
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that as being some sort of rough justice, but I don't
think that that is a particularly good outcome for
anybody to have an officer injured for whatever reason.
So, yes, I think it's serious in that sense.

And I think there are other senses in which
there's a serious problem. Whenever there is excessive
force, there is likely to be false reporting or
non-reporting. One of the cornerstones of correctional
management is that when something serious happens the
staff members involved have to say what it was,
everybody has to speak up. Management has to review
what happened, figure out if it was appropriate, if
something should be done about it. And when you have
non-reporting of excessive force by staff or false
reporting, you strike really one of the foundations
of correctional management. And it goes further than
that because not only -- we talked about bad apples,
and there may be a bad apple who beats somebody up and
doesn't report it or falsely reports it, but chances
are that person is not the only correctional staff
member on the scene. So you have one or more other
correctional staff members who are in the position of
either blowing the whistle on their colleague -- which
you have heard there are intense pressures not to
do -- or of lying.

So you have a situation where the actions of some
staff members in effect have a widening, corrupting
effect on the acts of other staff members. And it
doesn't even stop at the use of force because if staff
members become accustomed to lying or looking the other way, non-reporting about one thing, don't you think it's likely that they'll be prepared to lie, to look the other way about other things?

Doug's reference to staff gangs and staff's operation of, you know, of trafficking in contraband is pretty shocking, but you can see how that degree of corruption can start small with staff members who become accustomed to accepted dishonesty on the job in one respect and it broadens to become a way of life.

And the third aspect in which I think excessive force by staff members is important is, you know, these institutions are there ultimately for the purpose of trying to get people to obey the law. Even the pre-trial institutions -- such as the ones that I am primarily involved in -- are there as part of a process that is supposed to elicit lawful behavior from people in the long run. And what happens if the people that you are trying to correct go through the system and see lawless behavior that is covertly accepted and that goes unpunished? What do they think if the very institutions that are nominally trying to elicit lawful behavior from them engage in unlawful behavior themselves on a regular basis? I suggest to you that the credibility of the idea that once you lead a law abiding life is going to be seriously damaged when a criminal offenders and accused criminal offenders cement spectacle in the very institutions that are
MS. SCHLANGER: Let's get back to solutions a little bit. I mean, all of you must have experience with -- as I said, the instructional assistance that's gone some distance towards solving the problem. I'd be interested to hear on each of these problems what those systems -- you know, what seems to be the promising steps that those kinds of systems have taken?

MR. BOSTON: Well, let me follow up on my previous remarks because we have seen some examples of how these problems can be corrected in the New York City jails where my office is engaged in a series of pieces of litigation which have had very successful outcomes; not just in the sense that we have a favorable judgment that we can wave around, but that in fact they have gone considerable distance towards restoring lawfulness and peace to some of these institutions. And I say "some of these institutions." One of the sad lessons we have learned is that in the system we are dealing with reform isn't rolled out. Reform is quarantined. But nonetheless, it has happened in limited ways.

First, I think the thing that you have already heard today from others is absolutely correct; that a commitment by the leadership of the institutions to stop excessive force and to require that force be used only to the extent necessary is the absolute essential sine qua non. That may sound paradoxical when I come to you as a litigator who is bringing coercive pressure
from outside into the system, but it's not paradoxical because sometimes it takes external pressure over internal oversight to elicit internal leadership or to make it clear that only a leadership on this issue will make the external pressure go away. But within the broad structure, that there has to be a commitment by the people running the institution to curb lawless, violent behavior by their staff.

There are very identifiable steps that have to be taken in order for that leadership to have more than a rhetorical affect: One is supervision. The daily actions of the people in charge, the daily statements in dealing with their staff members; that is, commitment has to be expressed not in press releases or statements made when people are dragged into a courtroom but also it has to be stated and acted out to the staff on a daily basis.

Second, the use of force incidents must be reliably reported and they must be fairly investigated. One of the things that we have seen entirely too much of is the nod and wink investigation where, for example, when an inmate says, I was struck by an officer in a particular place, and there's no mark there; it didn't happen. But when an officer says the inmate struck me and I therefore had to use X amount of force to subdue him, they don't even ask whether the officer has a corresponding mark or injury to document the claim that the inmate
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16        initiated the violence.
17        These kinds of examples of double standards in use
18        of force investigations can be multiplied. I've given
19        other examples in my written testimony. But an honest
20        investigation system is absolutely essentially.
21        One of the best tools for assisting an honest
22        investigation system -- and in some cases making more
23        extensive investigation unnecessary -- is the use of
24        video recording in places where one knows from
25        experience that excessive force and violent incidents

are likely to take place. That is an analysis that
will probably vary from institution to institution, but
places immediately outside housing areas that are out
of view of other prisoners, stairwells, intake areas,
which are always high-tension areas in prisons and
particularly in jails which have just a higher traffic
of people in and out.

Frankly, I think it's our conclusion that the
widespread use of video recording is probably the
single most effective technique in bringing excessive
force down, if not eliminating it. It's also a
management tactic in which there are no losers because
it not only protects prisoners against excessive force
by staff, it protects staff members from false
allegations of misconduct by prisoners, so there's no
legitimate objection to that as a management tool.

Discipline of staff who violate the rules is
absolutely essentially. And one of the things that one
sees -- this crops up in police organizations as well
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as in prisons -- is that even when the organization
gets to the point of making a judgment that this person
has broken the rules and something ought to be done,
somehow nothing happens. Somehow the disciplinary
prosecution languishes, somehow a reason is found that
it can't be pursued, and they are left to wither
or they are left to odd. You know, they are delayed
for so long that the move -- the delay itself becomes a
reason to dismiss the disciplinary prosecution.

Disciplinary prosecution also must be carried
out in a competent fashion, and this has been a major
problem that we have observed in the New York City
system, and I believe that it is prevalent in other
systems as well.

When you are attempting to prove to an
administrative tribunal that a correctional officer has
used excessive force against a prisoner, you are
pursuing the moral equivalent of a criminal prosecution
for a violent crime, and that prosecution ought to be
conducted with the same degree of care, the same
preparation, the same resources that a prosecution for
assault on the street would be carried out with. I
think that very often that does not happen and that
that is a weakness of administration controls that is
not looked at often enough. That's half the problem
That's holding your staff accountable.

The other half of the problem is providing a
decent environment in which prison staff can work and
to avoid the sort of "occasions of sin," you might call them, the factors in the prison environment that may lead people to perform actions that while they are completely uncondonable, nonetheless they make the behavior understandable and they need to be dealt with in order to control the behavior:

No. 1 is, above all, to avoid overcrowding, a situation which puts enormous pressure on both staff and inmates, promotes violence by inmates, and promotes a sense on the part of the officers that they're overwhelmed and that they can only rule by intimidation.

Second, is classification. Dividing prisoners among those whom you know to be serious management problems and those who are not. Letting your officers know who they're dealing with and having architectural features of housing that promote greater control where that is needed. I think there also is essential to giving the correctional officer a manageable job. Providing inmate services reliably to eliminate the flash points that sometimes lead to staff-inmate violence. The person who can't get the medical care, the meal that is delivered late, cold or not at all, those things add up and create an adversary environment where very often a correction officer may be held responsible de facto for things that the officer has no control over.

Training the staff adequately. Sometimes I
question the importance of -- or I question the stress
that some people put on the importance of training
simply because training is kind of a kind of "mom and
apple pie" issue that nobody can really be against.
But nonetheless, there are very important aspects of
training for solving this problem:

One is, reinforcing what the rules are on a
regular basis, and the other is giving the officers the
tools to do the job. One of the things we have been
struck by in our work in New York City is the number of
correctional staff members who really don't remember
their training very well and can't give you a coherent
account of it, which I think tells you something about
how effective it is.

The other thing is that even though the New York
City jail system teaches means of restraining prisoners
without striking them by means of, you know, body holds
and other techniques that are less likely to be
injurious than punching them in the face; nonetheless,
the standard response to a prisoner that's giving you a
problem is to punch them in the face.

In our litigation about the Central Community
Segregation Unit, which Steve Martin talked about
earlier and which he was most helpful in bringing
about successful resolution, the Legal Aid Society

suggested and persuaded the Department of Corrections
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that you require people to qualify every year in the
use of firearms if they're going to carry a firearm.

Well, you know, why don't you make them qualify in this
unit that you say "holds the worst of the worse," why
don't you make them qualify every year in the tactics
of using their hands or not using their hands to
control the prisoners, and that's been accepted, and I
think that's made a contribution. Why that idea had to
come from the Legal Aid Society as opposed to the
Department of Corrections is a question that I leave as
an exercise to the audience.

And finally, there must be a readily available
supervisory backup for the correction officer at times
of stress and conflict because very often the things
that lead an argument to violence is simply that staff
members and inmates get personally invested in what
happens, and just having somebody with authority step
in and tell everybody to "cool it" and let's deal with
the problem will obviate the need for any further
violent reaction from staff. And if staff members do
not have available that kind of intervention, readily
and quickly, then the consequence is likely to be a
greater violence between staff and inmates.

So that in a nutshell is what I think our

experience supports. I'm sure there are other things
in other systems that need to be said.

MR. THOMPKINS: Excuse me. I want to suggest to
the Commission that we consider creating an independent
office, okay? Creating an independent office for investigation of complaints. Currently we do have, most Departments of Corrections do have an office where inmates write their letters, family members write their letters alleging violence, et cetera, et cetera, but those offices were have not be empowered. The individual holding that office has very little power. The decisions, or rather the recommendations that are made by these persons are usually just pushed to the side. So if we can develop an independent office and empower that person, give that person open access to enter the institution to talk to people, both staff and to offenders, to talk to staff in private, in secrecy, we may come a long way and go a further distance than trying to resolve some of this.

Prison violence is something that is kept secret. When we talk about a peaceful facility, as long as there's a -- there are a few escapes, a few reported incidents of violence, there is a visible sign of control, but that visible sign of control is just on the surface. Within the prison community itself there are many numerous acts of violence that go unreported. And when they are reported, they're just pushed to the side. So this independent office would be in a position to really do investigations and make recommend.

MS. SCHLANGER: Let me ask about possible solutions of one more issue, and this is for Ken Adams. What about inmates with mental illness, mental
retardation, are there solutions that you've seen that
go some distance towards solving their vulnerability
to other inmates or their -- the number of run-ins
that they have with staff? What are some solutions
there?

MR. ADAMS: Could I just make one quick comment?

MS. SCHLANGER: Absolutely.

MR. ADAMS: While I share my colleagues views in
terms of thinking positively about things like
reporting systems, investigation systems, particularly
independent systems and things like that, I have done
some work in terms of issues of excessive force and
the mechanisms that are used there, and I can tell you
that the track record in terms of the success of these
mechanisms is not that great.

Even with video recordings, as you're talking
about, which I endorse, and some systems

actually -- when the violence -- when the actions of
the officers are planned, that they bring out the
cameras and they set them up. I mean it's like a whole
TV studio, and they get this on recording and it's very
useful. You know, we can see what's happened in LA
that was recorded on the television and broadcast to
the nation, and people have very different views about
that event and about their judgments of it. So it's a
difficult -- it's a very difficult situation of drawing
that line and saying something is excessive.

I think the other thing to keep in mind is
that -- particularly in maximum security prisons, you are dealing with people who have histories of violence. I mean these are not -- you know, schools or hospitals or things like that, these are people who are in there because of these kinds of behaviors, and it's very difficult to try to control. That doesn't relieve anyone of the obligation to be lawful and to be professional in how they do it, but it is extremely difficult to try to manage some people's behaviors.

In any case, speaking about the mentally ill, we're in a position -- thanks to the deinstitutionalization, which happened in the 1960's -- where many people were taken out of hospital settings, put in the community, and the support services are not there. Prisons tend to be the backup support service for just about everything in society. When we don't know what to do with people, they wind up usually in prison, and so prisons take on a whole host of social roles other than just punishment of offenders.

In this context with mentally ill, we've also moved to a sort of therapeutic regimens that heavily concentrate on drugs, on pharmaceuticals, and for the most part, this has been good. There are some wonderful pharmaceuticals out there that do amazing things in terms of helping people along, but that's not the sum total of treatment in terms of what these people need. They need more than that. Furthermore, we've gone to a system where we basically have acute
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care hospitalization for the mentally ill. They get committed, they do about 30 days or so, maybe 60 days in a hospital for the, quote, unquote, "criminally insane." They come back, they spend about -- as they used to -- as they used to say, "They go into the hospital for a tune-up." They're good for 10,000 steps when then come back, but then they have to go back for another tune-up. So you get this sort of shuffling back and forth between prison and the hospital, prison and the hospital where what you've got is a prison career that's punctuated by 30-day acute care hospital stays with no real follow up within the prison setting.

Many of the mental health professionals can't identify the needs of those people. They are committed professionals, they're working hard to try to deal with the very difficult problems, but the arrangements are not there. We need to think about a multiplicity of arrangements that provide different settings that are tailored to the needs of people, okay? And we can identify different groups of people with different needs and put them in that context.

For example, New York State reoriented its mental health care for inmates by turning it over to the Department of Mental Health. It is no longer the responsibility of the Department of Corrections. That made a tremendous change because now medical professionals who deal with mental health issues for a
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living are setting the treatment standards, are setting the standards for records and for use of pharmaceuticals and things like that. And they also established within the prison the group of units called Intermediate Care Units, which is sort of a halfway house, halfway between the prison and the hospital. These are less intensive than hospitals but provide more support than prisons, and this has made a big difference in terms of facilitating the adjustment of these people.

Mentally retarded, sometimes -- they were somewhat different and distinct group. Very often they are victimized within prisons because they're seen as slow and vulnerable. They can be taken advantage of, they can be conned or they can be manipulated. Sometimes they run into problems because they get frustrated because they don't understand what's going on and there's lot of pressure for them to act. But they tend to be need more of a protective setting, simpler, manageable settings where they can negotiate the environment in satisfactory ways.

So when we think about prisons, you know, we have to think about creating multiplicity of environments within the organization that are suited and adapted to the needs of particular groups of people, and if we start thinking that way -- and prison staff can be very instrumental in helping to think about that and how to implement that. Or we can breakdown this notion of sort of the monolithic prison -- "the prison,"
right -- and think about the sub-environments within that prison and trying then to create environments that facilitate people's adaptation and increase their chances of success with them.

MS. SCHLANGER: Let me at this point open up to either questions or further discussion among the commissioners as well as the panel. I have been asked, although you can -- I'm just going to ask you to choose to try to keep us focused on violence so everybody gets to do their own thing, but that's what I've been asked. Yes --

MR. MAYNARD: I have a question for Mr. Boston relative to violence. The training issue you talked about, I was not clear if you were saying the training was a good thing or that it was not effective or -- I may have misunderstood.

MR. BOSTON: I think the training is a good thing. I think that in these discussions of use of force by staff that sometimes an overemphasis is given to training because managers are unwilling to confront the more politically difficult issues of holding their staff accountable. But I absolutely think that training both before one walks in the door to work as an officer and repeated training, you know, in-service training during the career is essential.

MR. MAYNARD: And I would agree with the need for leadership in front of training to enforce that and make sure that it's understood and carried out.
Do you think most corrections administrators move in a direction of organization improvement based on litigation or coercion or do you think a lot of them want to move that direction for it being the right thing to do?

MR. BOSTON: I think that it's a very mixed picture, and we have seen great progress made by people who were put in responsible positions just because they were responsible people, and we have also seen sabotage by people who not interested in improving the situation with respect to staff violence.

MS. SCHLANGER: Senator Romero --

SENATOR ROMERO: Again, thank you for everybody that's been presenting.

Let me ask, too -- this is more of an observation and maybe it's a little bit crazier, but I don't think violence is a secret at all. I think everybody knows it. We're well aware of it and many are grappling to change it. But I would also suggest that I think to some extent violence is dependent upon as a control mechanism.

I've visited many of the yards of our prisons in California, and I would say that if I go to our level 4 yards, our more maximum yards that to some extent prison gangs play a role in maintaining the management...
of the prison. So even if we talk out of one side of
our mouths about reducing violence, it has been my
observation that violence plays a very profound
role. If I lock-down, I don't have to program and
if I don't have to program -- especially at the end of
the fiscal year when again two legislators are going to
come to the wardens and say, "You've overspent your
budget. I don't have to program I saved money."
So I'd like to hear your observations on that.

And then also again -- also on a grading note of
12, with respect to women and sexual violence, sex also
is a strategy. And in terms of looking at how inmates
survive and cope and live and exchange and gain powers,
sex is a very powerful tool, and I guess the question
would be -- whether one condones or not -- do we need
to also think about sexual strategies for living in a
prison; and if we look at it in this sense, and
it's hard to put it out, but I think that at least from
what I've observed -- I want to go ahead and say it,
how do we respond and then what recommendations might
we have?

MS. MOSS: I'd like to take that.

You said a couple really important things, but I
think I want to speak to the violence, that we know
about it, and sometimes I think the only surprise to me

is that we're surprised because the violence is in our
society. I mean, as we unpeel this onion, there are
a lot of factors that we do know about.

And I had officer say to me recently, "You know, I
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know what's going on and I see it, but I don't know how
to correct it because it's about -- in the housing
unit, so that if I try to protect this guy and do
something, the invisible retaliation is going to be so
critical." I think we have to be real honest when we
look at strategies about how we're really going to give
real tools to the officers so that the part that the
inmates play in keeping things in control I think that
has to be really looked at very carefully.

In terms of the women, I think -- this is where
I'm going to do my little thing on the Prison Rape
Elimination Act. I think that the Prison Rape
Elimination Act, which was signed into law in September
of 2003, is going to force us to look at much more in
terms of definitions and the research that we have and
looking at more research. I think it is a very
complicated piece, and I'll respond to the women's
prisons piece, because I know, I've been involved in so
many cases and situations in women's prisons, and it is
a survival skill. And the women -- looking at the
pathways of the women who come into our setting, to

look at the dynamics they bring, and then they feel
like I have to have sex for cigarettes, you know, or
sex to get money on my books, but -- you know, for some
of the women this is not new behavior in terms of they
don't expect any different treatment. And I don't want
to overcharacterize that, but there are many women when
you sit with them you realize that they need to know
what are the boundaries, they don't understand that.

And it's also a very important training implication for staff. If we go with a trained staff and talk about that there's no such thing as consensual sex between staff and inmates, and of course there isn't, but immediately we go into, well, what about the false allegations and what about the women approaching us? You know, we've got women being raped that are approaching us.

And so I think your question really has great implications for how we talk about it. This Commission's concerned about violence. There is a lot that happens. The majority of sexual activity in a women's prison does not have the dramatic violence component to it. But I think that we have to be honest about the dynamics that you're talking about.

And yes, I think there will be recommendation. I think those of us who work in the area already have some recommendations in terms of the -- that's why the importance of programming for women. If they start understanding their own victimization cycle -- I've seen it happen, it usually takes three to five years in a facility where the culture really shifts and where the women start monitoring themselves, when they really have the tools.

And the other thing is that the staff meet those tools. Many of our staff comes from very disturbed or -- you know, environments where they're experiencing some of the same issues.

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MR. GREEN: How well prepared are we in our prisons and jails to deal with all of these complexities?

Mr. Adams talked about all of the different environments, and we've talked about issues of violence, we've talked about issues of sex and sexuality and how it's used. If we're expecting leadership to play an important role in this both in terms of people's preparedness to deal with all of the different issues that -- to a certain extent we talked about even being dumped on prisons such as the mental health issues, to the preparation and the resources that are necessary to provide that leadership, are they there? And anybody can --

MR. ADAMS: Well, let me take a couple. You know, there are a whole range of possible solutions and avenues we could take. Some are expensive and some are not. I think what John talked about, some of the policies that he was talking about implementing, these are not expensive things to implement.

But one think I can tell you is that correctional professionals from wardens on down are concerned about violence. They are looking for the tools to deal with it. They have a lot of experience in terms of trying to understand it. Sometimes that experience is not fully formed or in a form that they can implement, right? But if they choose to make violence reduction a priority and put that at the top of the list, I think
that some really important strides can be made, and they don't have to involve tremendous outlays of money.

For examples, in New York State, at least some of the prisons that I've seen, the staff will routinely rely -- the correctional staff will routinely rely on the mental health staff to come in and try to diffuse situations and try to work through potentially violent scenarios. Now, those people are on call, anyway. They're being paid, you know, they're available. But what we have to do is talk to the officer about how do you recognize when situations escalate? How do you begin to understand when things are going to go out of control? How do you analyze your range of options that you have and then select the option that's most appropriate for the scenario?

When I talk to officers, a lot of them are not very gung-ho on the use of force because they recognize that they can get hurt in that situation. And their safety is very important to them and they would prefer to have situations in which they didn't have to use force because it's better all around. So I think there are many things that they can do, reconfiguring roles, having different correction officers assigned specialty roles for specialty problems within that setting, giving them special training. Officers would love to have a group of people that they could call on to come in and help them with these problems. Similar to teachers, you know, where teachers are dealing with the kinds of situations in their classroom that might
involve violence, they would love to have people they could call on to assist them, you know. So it doesn't have to be overly expensive.

MR. LUTTRELL: Kenneth, let me take issue with what you said just ever so slightly, if I could.

I would hope that we would not get to the point where we consider it specialized training on how to deal with problematic inmates, but it becomes part of our routine training of staff and interpersonal personal communication skills that we don't take this and make it a mental health issue, we don't make it a special issue.

MR. ADAMS: Right.

MR. LUTTRELL: We make it an issue that correctional officers, counselors, teachers, nurses, all the thread that runs so through to all the training from interpersonal communication skills to how to diffuse problematic situations.

My concern is that we oftentimes say, okay, if you got violent inmates let's train a response team to deal with violent inmates, or if you've got an inmate that you can't communicate, let's bring the psychologist in to communicate. Let's bring some commonality to our training so we can try to get some common skills among all of our staff that can address these issues.

MR. ADAMS: I totally agree with you, and I think that -- well, I think that there should be some common level of training that deals with this issue and we
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should try to set that level high in order to address
the problem

In all these situations you're going to find some
need for more specialized training. And I didn't mean
to suggest it has to be turned into a mental health
problem or bring in a psychologist. Other correction
officers can be trained in terms of skills that they
have. Not everyone is equally flexible, adaptable or
suitable for dealing with all kinds of situations. So
we can find specialty niches for officers to deal with
this. But you're right, issues of communication of how
to diffuse situations, how not to escalate them, how to
know the warning signs, so to speak, the high risk
factors for various scenarios, these are things that we
should be teaching all officers. And in fact, I think
someone mentioned not just officers, all staff because
non-custodial staff are often in positions where
they're observing inmate behavior and can make
important contributions.

MR. THOMPKINS: If we look at prison violence
across institutional levels, we know that the lower
security level facilities have lower rates of violence.
So what's different? What's different is -- going to
your question -- is if a group of offenders have
something to believe in, something to work for, they're
vested in that program, okay? So what we need to do is
go back at a little bit and begin to reinstitute some
of these treatment and educational programs because
those are the facilities will receive lower rates of
prison violence.

At the same time, if we talk about high rates of violence in supermax facilities, level 5, level 4 facilities, what's different about that facility? You have violent offenders in institutions around this country, and prison managers are able to manage those facilities with low rates of violence. What's different? What's going on here?

If we looked at these maximum security facilities, and you ask an inmate, "What do you have to lose," they say "nothing." So if you have nothing to lose and you're facing 20, 30, 40 years in a maximum security facility, you're acting out this behavior. So I think if we go back and we look at the programs that are working in certain facilities, if we duplicate that it would go a long ways in helping to solve the problem. But let's not get caught up in the idea that, well, it works because it's a lower level facility and we have less violent offenders. Violent offenders, right, will act out appropriate behavior if they have something to lose.

All offenders for the most part are coming back to society, okay? I was sentenced the first time to two terms of life in prison, okay? I'm sitting here, okay? I was a leader of the Gangster Disciples, 2, 3,
400 people under me, in the Indiana Department of Corrections.

Recently, I began to interview a lot of these people who are coming out. Most of them were going to college or involved in some type of program. So they had options. They had options. Let's use the programs we already have, add to them, come up with a way -- again, let's create an independent office if you have want to investigate staff-on-inmate violence, empower that office.

On the other hand, let's create opportunities for offenders. Let's reinvest in the idea of rehabilitation and treatment. That's all we need to do. Not all offenders will follow through. But given an opportunity, most rational-thinking people will act out appropriate behavior.

MR. NOLAN: The Prison Rape Elimination Commission recently held our first public hearing, and the first witness was an inmate of slight stature who from the beginning of his term in prison was raped. And he made a fascinating, which frankly had never occurred to me; and that is, the inadequacy sometimes of formal reporting mechanisms. Several of our DOC folks said, "Oh, we have prison rape policy. We have big signs up that say report it."

And Steve told a story of two different institutions he was in where he was being raped and sold. The first, when he went to his unit
manager, he said, "I need to change cells." And the
guy said, "Great. Find yourself somebody to move in
with, and we'll do it." He knew what was going on and
handled it.

The second one said, "Well, gee, do you have
any -- have you been attacked? Is there anything you
want to report?" And Steve immediately clammed up
because he said he knew it would be a death sentence.
So that guy condemned him to go back to his cell where
he was continually beaten, raped, and sold because the
guard officially wanted him to report it, and he wasn't
willing to. The option was to go into protective
custody, which condemns you to 23/7 custody, severely
limited visits and other things, or suffer -- and
alternatively, we've also had testimony of people who
the guards say, "You've got a choice: Find yourself a
husband or fight like a man or also tell them you'd
probably enjoy it."

So the -- I guess it's -- from your experience, my
question is, what are the informal mechanisms of
dealing with some of this when the idea is to diffuse
and get a person out of a dangerous situation as
opposed to a formal report which they probably will
never do because they don't want to suffer the
consequences of being a rat.

Ms. MOSS: Commissioner Nolan, I appreciate that
you brought up a couple of issues. One is the staff
culture and what we need to do to work with staff
culture. I think it's very much related back to
Commissioner Nolan's question about, are the tools and resources there. I think we're talking about and addressing the violence. We're talking about culture change within the facility, and some of that culture change has to come with really working with staff around these issues. And so that the tool is the reporting mechanism, but making the tool work has to do with the staff's will and the inmate's belief and the credibility of that. So that having an objective process where people can report and know that that will happen, makes -- there's some gaps there, and it's going to take some time.

In facilities where I've seen that it really worked with the staff as well as the inmates around this, and have I been consistent and worked through these gaps -- I mean, we are seeing very positive results, I think, but it does take time, and we shouldn't fool ourselves; that if staff is hurting, if their morale is in the pit because they're having to work doubles; they're missing the holidays with their families; they don't feel appreciated, then it just makes that even more serious. But I think having an investigative and reporting mechanism on paper does not mean that we have it in place, of course, but you have to start with having something on paper and in place, and I think that very structure is -- the investigative structure and the reporting structure is still on homework for a lot of agencies, and to make sure that
the inmates know how to report and to look at what are
the multiple reporting mechanisms; that they don't have
to report only to their -- the officer in the housing
unit, they that they can report to any staff member.
And some systems have hot lines that they can report.
Some systems have an outside phone contact they can
call.

But I think we have to have ways and convince and
build that confidence so that it can be done.

MR. NOLAN: But realize, Steve didn't want an
investigation.

MS. MOSS: Right. I knew that.

MR. NOLAN: He wanted to be out of that situation.

MS. MOSS: And he wants out because he
doesn't -- he can't have the confidence that he won't
be hurt.

MR. NOLAN: Right.

MS. MOSS: Which is my point, is that we
have -- that's a hard challenge, but that's the
challenge we have to take on is how you shift that and
make that difference. And it's a difficult thing, but
I believe -- I often tell people this is like -- if you
think about drinking and driving, do people still drink
and drive? Absolutely. Is there a different attitude
about it? Absolutely.

And this is complicated, and I think we have to
understand -- and it's often saying staff sexual
misconduct -- it's a marathon, it's not a sprint. And
we can be overwhelmed by all these issues, but I do
think that there's some starting points that we can
move forward on.

MR. GILLIGAN: I'd like to ask Mr. Thompkins
a question, which I feel you partially answered
already.

I wanted to raise the question of gang violence
and what can be done about it? I feel one of the
standard mechanisms, as I understand it, is try to
separate people from -- who belong to different gangs
so they're not under the same section of the prison or
even in the same prison. And you've mentioned some

ways of diminishing the level of violence.

I'm wondering what your thoughts are. How should
we be dealing with the issues of rival gang members in
the same prison?

MR. THOMPKINS: I don't think there's anything
that we can do to eliminate the presence of gangs
because we're log up gang members. I don't think
that there's much we can do to eliminate totally gang
violence.

The first lines of defense, so to speak -- gangs
monitor each other, okay? In a facility where you have
two or three gangs, right, if both gang members are
controlling the members, they're controlling each other
as well, okay? How do we manage that? When I went
from a maximum security facility, was transferred to a
minimum security facility, I was surrounded by gang
members. But again, they were vested in the program
They were able to take college classes, et cetera, et cetera, et cetera. And understanding they had this opportunity, they took advantage of it.

Now, if we look at the supermax facility, again, what do they have to lose, okay? And within these facilities, the guards are a gang, okay? The gang members coming into the facility, as someone said earlier today, they're sitting in a cell 23 hours a day, they're still able to communicate with the outside community.

I was asked to do something in LA for a radio station that was concerned with how it was the gang members in supermax facilities are still able to communicate with the outside world, and as they put it, continue their criminal enterprise. Well, it's only possible if you have a supportive staff, okay? We need to think about -- for example, I understand California was segregating offenders now by race. Some facilities were putting African-Americans together.

Well, come on. Just because we're African-American doesn't mean we all agree, okay? So you're putting people within these facilities who are members of rival groups. So that in itself is going to breed. Because, look, we're talking about competition for scarce resources. The prison community shares many similarities with outside intercity poor communities. Don't get away from that, don't ignore it.

So putting gang members of one race within a facility, that's not going to solve the problem; it's...
going to create it, okay?

I think that what we need to do is recognize that we have gangs in prisons and we hold them accountable, okay?

David Kennedy, who is now at John Jay, helped develop a process whereby persons in the community were being held accountable. Help hold members and gang leaders accountable for their actions, okay? Make them responsible, because you're not going to eliminate the gangs. They're not going anywhere because that's who we're locking up. So let's recognize they're there and create a process where we make them accountable and use them to police each other. Use the leadership. I'm not saying that you sanction the gang or I'm not saying that you promote gang activity. I'm saying, let's be honest. Gang members are in prison. We need to make them accountable, and in doing that, some would say, well, you're empowering them. Maybe we are. Maybe we are, but let's make them accountable, and let's think about the strategies we're using such as putting African-Americans in one facility, white offenders in another facility, Hispanic, Latino in another. That's not not the solution. That's not the solution.

I hope I answered your question to a degree.

MS. SCHLANGER: I see that it's one o'clock. And I have a feeling that the chairs of this Commission would like us to absorb the ten minutes extra from here
rather than go late. So I think that we'll call it an
end to this panel.

Let me one more time thank the panelists for
coming. I know I learned a lot from this session.

MR. KATZENBACH: Just a few words in closing, and
I'm sure John has something to say also.

It was less than two months ago that we announced
the formation of the Commission on Safety and Abuse in
America's Prisons. We were then and are now 21 people
with 21 different experiences; 21 people with diverse
views on what the problems are in our jails and
prisons; 21 people who never even had a conversation
about it. The past two days have been full of personal
stories, professional accounts, lessons learned,
opinions about what should be done. We have spoken
with witnesses. We've spoken with each other. It's
been an engaging, interesting, educational time talking
and listening about our jails and prisons.

So as we conclude the first of the four hearings,
the Commission will hold across the country over the
course of the next year, I think we leave as a group
who is whole and I believe will be and will become
stronger than the sum of its parts.

On behalf of the Commission all of you, I want to
thank all the witnesses who have traveled from near and
far to participate in the hearing. I want to thank all
the welcome we've had from the people of Tampa, and I especially want to thank the staff who has worked so hard and so long to make it all look so easy.

Thanks.

MR. GIBBONS: Well, I certainly agree with Nick that we've learned a great deal over the course of the past two days. Some of that testimony was extremely troublesome to me, although not surprising. But there were also hopeful moments in which we heard the men and women who were working so hard to improve our jails and prisons, and that wasn't surprising either. I have renewed confidence that this Commission on Safety and Abuse in Prisons has the potential to make a difference in the lives of inmates, correction officers and their families, and in society at large.

As I listened to the concerns of those and the stories of those who work in our corrections world and of those who have served time in our jails and prisons, I'm certain that as this Commission develops our findings and recommendations, those findings and recommendations will lead to constructive change because of the skill, the strength, the commitment and the openness to constructive suggestion of those men and women who work in corrections and who really want to do the right thing.

One theme in particular that the Commission will be returning to in the future is the need for more transparency in the operation of our jails and prisons.
Transparency will provide much of the data concerning safety and abuse that is sorely missing. It will allow the public and policymakers to move beyond the anecdotes of violence and the broad generalizations about inmates and corrections officers and to really understand in a concrete way what goes on behind the walls and behind the bars.

We look forward to our next meeting in New Jersey in July when the Commission on Safety and Abuse in American Prisons will look at some of the significant factors that influence the conditions of safety and abuse in our jails and prisons like overcrowding, poor medical care, and medical health treatment, and the excessive use of isolation and the privatization of certain correctional facilities.

Thank all of you for joining us this week in Tampa, Florida. We've only begun this important work and we look forward to working with both the members of the Commission and our future witnesses in concluding what we hope will be a valuable report.

We're adjourned.

(The hearing was concluded at 1:19 p.m.)