

WITNESS PANEL: ROUNDTABLE DISCUSSION ON VIOLENCE

22 MS. SCHLANGER: Like the other commissioners, I  
23 want to begin this session, which is our last one of  
24 the day, by welcoming and thanking our panelists, who  
25 are Ken Adams, John Boston, Andie Moss, and Doug

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1 Thompkins. I'll introduce them in just one  
2 minute.

3 As you can, perhaps, tell from the fact that I'm

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

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

24 We've been talking already this morning about  
25 dividing the broad topic of violence in jails and

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1 prisons into three categories of intra-inmate violence,  
2 inmate violence against staff, and staff violence  
3 against inmates.

4 Let me start by just saying a word or two about  
5 this that can maybe can help set our conversation  
6 going. It seems, from what people say, that

7 intra-inmate violence is one of the most frequent and  
8 most serious categories of violence in jails and  
9 prisons, and it ranges from beatings to rape to murder,  
10 and it inevitably it's even more serious than its  
11 numbers because it casts this wide shadow of extortion  
12 and coercion around it. So we'll talk some about that.

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

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

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

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

8 In any event, I guess what's clear and what I'm  
9 hoping to develop in the course of this conversation  
10 with the panel after this -- you know, all the talking,

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11 is that each of these sources of violence has its own  
12 dynamics that require its own policies and solutions,  
13 so we need to be careful to keep things separate  
14 sometimes; that gang and racialized fighting and  
15 predation are dissimilar in many ways for more  
16 individual situational violence, and that both of these  
17 are distinguished from the serious problems facing and  
18 caused by inmates with mental illness or mental  
19 retardation. It's sometimes useful to pull these  
20 things apart for the conversation.

21 In any event, I hope that in this panel we will  
22 gain some additional insights into these dynamics.

23 So again, the format. We'll run for 80 or 90  
24 minutes. We're ten minutes late, so probably will eat  
25 that time in this panel, I suppose, and run for 80

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

6 Okay. So let me move on to introductions. I'll  
7 try to do this in order. Ken Adams has been working to  
8 further understanding of violent misconduct in jails  
9 and prisons for other 20 years. His current academic  
10 appointment is at the University of Central Florida, so  
11 he, unlike some of us, was able to drive here today.

12 Professor Adams is a co-author with Hans Toch with  
13 three books about inmates' maladaptive behavior in

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prisons including most recently, "Acting Out:  
15 Maladaptive Behavior in Prison." It's a book that was  
16 published in 2002.

17 John Boston has been counsel at the Prisoners'  
18 Rights Project of the Legal Aid Society in New York  
19 since his graduation from NYU Law School in 1976. He  
20 served as the project's director since 1991. In that  
21 capacity, he's been part of litigation that has  
22 challenged conditions at the very large jails that make  
23 up the New York City jail system and other correctional  
24 facilities in New York State as well. He's an author  
25 of the Prisoners' Self-Help Litigation Manual" and

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1 numerous guides for prisoners' advocates, especially  
2 regarding the intricacies of the Prison Litigation  
3 Reform Act.

4 Andie Moss was Assistant Deputy Commissioner in  
5 the Georgia Department of Corrections in the early  
6 1990's, where she was responsible for ensuring  
7 compliance with the mandates of a major class action  
8 lawsuit, Cason vs. Seekinger, I think, which dealt with  
9 staff sexual misconduct. Since then, she's remained  
10 deeply involved in that issue, as well as intra-inmate  
11 sexual misconduct issues. She's worked for the  
12 National Institute of Corrections and also with the NIC  
13 on implementation of the new Prison Rape Elimination  
14 Act, which is one of the things that I hope she'll tell  
15 us about a little bit.

16 She's consulted on site with over 40 correctional  
17 institutions to help her come to grips with the

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18 assessments and solutions of sexual misconduct behind  
19 their walls.

20 Doug Thompkins is a faculty member of the John Jay  
21 College o Criminal Justice as well as a doctoral  
22 candidate at the University of Illinois. His academic  
23 work and teaching is focused on violence behind bars.  
24 He's done ethnographic work in the area and he also  
25 has personal experience to draw on. He served time in

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1 an Indiana prison and was a leader of the gang Gangster  
2 Disciples, street gang.

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

10 MR. ADAMS: Well, in terms of inmate-on-inmate  
11 violence, it's difficult to give a precise figure or  
12 estimate of how often this occurs or what the incidence  
13 rate might be in prisons throughout the United States.  
14 I can say generally that, A, it's a substantial and  
15 significant problem in that, B, the problem varies.  
16 There is considerable variation within prison systems,  
17 even within prisons by different settings within the  
18 system, different cell blocks, different arrangements.  
19 So there is no one figure that would capture all of  
20 that variety.

21 But let me give you just a few examples of things  
22 I came across yesterday just on a quick Internet  
23 search. The New York City Department of Corrections,  
24 which runs the jail system there, reported in 1995 that  
25 it had 1100 slashing and stabbings, so quite a large

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1 number.

2 A survey of U. S. prisons, in which 40 prison  
3 systems responded, in 2001 indicated that there were  
4 124 suicide attempts and 1830 attempted suicides, and  
5 that 17 inmates were killed by other inmates in the  
6 United States.

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

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

16 Let me just briefly comment on why it's difficult  
17 to give precise estimates on this. First off,  
18 violence, even inmate-on-inmate violence that we now  
19 are concerned there, covers a wide range of behaviors,  
20 there's a wide spectrum of acts that are involved. For  
21 example, we have sort of standard-type crimes, murder  
22 assault, robbery. In prisons, as in the street  
23 setting, these can occur with weapons or without  
24 weapons. We have sexual violence, which is of special

25 concern within prison. We have group violence, riots

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1 and disturbances. And while sometimes those violent  
2 acts are directed against staff, very often  
3 inmate-on-inmate violence that occurs in a riot or  
4 disturbance context. We have gang-related violence,  
5 which varies by the prison system, and we have  
6 self-directed violence, suicide and self-injury.

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

16 Now, in terms of understanding the numbers, you  
17 know, we have to recognize that the official records do  
18 not capture all of the events. They're subject to a  
19 number of non-reporting and other biases. In terms of  
20 the non-reporting bias, for example, inmates are not  
21 often willing to come forward and to admit or to make  
22 known that they've been victimized. Depending on the  
23 context, there may actually be norms in the prison  
24 against this. I mean, if you're a man, you take it as  
25 a man and you deal with it later, you don't go running

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1 to the authorities for help. Sometimes activities are  
2 sort of seemingly consensual, but they're actually the  
3 result of coercion and threats of violence. As in some  
4 sexual activities, they might seem on the surface to be  
5 consensual, but they're not. And sometimes incidents  
6 are presented in different lights such as inmates  
7 getting assaulted, and the incident gets reported as an  
8 injury or a fall or something like that, and it winds  
9 up on the hospital record. So in that context, there's  
10 a wide range of activities. We have very a imperfect  
11 and imprecise systems for monitoring this. In fact,  
12 it's very hard to know.

13 I'll just give you one quick example. I found a  
14 survey, which was sent to 50 states, and they were  
15 asked about the number of disturbances in their prison  
16 system. Ten of the states could not or would not  
17 report, representing 20 percent of the states. Among  
18 the other 40 states that reported, they had  
19 approximately 2800 incidents, disturbances that were  
20 reported as having occurred in that year, and of that  
21 2800, believe it or not, 2300 came from Tennessee.  
22 Now, I don't know what's going on in Tennessee. I  
23 doubt it's that dangerous of a place. I haven't been  
24 to their prisons. But as you can see, how they define  
25 an incident, how they -- the kinds of systems and

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1 mechanisms they have for recording these behaviors  
2 have a large influence on this.

3           Let me just say also, quickly, in terms of  
4           thinking about violence and types of violence, very  
5           often psychologists make a distinction between what the  
6           call instrumental violence and expressive violence.  
7           Instrumental violence is premeditated, it's calculated,  
8           it's motive driven, and it's goal directed. Expressive  
9           violence tends to be impulsive, emotional, spontaneous.  
10          And both of these types of violence occur. And the  
11          situations are very different between express and  
12          instrumental.

13                 Also, I'll just mention quickly, some of the  
14          themes, the motives or the psychological themes that  
15          often come up in these violent incidents -- and this  
16          has been documented in a variety of observational and  
17          other studies -- sometimes the violence involves anger  
18          or retaliation or revenge. This may be a particular  
19          characteristic of gang-related violence, or protests,  
20          protesting the conditions. Intoxication, believe it or  
21          not inmates find access to alcohol and drugs within  
22          prison context. Mental instability, a mentally ill or  
23          perhaps mentally retarded inmates. There is  
24          self-protection or preemptive strike that may occur.  
25          There's fear often coinciding with that self-protection

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1           of preemptive strike. There's bullying, and then  
2           there's saving face, which has to do with how one is  
3           viewed and presented within the larger prison context,  
4           okay? And that actually is a very important theme  
5           because inmates are painfully aware of how they are  
6           viewed and how they are looked upon by other inmates.

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7 In fact, it's a very important feature of the prison  
8 setting. So this gives you some idea of the different  
9 themes and dynamics that go on. So, again, you would  
10 see that there's a lot of variety in terms of these  
11 behaviors. Different acts may have very different  
12 underlying themes. And if we're going to try to  
13 understand those behaviors, we have to dig a little  
14 deeper and try to figure out just what is going on.

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

17 MR. THOMPKINS: Okay.

18 MS. SCHLANGER: -- Professor Thompkins.

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

22 MR. THOMPKINS: Excuse me.

23 When we talk about policy, my concern is with the  
24 effect of the policy changes over time and the changes  
25 in institutional structures. Some of these policies

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1 can in fact create new opportunities for types of  
2 prison violence and also increase levels of prison  
3 violence. When we think of -- as we heard earlier  
4 today -- shifts in policies such as are creating the  
5 supermax facilities, we have higher levels of violence,  
6 different types of violence across these types of  
7 institution, and a lot of the violence that is  
8 expressive is in response to increased levels of  
9 perceived deprivation and so forth.

10 MS. SCHLANGER: One of the things that  
11 Professor Adams just mentioned -- this is also for  
12 Professor Thompkins -- was about gang violence. And  
13 I've heard from a number of commissioners that they'd  
14 like to talk more about gangs and the particular  
15 issues. So I don't have a specific question, but could  
16 you tell us about that?

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

25 I recently came out of the field in June after

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

11 The policies in terms of a cross-race, those gang  
12 policies that we find being implemented and used within  
13 society, those criminal justice policies, are used

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14 within correctional facilities. So if you look across  
15 race, for example, the largest percentage of persons  
16 within the supermax facilities happen to be men of  
17 color. And when you say they're "men of color," it's  
18 because we're talking about this racism proxy for  
19 dangerousness. It's uneven in terms of who's going to  
20 be placed within these facilities, and then once there,  
21 if you're talking about a facility within a rural  
22 community, the staff, they act out gang behavior  
23 because they know each other. So this us versus  
24 them ethos is created, and gang activity becomes a  
25 means by which offenders can survive.

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

8 Recently we're finding in some states that the  
9 differences that have divided in the population,  
10 they're going away. There's a common sense identity  
11 in terms of the pressures and the problems that are  
12 being encountered. So the policies, when I think of  
13 tobacco ban, the literature tells us when we talk  
14 about prison violence that it is management practices  
15 and changes that often lead to an increase in this type  
16 of behavior. It also tells us that the informal

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17 economic structure, the informal inmate organization  
18 has helped to reduce levels of violence.

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

24 MS. SCHLANGER: So are you saying that one of the  
25 things that a Commission like this should think about

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1 is recommending doing away with the tobacco ban?

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

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

17 MS. SCHLANGER: To sort of continue to lay the  
18 basis of this conversation that we're having, let me  
19 move to sexual violence in both men's and women's  
20 facilities. So this is a question really direct at

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21 Ms. Moss. And the question is just, you know, again,  
22 what are the general dynamics, how are they different?  
23 And maybe here, since you've been so involved in the  
24 solutions, what are the promising solutions?

25 MS. MOSS: that's sort of a big charge, but I am

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1 up to it.

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

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

16 I think in your introduction and the setup of this  
17 panel I have the following comments: It's very clear  
18 that there are -- it's multidimensional when we look at  
19 these dynamics, when we're talking about violence and  
20 then when we talked about sexual violence. And then  
21 you talk about male facilities and female facilities.  
22 So you're really looking at many sort of layers of  
23 issues. And I think that's really important in

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informing us because the strategies have to be multiple  
25 strategies. One size does not fit all. I think that

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

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

23 And when we look at male violence or look at male  
24 institutions and sexual violence, I think we had  
25 some very intense testimony here yesterday. I think we



1 understand that the dynamics do tend to bring more  
2 physical violence than you would see in a female  
3 facility, but I think they're great implications for  
4 how we look at working with our staff, preparing them  
5 to work with the population. And also I'm a great  
6 believer that we have to do inmate orientation. We  
7 have to give them multiple ways of reporting sexual  
8 activities and violence. There's a strategy that I  
9 think is very important for a leader to look at in  
10 terms of, do I have certain management tools in place  
11 to begin to address these issues. And I'd be happy to  
12 expand on those a little bit more when it's  
13 appropriate.

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

21 MS. MOSS: Well, I think it's both. I think you  
22 have to look at the sexual violence part of it because  
23 it's part of one continuum. I think to understand  
24 that -- we have to understand that there is sexual  
25 violence that is physical harm and coercive. I think

1 we really understand, which we have to if you're going  
2 to look at violence in institutions, I think you have

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3 to unpeel the onion, you have to -- we've heard so many  
4 people talk about we have to look at the culture, and  
5 that's so critical.

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

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

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1 And let me just go through, for the purposes of  
2 this discussion, and talk staff sexual misconduct and  
3 violence. So I would like to see if they have written  
4 policy, and is the staff trained on that policy, and  
5 not trained in a way that they're just signing off on a

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policy, but trained in a way that the dynamics are  
7 discussed in terms of staff inmate dynamics,  
8 professional boundaries are discussed; people  
9 understand what is appropriate behavior as well as  
10 understanding what's prohibited behavior. So look at  
11 training. Who gets training, and it should not just be  
12 custody staff, correctional officers. It's a myth to  
13 think that sexual misconduct, particularly in women's  
14 prisons, is about officers having sex with the women.  
15 It's about psychiatrists, about food service,  
16 maintenance, any -- you know, I've seen every job  
17 classification involved. So looking at the training,  
18 looking at the training for staff, looking at the  
19 training for inmates; are they oriented towards  
20 reporting mechanisms. Do they know how to record any  
21 misconduct or violence? Do they understand their  
22 role in creating a healthy environment and healthy  
23 culture? And that's very important training.

24 I would look to see if the programs are meeting  
25 the needs of the inmates or if they're programs that

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1 are on paper. And that's very critical, and someone  
2 else brought that up during our time here. That if the  
3 inmates are engaged with productive programs, they  
4 become very much a part of the solution.

5 Many, many of our inmates really want to turn  
6 their lives around. I'm very strong -- feel very  
7 strongly that if we can create hope-based environments  
8 instead of fear-based environments that all of these  
9 things will work together to provide the solutions that

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

7 And so when we talked about cultural change,  
8 whether it's organizational or institutional or working  
9 with the public, I think that we have to start with  
10 getting certain tools in place that sends the message  
11 that it is a new day and that staff understand the  
12 structure around what it is we're trying to create

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14 within the culture of the facility.

15 MS. SCHLANGER: I'm going to ask one more question  
16 related to this topic, which is, are there solutions  
17 that have been tried that don't work? I mean, are  
18 there false leads?

19 MS. MOSS: I think it's more -- it's more attitude  
20 and not following through. I understand why people  
21 say, "Well, this is about a few bad apples." And while  
22 that's true, because I'm a -- you know, I'm a very  
23 proud practitioner, I'm very proud of my  
24 profession and the people I work with. And so I  
25 understand that "it's about a few bad apples." But if  
we take that approach and don't put in systemic ways of

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1 addressing the issues, and if don't prepare ourselves  
2 and urge and hold ourselves accountable to create  
3 cultures where people can become healthy and the  
4 institutions can become healthy; then if we use the  
5 "few bad apples" theory and that we can't do anything  
6 about it, I think that's one of the things that is the  
7 most difficult to break through because there is much  
8 that we can do, and much of what we can do does not  
9 cost money.

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

11 MR. THOMPKINS: I agree with what's been said. My  
12 concern is that for a long time we talked about prison  
13 communities as total institutions as though they were  
14 shut off from the outside world. Today, most of us  
15 who do this type of work would agree that they're not  
16 total institutions. There is great influence from the

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17 outside. At the same time, they are total closed  
18 institutions when it comes to illegal criminal deviant  
19 behavior within the facility. There is a push, a  
20 drive, a need to sort of hide, keep secret what takes  
21 place. So we can talk about the number of reported  
22 cases of X, Y, and Z, but the reality is, that's just a  
23 small percentage of what is actually going on.

24 Another point is, to date we now have women  
25 working in male facilities. So when we talk about

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1 sexual violence, we talk about sexual misconduct. We  
2 need to look at that as well. We need to look at the  
3 gender issue in terms of how a woman's sexuality, who  
4 is a staff member, how that's used to both gain  
5 information from offenders. We need to look at the  
6 relationships that are developing between male  
7 offenders and female staff.

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

18 MS. SCHLANGER: Let me bring John Boston into this  
19 conversation. Do you want to speak to that or should

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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

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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

24 that we can do about that. Where it's the fact that  
25 they signed on to that union contract sort of gets lost

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

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

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

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

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

21 MR. BOSTON: Well, I think it's a pretty serious  
22 problem, and I think it's also serious to people like  
23 Mr. Sean Davis, who is involved in one of our pieces of  
24 litigation in New York City, who sustained a ruptured  
25 eyeball from being kicked in the face by a correctional



1 officer while on the floor in a holding pen in one of  
2 the new York City jails. When he was kicked by a  
3 correctional officer, it was part of an incident where  
4 he was being beaten by several officers.

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

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

1 will come away with a broken hand. You can talk about

2 that as being some sort of rough justice, but I don't  
3 think that that is a particularly good outcome for  
4 anybody to have an officer injured for whatever reason.  
5 So, yes, I think it's serious in that sense.

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

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1 do -- or of lying.

2 So you have a situation where the actions of some  
3 staff members in effect have a widening, corrupting  
4 effect on the acts of other staff members. And it  
5 doesn't even stop at the use of force because if staff

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6 members become accustomed to lying or looking the other  
7 way, non-reporting about one thing, don't you think  
8 it's likely that they'll be prepared to lie, to look  
9 the other way about other things?

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

16 And the third aspect in which I think excessive  
17 force by staff members is important is, you know, these  
18 institutions are there ultimately for the purpose of  
19 trying to get people to obey the law. Even the  
20 pre-trial institutions -- such as the ones that I am  
21 primarily involved in -- are there as part of a process  
22 that is supposed to elicit lawful behavior from  
23 people in the long run. And what happens if the people  
24 that you are trying to correct go through the system  
25 and see lawless behavior that is covertly accepted and

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1 that goes unpunished? What do they think if the  
2 very institutions that are nominally trying to elicit  
3 lawful behavior from them engage in unlawful behavior  
4 themselves on a regular basis? I suggest to you that  
5 the credibility of the idea that once you lead a law  
6 abiding life is going to be seriously damaged when a  
7 criminal offenders and accused criminal offenders  
8 cement spectacle in the very nstitutions that are

9 Transcript of first hearing\_part 3.TXT  
supposed to be correcting them

10 MS. SCHLANGER: Let's get back to solutions a  
11 little bit. I mean, all of you must have experience  
12 with -- as I said, the instructional assistance that's  
13 gone some distance towards solving the problem. I'd  
14 be interested to hear on each of these problems what  
15 those systems -- you know, what seems to be the  
16 promising steps that those kinds of systems have  
17 taken?

18 MR. BOSTON: Well, let me follow up on my previous  
19 remarks because we have seen some examples of how these  
20 problems can be corrected in the New York City jails  
21 where my office is engaged in a series of pieces of  
22 litigation which have had very successful outcomes;  
23 not just in the sense that we have a favorable judgment  
24 that we can wave around, but that in fact they have  
25 gone considerable distance towards restoring lawfulness

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1 and peace to some of these institutions. And I say  
2 "some of the institutions." One of the sad lessons we  
3 have learned is that in the system we are dealing  
4 with reform isn't rolled out. Reform is quarantined.  
5 But nonetheless, it has happened in limited ways.

6 First, I think the thing that you have already  
7 heard today from others is absolutely correct; that a  
8 commitment by the leadership of the institutions to  
9 stop excessive force and to require that force be used  
10 only to the extent necessary is the absolute essential  
11 sinequan known. That may sound paradoxical when I come  
12 to you as a litigator who is bringing coercive pressure

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13 from outside into the system, but it's not paradoxical  
14 because sometimes it takes external pressure over  
15 internal oversight to elicit internal leadership or to  
16 make it clear that only a leadership on this issue will  
17 make the external pressure go away. But within the  
18 broad structure, that there has to be a commitment by  
19 the people running the institution to curb lawless,  
20 violent behavior by their staff.

21 There are very identifiable steps that have to be  
22 taken in order for that leadership to have more than a  
23 rhetorical affect: One is supervision. The daily  
24 actions of the people in charge, the daily statements  
25 in dealing with their staff members; that is,

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1 commitment has to be expressed not in press releases or  
2 statements made when people are dragged into a  
3 courtroom, but also it has to be stated and acted out  
4 to the staff on a daily basis.

5 Second, the use of force incidents must be  
6 reliably reported and they must be fairly  
7 investigated. One of the things that we have seen  
8 entirely too much of is the nod and wink investigation  
9 where, for example, when an inmate says, I was struck  
10 by an officer in a particular place, and there's no  
11 mark there; it didn't happen. But when an officer says  
12 the inmate struck me and I therefore had to use X  
13 amount of force to subdue him, they don't  
14 even ask whether the officer has a corresponding mark  
15 or injury to document the claim that the inmate

16 Transcript of first hearing\_part 3.TXT  
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

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

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

17 Discipline of staff who violate the rules is  
18 absolutely essentially. And one of the things that one  
19 sees -- this crops up in police organizations as well

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20 as in prisons -- is that even when the organization  
21 gets to the point of making a judgment that this person  
22 has broken the rules and something ought to be done,  
23 somehow nothing happens. Somehow the disciplinary  
24 prosecution languishes, somehow a reason is found that  
25 it can't be pursued, and they are left to wither

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1 or they are left to odd. You know, they are delayed  
2 for so long that the move -- the delay itself becomes a  
3 reason to dismiss the disciplinary prosecution.

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

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

21 The other half of the problem is providing a  
22 decent environment in which prison staff can work and

23                    Transcript of first hearing\_part 3.TXT  
24                    to avoid the sort of "occasions of sin," you might call  
25                    them, the factors in the prison environment that may  
                     lead people to perform actions that while they are

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1                    completely uncondonable, nonetheless they make the  
2                    behavior understandable and they need to be dealt with  
3                    in order to control the behavior:

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

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

25                                       Training the staff adequately. Sometimes I



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

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

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

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

1 suggested and persuaded the Department of Corrections

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2 that you require people to qualify every year in the  
3 use of firearms if they're going to carry a firearm.  
4 Well, you know, why don't you make them qualify in this  
5 unit that you say "holds the worst of the worse," why  
6 don't you make them qualify every year in the tactics  
7 of using their hands or not using their hands to  
8 control the prisoners, and that's been accepted, and I  
9 think that's made a contribution. Why that idea had to  
10 come from the Legal Aid Society as opposed to the  
11 Department of Corrections is a question that I leave as  
12 an exercise to the audience.

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

25 So that in a nutshell is what I think our

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

3 MR. THOMPSON: Excuse me. I want to suggest to  
4 the Commission that we consider creating an independent

5 Transcript of first hearing\_part 3.TXT  
6 office, okay? Creating an independent office for  
7 investigation of complaints. Currently we do have,  
8 most Departments of Corrections do have an office where  
9 inmates write their letters, family members write their  
10 letters alleging violence, et cetera, et cetera, but  
11 those offices were have not be empowered. The  
12 individual holding that office has very little power.  
13 The decisions, or rather the recommendations that are  
14 made by these persons are usually just pushed to the  
15 side. So if we can develop an independent office and  
16 empower that person, give that person open access to  
17 enter the institution to talk to people, both staff and  
18 to offenders, to talk to staff in private, in secrecy,  
19 we may come a long way and go a further distance than  
20 trying to resolve some of this.

21 Prison violence is something that is kept secret.  
22 When we talk about a peaceful facility, as long as  
23 there's a -- there are a few escapes, a few reported  
24 incidents of violence, there is a visible sign of  
25 control, but that visible sign of control is just on  
the surface. Within the prison community itself there

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1 are many numerous acts of violence that go unreported.  
2 And when they are reported, they're just pushed to the  
3 side. So this independent office would be in a  
4 position to really do investigations and make  
5 recommend.

6 MS. SCHLANGER: Let me ask about possible  
7 solutions of one more issue, and this is for Ken Adams.

8 What about inmates with mental illness, mental

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9           retardation, are there solutions that you've seen that  
10           go some distance towards solving their vulnerability  
11           to other inmates or their -- the number of run-ins  
12           that they have with staff? What are some solutions  
13           there?

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

15           MS. SCHLANGER: Absolutely.

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

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

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

11           I think the other thing to keep in mind is

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

21 In any case, speaking about the mentally ill,  
22 we're in a position -- thanks to the  
23 deinstitutionalization, which happened in the  
24 1960's -- where many people were taken out of hospital  
25 settings, put in the community, and the support

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1 services are not there. Prisons tend to be the backup  
2 support service for just about everything in society.  
3 When we don't know what to do with people, they wind up  
4 usually in prison, and so prisons take on a whole host  
5 of social roles other than just punishment of  
6 offenders.

7 In this context with mentally ill, we've also  
8 moved to a sort of therapeutic regimens that heavily  
9 concentrate on drugs, on pharmaceuticals, and for the  
10 most part, this has been good. There are some  
11 wonderful pharmaceuticals out there that do amazing  
12 things in terms of helping people along, but that's not  
13 the sum total of treatment in terms of what these  
14 people need. They need more than that. Furthermore,  
15 we've gone to a system where we basically have acute

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16 care hospitalization for the mentally ill. They get  
17 committed, they do about 30 days or so, maybe 60 days  
18 in a hospital for the, quote, unquote, "criminally  
19 insane." They come back, they spend about -- as they  
20 used to -- as they used to say, "They go into the  
21 hospital for a tune-up." They're good for 10,000 steps  
22 when then come back, but then they have to go back for  
23 another tune-up. So you get this sort of shuffling  
24 back and forth between prison and the hospital, prison  
25 and the hospital where what you've got is a prison

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1 career that's punctuated by 30-day acute care  
2 hospital stays with no real follow up within the prison  
3 setting.

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

13 For example, New York State reoriented its  
14 mental health care for inmates by turning it over to  
15 the Department of Mental Health. It is no longer the  
16 responsibility of the Department of Corrections. That  
17 made a tremendous change because now medical  
18 professionals who deal with mental health issues for a

19 Transcript of first hearing\_part 3.TXT  
living are setting the treatment standards, are setting  
20 the standards for records and for use of  
21 pharmaceuticals and things like that. And they also  
22 established within the prison the group of units  
23 called Intermediate Care Units, which is sort of a  
24 halfway house, halfway between the prison and the  
25 hospital. These are less intensive than hospitals but

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1 provide more support than prisons, and this has made a  
2 big difference in terms of facilitating the adjustment  
3 of these people.

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

15 So when we think about prisons, you know, we have  
16 to think about creating multiplicity of environments  
17 within the organization that are suited and adapted to  
18 the needs of particular groups of people, and if we  
19 start thinking that way -- and prison staff can be very  
20 instrumental in helping to think about that and how to  
21 implement that. Or we can breakdown this notion of  
22 sort of the monolithic prison -- "the prison,"

23 right -- and think about the sub-environments within  
24 that prison and trying then to create environments that  
25 facilitate people's adaptation and increase their

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1 chances of success with them.

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

8 Yes --

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

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

23 MR. MAYNARD: And I would agree with the need for  
24 leadership in front of training to enforce that and  
25 make sure that it's understood and carried out.



1           Do you think most corrections administrators move  
2           in a direction of organization improvement based on  
3           litigation or coercion or do you think a lot of them  
4           want to move that direction for it being the right  
5           thing to do?

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

12          MS. SCHLANGER: Senator Romero --

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

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

22          I've visited many of the yards of our prisons in  
23          California, and I would say that if I go to our level 4  
24          yards, our more maximum yards that to some extent  
25          prison gangs play a role in maintaining the management

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1 of the prison. So even if we talk out of one side of  
2 our mouths about reducing violence, it has been my  
3 observation that violence plays a very profound  
4 role. If I lock-down, I don't have to program, and  
5 if I don't have to program -- especially at the end of  
6 the fiscal year when again two legislators are going to  
7 come to the wardens and say, "You've overspent your  
8 budget. I don't have to program, I saved money."  
9 So I'd like to hear your observations on that.

10 And then also again -- also on a grading note of  
11 12, with respect to women and sexual violence, sex also  
12 is a strategy. And in terms of looking at how inmates  
13 survive and cope and live and exchange and gain powers,  
14 sex is a very powerful tool, and I guess the question  
15 would be -- whether one condones or not -- do we need  
16 to also think about sexual strategies for living in a  
17 prison; and if we look at it in this sense, and  
18 it's hard to put it out, but I think that at least from  
19 what I've observed -- I want to go ahead and say it,  
20 how do we respond and then what recommendations might  
21 we have?

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

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

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

4 And I had officer say to me recently, "You know, I

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

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

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

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9 what are the boundaries, they don't understand that.

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

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

25 And yes, I think there will be recommendation. I  
think those of us who work in the area already have

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1 some recommendations in terms of the -- that's why the  
2 importance of programming for women. If they start  
3 understanding their own victimization cycle -- I've  
4 seen it happen, it usually takes three to five years in  
5 a facility where the culture really shifts and where  
6 the women start monitoring themselves, when they really  
7 have the tools.

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

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

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

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

7 But one think I can tell you is that correctional  
8 professionals from wardens on down are concerned about  
9 violence. They are looking for the tools to deal with  
10 it. They have a lot of experience in terms of trying  
11 to understand it. Sometimes that experience is not  
12 fully formed or in a form that they can implement,  
13 right? But if they choose to make violence reduction a  
14 priority and put that at the top of the list, I think

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15 that some really important strides can be made, and  
16 they don't have to involve tremendous outlays of money.  
17 For examples, in New York State, at least some of  
18 the prisons that I've seen, the staff will routinely  
19 rely -- the correctional staff will routinely rely on  
20 the mental health staff to come in and try to diffuse  
21 situations and try to work through potentially violent  
22 scenarios. Now, those people are on call, anyway.  
23 They're being paid, you know, they're available. But  
24 what we have to do is talk to the officer about how do  
25 you recognize when situations escalate? How do you

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1 begin to understand when things are going to go out  
2 of control? How do you analyze your range of options  
3 that you have and then select the option that's most  
4 appropriate for the scenario?

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

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19 involve violence, they would love to have people they  
20 could call on to assist them, you know. So it doesn't  
21 have to be overly expensive.

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

24 I would hope that I we would not get to the point  
25 where we consider it specialized training on how to

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1 deal with problematic inmates, but it becomes part of  
2 our routine training of staff and interpersonal  
3 personal communication skills that we don't take this  
4 and make it a mental health issue, we don't make it a  
5 special issue.

6 MR. ADAMS: Right.

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

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

19 MR. ADAMS: I totally agree with you, and I think  
20 that -- well, I think that there should be some common  
21 level of training that deals with this issue and we

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22 should try to set that level high in order to address  
23 the problem.

24 In all these situations you're going to find some  
25 need for more specialized training. And I didn't mean

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1 to suggest it has to be turned into a mental health  
2 problem or bring in a psychologist. Other correction  
3 officers can be trained in terms of skills that they  
4 have. Not everyone is equally flexible, adaptable or  
5 suitable for dealing with all kinds of situations. So  
6 we can find specialty niches for officers to deal with  
7 this. But you're right, issues of communication of how  
8 to diffuse situations, how not to escalate them, how to  
9 know the warning signs, so to speak, the high risk  
10 factors for various scenarios, these are things that we  
11 should be teaching all officers. And in fact, I think  
12 someone mentioned not just officers, all staff because  
13 non-custodial staff are often in positions where  
14 they're observing inmate behavior and can make  
15 important contributions.

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



1 prison violence.

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

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

22 All offenders for the most part are coming back  
23 to society, okay? I was sentenced the first time to  
24 two terms of life in prison, okay? I'm sitting here,  
25 okay? I was a leader of the Gangster Disciples, 2, 3,

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1 400 people under me, in the Indiana Department of  
2 Corrections.

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

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

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

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1 And Steve told a story of two different  
2 institutions he was in where he was being raped and  
3 sold. The first, when he went to his unit

4 manager, he said, "I need to change cells." And the  
5 guy said, "Great. Find yourself somebody to move in  
6 with, and we'll do it." He knew what was going on and  
7 handled it.

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

22 So the -- I guess it's -- from your experience, my  
23 question is, what are the informal mechanisms of  
24 dealing with some of this when the idea is to diffuse  
25 and get a person out of a dangerous situation as

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1 opposed to a formal report which they probably will  
2 never do because they don't want to suffer the  
3 consequences of being a rat.

4 MS. MOSS: Commissioner Nolan, I appreciate that  
5 you brought up a couple of issues. One is the staff  
6 culture and what we need to do to work with staff  
7 culture. I think it's very much related back to

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8 Commissioner Nolan's question about, are the tools and  
9 resources there. I think we're talking about and  
10 addressing the violence. We're talking about culture  
11 change within the facility, and some of that culture  
12 change has to come with really working with staff  
13 around these issues. And so that the tool is the  
14 reporting mechanism, but making the tool work has to do  
15 with the staff's will and the inmate's belief and the  
16 credibility of that. So that having an objective  
17 process where people can report and know that that will  
18 happen, makes -- there's some gaps there, and it's  
19 going to take some time.

20 In facilities where I've seen that it really  
21 worked with the staff as well as the inmates around  
22 this, and have I been consistent and worked through  
23 these gaps -- I mean, we are seeing very positive  
24 results, I think, but it does take time, and we  
25 shouldn't fool ourselves; that if staff is hurting, if

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1 their morale is in the pit because they're having to  
2 work doubles; they're missing the holidays with their  
3 families; they don't feel appreciated, then it just  
4 makes that even more serious. But I think having an  
5 investigative and reporting mechanism on paper does not  
6 mean that we have it in place, of course, but you have  
7 to start with having something on paper and in place,  
8 and I think that very structure is -- the investigative  
9 structure and the reporting structure is still on  
10 homework for a lot of agencies, and to make sure that

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12 the inmates know how to report and to look at what are  
13 the multiple reporting mechanisms; that they don't have  
14 to report only to their -- the officer in the housing  
15 unit, they that they can report to any staff member.  
16 And some systems have hot lines that they can report.  
17 Some systems have an outside phone contact they can  
18 call.

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

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

23 MS. MOSS: Right. I knew that.

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

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

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1 be hurt.

2 MR. NOLAN: Right.

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

11 And this is complicated, and I think we have to  
12 understand -- and it's often saying staff sexual  
13 misconduct -- it's a marathon, it's not a sprint. And  
14 we can be overwhelmed by all these issues, but I do

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15 think that there's some starting points that we can  
16 move forward on.

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

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

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1 ways of diminishing the level of violence.

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

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

10 The first lines of defense, so to speak -- gangs  
11 monitor each other, okay? In a facility where you have  
12 two or three gangs, right, if both gang members are  
13 controlling the members, they're controlling each other  
14 as well, okay? How do we manage that? When I went  
15 from a maximum security facility, was transferred to a  
16 minimal security facility, I was surrounded by gang  
17 members. But again, they were vested in the program.

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19 They were able to take college classes, et cetera, et  
20 cetera, et cetera. And understanding they had this  
21 opportunity, they took advantage of it.

22 Now, if we look at the supermax facility, again,  
23 what do they have to lose, okay? And within these  
24 facilities, the guards are a gang, okay? The gang  
25 members coming into the facility, as someone said  
earlier today, they're sitting in a cell 23 hours a

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1 day, they're still able to communicate with the outside  
2 community.

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

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

20 So putting gang members of one race within a  
21 facility, that's not going to solve the problem, it's

22 going to create it, okay?

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

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

21 I hope I answered your question to a degree.

22 MS. SCHLANGER: I see that it's one o'clock. And  
23 I have a feeling that the chairs of this Commission  
24 would like us to absorb the ten minutes extra from here



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rather than go late. So I think that we'll call it an

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1 end to this panel.

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

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

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

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

23 On behalf of the Commission all of you, I want to  
24 thank all the witnesses who have traveled from near and  
25 far to participate in the hearing. I want to thank all

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1 the welcome we've had from the people of Tampa, and I  
2 especially want to thank the staff who has worked so  
3 hard and so long to make it all look so easy.

4 Thanks.

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

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

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1 One theme in particular that the Commission will  
2 be returning to in the future is the need for more  
3 transparency in the operation of our jails and prisons.

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4 Transparency will provide much of the data concerning  
5 safety and abuse that is sorely missing. It will allow  
6 the public and policymakers to move beyond the  
7 anecdotes of violence and the broad generalizations  
8 about inmates and corrections officers and to really  
9 understand in a concrete way what goes on behind the  
10 walls and behind the bars.

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

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

24 We're adjourned.

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