MR. KRONE: I believe now we're going to continue now with the introduction of the overcrowding panel.

On behalf of the Commission on Safety and Abuse in America's Prisons, I am honored to welcome our three witnesses; Vincent Nathan, Craig Haney and Richard Stalder. The Commission has invited this prominent group of experts to express the causes, implications and consequences of overcrowding in our prisons and jails.

Overcrowding directly impacts both inmates and correctional officers every hour, every day that people are inside of a facility.

This morning we are taking a serious look at how facilities operate above capacity or overcrowding, as we will call it. Many have safety failures, violence and abuse that directly impacts both inmates and correctional officers. Through our witnesses today, we will consider the extent to which overcrowded prisons and jails are more difficult to operate and how overcrowding contributes to the breakdown of social order in a facility, harming both
prisoners and correctional staff.

This panel will address these issues from several complimentary perspectives. Our witnesses have dealt with the challenges posed by overcrowded facilities in different capacities. We will draw upon their experience to develop a balanced report on the state of our knowledge on the link between overcrowding and violence. We will hear about how overcrowding causes systematic breakdowns that result in dangerous conditions. In the academic literature removed from daily experience of the inmates and corrections officers, there is no established connection between overcrowding and violence.

We will hear from our witnesses today about how individual accounts, court cases and media reports, and even our witnesses' own experiences, are more able to make the obvious connection between overcrowding and violence.

Attorney Professor Vincent Nathan has served as a consultant for several state departments of corrections. He has also been retained as an expert in conditions, lawsuits and studied prison violence at University of Toledo Law School.

Dr. Craig Haney, professor of
Psychology at the University of California, Santa Cruz, will help us understand the consequences of deteriorating prison environments to inmates.

Richard Stalder, Secretary of Louisiana's Department of Public Safety and Corrections, has worked with the department for over 30 years in different capacities. He will describe the systematic conditions related to overcrowding problems and how correctional institutions respond.

Let me thank each of you for taking the time to appear at this hearing. Our goal is to learn from your many years of experience and many years of hard work. We are confident by helping us, you will contribute to helping making correctional institutions safer, less abusive and more humane for those incarcerated, and safe for the men and women who work inside. Thank you.

MR. NATHAN: My name is Vincent Nathan. Let me begin by --

JUDGE SESSIONS: Would you pull the microphone up closer. We can't hear you.

MR. NATHAN: Good start. Is that better?

JUDGE SESSIONS: Much better.

MR. NATHAN: Thank you. Let me begin
by thanking the Vera Foundation for inviting me and I would like to thank, as well, the members of the Commission for their expression of interest and concern about the problems we've been hearing about and we'll be hearing about today.

I'm going to focus on the impact of crowding on the operation of a prison or a prison system and attempt to formulate for you a description of the perspective of the conscientious Director, Secretary of Corrections, who is faced with the exceptional difficulty of maintaining a safe and secure and, hopeful, industrious prison system, despite that person's inability to control the size of the population and, in many senses, the resources available to deal with that population.

You notice I used the word responsible as an adjective. In 1965, when I began working in prison and jail litigation, typically as a representative of the federal court, I did not meet very many Directors of Corrections whom I would have described as responsible. Now, let me add a quick cliff note. Special Masters don't go into good prisons as often as they go into bad prisons so I'm not suggesting that everyone with that length of experience or experience at that time was part of the
problem.

But what I can say with confidence is that of all of the things we have accomplished through litigation, through the adoption of internal professional standards, through increased expectations, the impact of efforts on citizens groups and others, of all the things that we've accomplished I think the thing that may have been most valuable has been the enormous change in the prospective attitude and behavior of people at the administrative executive level of corrections in the United States.

We are talking about people, for example -- and I'm going to make a couple of references to my State of Ohio, we're talking about spending almost $2 billion a year and we have a person, Reggie Wilkinson in this case, who is responsible for the operation of almost 40 prisons and some 42, 43,000 inmates and he has qualities of administration and he has a sensibilities and concerns that simply -- that I simply did not see 25 or 30 years ago, and I think that's true of many, many corrections administrators.

Now, the concern that I tried to express in the brief statement that I gave you is that when state governments initially reacted to
correctional overcrowding by ignoring the problem,
we've had a couple things going for us. At first we
had the federal courts, who did step in and who did,
not solve the problem, but accomplished a great deal
and we've had a response to that in the form of
building and expanding; not reducing population, but
making more room. And, of course, that costs a lot of
money and in the '90s money was cheap, it was easy to
budget those kinds of expansions, it was politically
easy and it was at least economically feasible.

As the population increase has
stabilized for at least a little while, or nearly
stabilized, what concerns me so much is that we are
going to see an increase in population soon and that
we are going to find ourselves without the benefit of
the courts for a number of reasons that I outline in
my statement, and we're going to find ourselves
without the money that we had in the 1990s to address
the problem.

The difficulties that administrators
face in attempting to maintain safe institutions, to
maintain staff moral, to prepare prisoners for
re-entry, which is a fundamental responsibility in the
state, to accomplish anything constructive is made so
much more difficult by the inability to do anything
but respond to the daily crises in the form of violence, in the form of staff responses, in the form of deterioration of physical facilities and all of the problems that result from an overcrowded environment, it's a heartbreaking experience for people like Reggie Wilkinson and other directors.

And I remember he said to me -- a couple of years ago he said, you know, we're going to make it, our population is going down, we actually lost -- we pulled our population down by 6,000. Now, that wasn't just happenstance, that wasn't just -- it wasn't because Ohioans quit committing crime, they have a lot of crime in Ohio, they have a lot of crime in all of our big cities in the state, but our legislature began to catch on and we began to decriminalize, we began to take some steps that resulted in reduced incarceration. And then the money went away. And what have we done?

We've closed three or 4,000 beds to save money because we don't have any money for our colleges, we don't have any money for maintenance of Medicaid, we don't have money for secondary education. And even though the corrections department continues to be the only state agency with an increase in its budget, that increase is marginal compared to what it
was accustomed to.

And so, as I point out in my written remarks we continue to, as many states do, double cell inmates who have just walked in the front door of the prison, we know nothing about them, we have no idea how two men or two women will respond. In fact, turning to women, the intake facility for women in Ohio maintains 250 women in one dormitory before they are classified. Now, if classification means anything, that kind of crowding and the resultant response that is inevitable, simply turns the concept on its ear.

We have an opportunity now, it seems to me, while we enjoy the benefits of reduced pressure on intake, to begin to think seriously about the number of prisoners a particular jurisdiction is prepared and able to accommodate financially, physically and to develop policies that will bring our system into some form of balance. If we do not accomplish that, we are going to lose what I think is the most crucial -- the most crucial resource we have today to take the improvement of prison to the next stage, and that is the talent that we see in a large number of directors, a substantial number of wardens and deputy wardens and captains and majors and line correctional officers who
really feel differently about what they do for a 
living than they did 30 years ago, and who are 
prepared to make prisons work.

And if we say no, by our actions, we 
don't want to help you make it work, perhaps they will 
leave and when they do, they will replace -- they will 
be replaced by people who are willing to accept the 
status quo and work from there, and that's what we had 
for so long and that's what produced the problems of 
the '70s, the '80s and the '90s. Thank you very much.

MR. KRONE: Craig Haney now, please.

MR. HANEY: Thank you. Thank you for 
an opportunity to address such a distinguished group 
about such an important topic.

When people discuss and analyze 
prisons, and it's been evident in this morning's 
presentations, much depends on one's perspective. 
Depending upon that perspective, the glass is either 
half full or half empty. I want to acknowledge at the 
outset that I am a half empty guy.

I was a graduate student in 1971 and I 
was one of the principle researchers in what has 
become a notorious experiment in psychology, the 
Stanford Prison Study. And I sat as a graduate 
student and watched healthy, normal, young men turned
into either largely sadistic acting or behaving prison guards or victimized and, soon, emotionally dysfunctional prisoners in the period of six short days.

Since that time, almost 35 years I have spent a lot of my professional life going in and out of correctional institutions throughout the United States, touring, inspecting, interviewing prisoners and, to a certain extent, staff and administrators as well. I would estimate nearly 100 of these tours and inspections in different facilities around the United States.

Much of my involvement has been precipitated by litigation, so, like Vince Nathan, I am typically not called in to examine prisons at their best. I acknowledge to you at the outset, I have not seen American prisons at their best, but I have seen many of them at their worst and I have seen many of them with issues that this commission addresses, issues of safety and issues of abuse are at the forefront.

I can tell you that when I began this work, the concept of double celling was regarded not just by academics, but by prison administrators as well as an unmitigated evil. Nothing has changed
except for the numbers of people that we have in prison to shift that judgement. Nothing has changed in academia to suggest that crowding is not harmful, nothing has changed in prison administration to suggest that prisons cannot be run better when they are not overcrowded. What has changed are the norms; the perspective from which we view these issues.

Of all the things that have happened in American corrections over the last 35 or so years since I have been a witness to it, nothing is more important than overcrowding, in my opinion. There are many issues, but overcrowding, if one had to pick one, it would be the single one, and the related concept or trend of overincarceration.

Now, overcrowding in this context I think is a bit of a term of art; it does not just mean too many people for the space available. It also means housing more prisoners in environments that don't have the infrastructure to manage them properly. Housing more prisoners in environments that don't have adequate programming resources, housing more prisoners in environments that don't have medical and mental healthcare that is commensurate with the number of people who are confined. And, by that measure, American prisons are and have been for the last 35
years, in many jurisdictions, woefully overcrowded.

Overcrowding does mean to a certain extent, however, social density and that's something that ought not be lost sight of. The average American prisoner lives in an environment roughly the size of a king size bed. If you have a king size bed at home, that's about 60 square feet, the average American prisoner lives in an environment just a little bit bigger than that. You have a modest size walk-in closet or a very small bathroom, imagine living your life in an environment that size, imagine having all of your worldly possessions in there with you and then imagine also having a friend to share that space with you, or an enemy as the case may be, because, as you well know, virtually every prison in the United States in double celled, if they are lucky. Some of them are housed in the space that size with a third person in certain jurisdictions, with which I'm sure you are familiar. So overcrowding does mean an absence of appropriate space, a lack of sheer physical freedom.

But it also means a lack of adequate programming. By most estimates, half or so of the prisoners confined in American prisons lack meaningful work opportunity, half or so. About an equal number lack adequate educational opportunities. In my state,
California, the average reading level of prisoners confined in our prisons is seventh grade and many of them, many of those prisoners have been in those prisons several times. So whatever kind of educational resources we're devoting to the process of educating them, they are not learning and they are not improving.

There is a lack of adequate mental health program and medical resources in many facilities, in many facilities in the United States, in part because the sheer overwhelming numbers of people who are confined inside our prison system. Indeed, many prison systems lack the opportunity and the resources with which to do even adequate screening of people who are coming into the system. And, of course, if you can't identify a mental health or medical problem, you cannot treat it adequately. Most systems -- again, I will speak to my own state -- do no more than a superficial job of addressing these issues, in part because there are simply too many people coming into the system to devote the necessary amount of time to adequately assessing them and then, in part, frankly, because we don't have the resources with which to address their problems, even if we adequately identified them.
Now, you heard some testimony earlier today that despite the overwhelming oppressive numbers in the system, somehow we have managed to keep order, some semblance of order in most places. You are going to hear more about this this afternoon, I know, but let me share with you the mechanisms that I have seen used in order to keep some semblance of order inside these overcrowded and barely overrun and overwhelmed facilities.

In many prisons in the United States, maximum security prisons, there are metal detectors, x-ray machines, leg irons, waist chains, handcuffs, black boxes, holding cages, violent prisoner restraint chairs, psychiatric screening, chain link fences concertina wire, tasers, stun guns, pepper spray, tear gas canisters, gas grenades, and, in some jurisdictions, mini 14 and 9-millimeter rifles, 12-gauge shotguns and the like in place, inside housing units. That is, in some sense, the way we have managed to maintain control and stability in some of our worst and most overcrowded prisons.

You are going to hear later on this afternoon about another technique which has emerged in the course of this recent period of overincarceration and overcrowding, the use of the supermax prison,
where people are kept, at best, 23 hours a day lacking any human contact. I have regularly interviewed people who have been in these facilities for five or 10 or 15 years during which time, among other things, they have not touched another human being with affection.

In my written statement to you and in other materials that I know people have written about these issues, we have addressed at length the psychological and psychiatric consequences of confining people in overcrowded facilities and of confining people in facilities where they are subjected to these forms of social and institutional control. There is a significant psychological and psychiatric price which is exacting and I would suggest to this Commission that unless we can get a handle on the overcrowding and overincarceration which has plagued our country over the last 35 years, then we will not be able to solve the many problems that you have been addressing and thinking about and analyzing. Thank you.

MR. STALDER: Thank you. Richard Stalder, Secretary of Public Safety and Corrections in Louisiana. First, let me say that the fact as a witness I don't have on a shirt and tie is not a sign
of disrespect of this Commission, it's a sign and
simply reflects the fact that at 6:00 this morning the
button on my buttondown collar escaped from my shirt
and remains at large and, therefore, I'm doing the
best that I can.

I would like you to know -- I want to
begin, I guess, with my conclusion. On behalf of the
Association of State Correctional Administrators, on
behalf of the American Correctional Association, of
which I am a past president, the executive director,
Jim Gallon(ph.) is in the audience, I think, Mr. Ryan,
you would agree as the past president of the American
Jail Association, we share with you a very common goal
in your work and that is to advocate for safe and
stable and productive and organized and disciplined
correctional environments in America. That is what we
want.

Senator, we, as an association, have
been working four years with the Department of Justice
through VJA to develop the very kinds of performance
measurements that you called for this morning,
consistent across the board ability throughout America
to say how many assaults do we have, how many escapes,
not just the deaths and the suicides, but at a level
of performance measurement that gets down into our
operations that can provide meaningful information to
to people like you to explore these problems. We are
four years into doing that and we have six pilot
states. Mr. Maynard is one of the pilot states, I'm
one of the pilot states. We'll add probably seven or
eight states by August or September and, hopefully, be
in full operation in another six months. That would
be the kind of information that you need and I'm proud
that our association is doing that.

I want to speak to you about

overcrowding, not from the fire marshal's perspective.
I think I'm going to echo a little bit about what
Vince and Craig said. You know, overcrowding from the
fire marshal's perspective is, you know, can you exit
people quickly in an emergency? What are your exit
aisle widths and how big are your doors and where are
your keys?

From the health department's

perspective, overcrowding is contingent upon how many
sinks do you have and how many toilets do you have and
how many showers do you have?

And I think from our perspective,

particularly from my perspective as an administrator,
overcrowding means do you have more inmates than your
resources can support? You know, we can have a
thousand bed prison -- two identical thousand bed
prisons, one which is significantly overcrowded and
one which is very safely and productively run simply
as a function of the resources that are put into it.

You know, I want to very specifically
urge your advocacy for certain things. One is for pay
and benefits for correctional officers, people who
work in our prisons and our jails. You cannot run the
kind of safe and stable facilities that you want and
that we advocate for without a well trained, career
staff.

In Louisiana I regret to tell you that
we start our correctional officers at the state level
at $18,000 a year, gross. Now, if they're fortunate
enough to be able to participate in our group benefits
insurance program, that takes $3,600 off the top.

Most of our correctional officers are eligible, thank
God, for their children to participate in the
Children's Health Insurance Program, funded federally,
so at least the kids can enjoy health benefits. Our
turnover is 30 percent a year.

If this Commission can advocate for pay
and benefits for correctional officers in our prisons
and our jails, you will take a significant step
forward in promoting safety in these environments.
You've heard earlier this morning about the medical and mental health interests. Dr. Karl Menninger wrote a wonderful book years and years ago in Topeka, Kansas called "The Crime of Punishment." We shouldn't lock up the mentally ill, he said, we don't need to punish the mentally ill. And, unfortunately, as a society we forgot to read the last chapter. We read all the first of the book and we should deinstitutionalize the mentally ill, we forgot the last chapter that said we need to provide community support for the mentally ill.

And so the mentally ill became the homeless and began to interface with the justice system and tomorrow you will hear from Director Wilkinson, who Vincent mentioned earlier, tomorrow you will hear about that very tragic reality that our correctional institutions are becoming de facto mental health clinics, but we have to have the resources to deal with it. Without the resources, without the staff, without the professionalism that's needed to cope with those kinds of problems, you will not have the kind of safe environment that you promote as a Commission.

The medical issues. You know, when we talk about safety, I like to say public safety
relative to corrections is not just about keeping
dangerous people behind bars. Public safety is about
making sure they don't exit our system with contagious
diseases. So that if we know that someone has disease
prevalence or that we have a higher disease prevalence
in our institutions, we need the resources to deal
with that, and I would urge this Commission to be sure
that the scope of what you do and advocate for
includes advocacy for the treatment of disease in our
institutions.

Twenty-five percent of the inmates in
the State of Louisiana -- we test for tuberculosis, we
test once a year, everybody, staff and inmates -- we
have 25 percent tuberculosis prevalence. That doesn't
mean they're sick, it means they test positive and we
have to treat them. You know, the great news about
tuberculous is detection is cheap and treatment is
cheap, so that's an easy one.

Unfortunately, hepatitis C, as you
heard Dr. Beck talk about this morning, probably one
out of three inmates in America, because it's a
disease of intravenous drug abuse and it's a disease
of lower socioeconomic status have hepatitis C and,
regrettably, the treatment is 18 months long and it
costs about $20,000 per inmate. You know, if I
treated everybody in the State of Louisiana in my correctional system who had hepatitis C, the cost would exceed the annual limit for bonded indebtedness for the entire state. We need help. We need attention to those kinds of resource issues.

Relative to overcrowding, I would like you to please consider supporting, for example, the Prison Rape Elimination Act Provisions For Safeguarding Communities.

It all has to do with we have a fixed resource base and we continue to pour more people into it, how do we make those resources stretch to accomplish our goals? And in my mind the best way is to quit putting so many people into the system, which means we need to pay attention to prevention, which in my mind means that we need to take -- we heard in Ohio people read at the seventh grade level, in Louisiana we had tested some 26,000 inmates four years ago and people come into our system at the fifth grade level, the fifth grade reading level.

You know, and that doesn't mean -- we can look at all the records and everybody claims I graduated from high school or I finished 11th grade, I finished 10th grade. They may have, you finish that all you want, you still can't read the fifth grade
We need to put resources into basic education in our prisons. We need to put resources into substance abuse treatment. 80 percent of the people that we deal with have substance abuse problems that were -- that in some way affected their criminal behavior. We need to teach job skills. I mean, three-fourths of the people who come to prison in America weren't working when they got arrested. Let's teach job skills.

Let's teach values. You know, our people come to us and they have a value set that's formed by the culture of gangs and the culture of drugs and not by preachers and teachers and parents. We do a lot with that in Louisiana. I think, Mr. Nolan, you are aware of that. We believe that our faith-based efforts, our faith-based communities can do a lot to help people restructure values.

You take those four pieces and then all of a sudden people leave prison and they don't come back at the rate of 43 percent after five years in Louisiana. They come back far less frequently, which means there's far less overcrowding, which means we don't need more resources, which means we can take our existing resource base and spread it to accomplish
these goals better. That, I think, is a voice that we
need this Commission to adopt and to take.

We need to pay attention to our kids.

My time is up. The one minute thing is about to wave.

Our children -- prenatally and in early childhood
there's so much that we can do to divert them from
criminal activities, so much. I think Head Start is a
wonderful program, we support it in our department,
all over the state, three and four year old kids
learning how to learn and then they go to school and
they succeed in school and they don't come into our
justice system.

You know, that's one of the most
important things we can do relative to overcrowding,
in my opinion, is to support programs for children and
this Commission I think, and I hope, can take a step
forward and say, you know, in all of this that we deal
with and we talk about safety and abuse in America's
prisons, let's deal with some of these issues that can
help make sure that people don't get the opportunity
to come into prison.

On a final note, I'm sure you are all
aware of this horrible statistic. The children of the
people in our prisons are seven times more likely to
go to prison than other kids in similar socioeconomic
status, seven times more likely. You know, I hope that this Commission will look at that tragic statistic and say, you know, to deal with overcrowding, to promote safety, let's pay attention to kids, particularly the children of people who are in our prisons.

Those are the types of things that I hope that you will be able to do that will be a concrete and a significant level of support for making sure that America's prisons and jails are operated as safely as possible. Thank you for the opportunity to testify.

MR. KRONE: I would like to start off the first question to you, Mr. Stalder. I recognize that a lot of things involving prison reform and safety, you know, right away brings an outrage to the public, they already got it too easy in there, they got three hot meals a day and the politicians are really reluctant to back any type of studies, any type of legislation that makes them appear soft on crime and, you know, threatens their re-election.

My question to you is you working on the inside, you know how the prisons work, your ideals and opinions of what needs to be done in there, how readily is that accepted by your other co-workers,
your other peers, your other people in the profession in the other states? Do you recognize how much resistance is there or how much support is there for these type of changes that we're talking about here that need to be done to address this overcrowding issue?

MR. STALDER: Mr. Krone, there was more resistance a decade ago. Today there is very little resistance to the type of program that helps people leave prison and not come back for this very simple reason. If you were a legislative panel in Louisiana, I could sit before you like this and tell you that the reality is that every year 15,000 people leave Louisiana's prisons; within five years, 43 percent of them will return, that's 7,000 people coming back to prison at a cost of $25,000 per bed to build the bed they sleep in, and at a cost of $35 a day or almost 13 and a half thousand dollars a year to pay the operating expenses for them to stay in prison, and that what we do to teach job skills and basic education and what we do with substance abuse education and what we do on the values piece keeps them from coming back. So that means, Mr. Legislator, whether you are Republican or Democrat, whether you are republican or democrat, whether you are liberal or
conservative, what that means is you have money now
that you can spend on higher education, that you can spend on road and bridges, that you can spend on services to the elderly, that you can spend on services to children, and that message comes through very clearly, even in places like Louisiana.

MR. KRONE: Keep that message covered.

MR. RYAN: Let me go back to basics for a second. One of the terms that we use is overcrowding. For me, that terms gets kind of confused in the fact that there is an assumption that we're crowded at the beginning.

What Mr. Beck said is that our jails are at 94 percent, our prisons at 100 percent and federal prisons at 140 percent I think is what he said.

Can you help me better understand the concept of the design to capacity facility its operational capacity, its constitutional capacity and what that all means relative to the consequences of each.

MR. HANEY: Well, let me just offer one insight about it. I mentioned to you when I first started doing this work 35 or so years ago the concept of double celling was anathema to most not only
scholars, but correctional administrators. Prisons were regarded as overcrowded when they approached 90 percent of capacity and that was because correctional administrators understood that you had very -- you had increasingly fewer degrees of freedom to manage prisons effectively when you had problems, when you had prisoners who needed to be separated, et cetera, as the prison got closer and closer to its design capacity.

But we've long since have given up on the notion of 90 percent as overcrowded. We don't even begin to think about overcrowding until we're at 100 percent of capacity.

It sure comes as no surprise to you if I say that prisons are not built to be particularly spacious or luxurious, so a facility that is 100 percent of capacity really is operating at a very tight literal physical capacity to hold people.

Now, in California, as Senator Romero knows, we're operating at 180 percent of capacity, which means we have almost twice as many people in the prisons in California as those prisons were built to hold, and it's a sizeable population, we've got about 150 to 160,000 people I would argue to you who are significantly, painfully overcrowded. And the
management problems which come about as a result, I think, multiply out well beyond the simple space capacity issue.

MS. SCHLANGER: I had a similar kind of question based on Dr. Beck's presentation and, that is, is it the feeling of people on the ground -- what he said was that we're currently less crowded than we were ten years ago. And I wondered, if it feels like that. And I'm always very distrustful of capacity figures because you can take the same thousand bed prison and call its capacity different things, depending on the mind-set of the designer and what that designer expects is going to happen with the housing in that prison.

So I guess -- not percentages of capacity or whatever, that seems to me like it's not that likely to be that illuminating, but just the feel of the prisons, does it seem like prisons are less overcrowd now than ten years ago or the same or more or am I wrong about those capacity figures?

MR. STALDER: Commissioner, I want to answer this very quickly and then let Vince and Craig, if he wants to say something, but there is a long tail of building beds in the prison business. It's about three and a half years to bring beds online.
In Louisiana we grew by 2,500 to 3,000 inmates a year in the mid '90s, which caused a significant construction boom and, as Dr. Beck said, growth is fairly static right now. I say static, we go 2 percent a year, I mean compared to what we were growing a decade ago -- growth is static, the long tail of that construction caused us now to have, in essence, surplus capacity and that surplus capacity means I think that Dr. Beck is right, that we're not significantly overcrowded in most jurisdictions.

Now, I don't know what the future will hold, but today there is capacity to handle the number of inmates that we have, particularly in Louisiana.

MR. NATHAN: I think I would disagree with that. I agree, sir, I would dispense with the word overcrowding, I don't think it adds light. Prisons should not be crowded and when you have a system with 45 and 55 and 60 square feet cells in which virtually every inmate is double celled and when you have the breakdown of infrastructure that Dr. Haney has described, you have a crowded prison and the crowding is interfering with operations.

My very point, Professor Schlanger, that in Ohio the response of the legislature to a lessening of the population was to close prisons.
We're no less crowded, we're no less crowded.

Now, to go directly to the question of what do these capacity figures mean; the architect is told design a prison for a thousand people, he or she designs the prison and says the design capacity is 1,000. Then the question of capacity becomes political and if we have to put two people in a cell, then we double that capacity and we call it operational capacity and we find someone who will say I can run that prison safely at 2,000. Well -- and people will disagree about that.

I have not, in my experience over the past several years, seen anything that causes me to feel optimistic, that we are less crowded today than we were and, yeah, we're managing the prisons. Part of that is skill on the part of prison administrators, part of it is what Dr. Haney described, we have tipped the scales of control in some ways that, to me, are some troubling, but I think we have a terribly crowded system in the United States and that we have made virtually no inroad.

Keep in mind that when we talk about a reduction in the rate of increase, we're not talking about pure prisoners, we're talking about not having quite as many more. That would be my response to the
MR. GREEN: Mr. Nathan, you talked about, though, hitting a point in time with kind of the static growth where the policies and decisions that we make going forward are so important.

Can you just expound on that a little bit more in terms of the kind of things you think we need to grapple with and the kind of policy considerations we need to be making at this time?

MR. NATHAN: I believe that we are -- and I can't tell you really why, we are at a point at which we know crime, reported crime and even reported victimization has fallen dramatically. We don't know why, but we know it's happened.

We know that money is scarce and is likely to remain so for the foreseeable political future, at least. We know that we continue to have an enormous number of people in prison, but it seems to me that we have an opportunity now, when at least we don't have folks backed up 10 miles waiting to get into our prisons, we are not backing up hundreds and thousands of people in county jails -- although that is still a problem in some states -- awaiting entry into the prison system, that now is the time to take stock; what do we have?
Okay, we know how many beds we have in Ohio, we know how much money we have and we simply need to define correctional policies from the point of view of how many people are we going to incarcerate, permit to be incarcerated and then what are we going to do with the rest of them, by way of diversion, by way of other kinds of programming. And then we need to accept the fact that, yeah, the criminals will always commit crimes for which we don't have an answer but -- and I want to answer your question on as practical a level as I can.

It's a time when the phenomena arises that elements come together that sort of give the system, the political system, a breathing spot or, a breathing space, then we could begin to think about what to do.

I think in Ohio, Director Wilkinson may disagree with me when he talks with you, but it seems to me that we didn't make a wide policy decision when we decided to take advantage of our decrease in population to maintain crowding and keep these beds empty. That's to me, was not a wise -- that was an opportunity we had. I want us to go back and seize it, I hope that we will.

I hope that at least begins to answer
your question, I'm not sure.

SHERIFF LUTTRELL: Let me address a question to the three of you and ask you for brief comments.

First of all, I think as a Commission we are very fortunate to have what I think is a good blend of the academic, the clinical and the practical and I think each of the three of you -- each one of you represent those three values very well.

Richard, I would like to add one point to what you were saying about investment in programs in our facilities and reflect on something that Dr. Beck mentioned this morning. I have had the good fortune to work in both prisons and jails so I can kind of look at both sides of the equation.

Dr. Beck mentioned this morning that part of the problems with our jail overcrowding has been a decrease in the quality and quantity of community programs and when we talk about prison overcrowding, we talk in large part about the recidivism rate. Until we have adequate support programs in our community to really compliment the programs that we are initiating in our prisons, it's going to be very difficult for us to sustain the good programs that we have in our prisons.
Some of the best drug programs I've seen have been in prisons, yet there doesn't seem to be a nexus to the community when many of these people are released. So there's got to be support in the community if we're going to impact the recidivism.

But I would like the three of you to really talk about, very briefly -- I think the common thread that runs through all of this is shrinking budgets effectiveness. State and counties over the last three or four years have had some significant problems when it comes to funding all types of programs, whether it's education, mental health or corrections. And, quite frankly, politically we'll never compete with education and with several other programs in the community.

The overcrowding problems impacts programs, quality of programs impacts staffing, impacts facilities.

Can you all just give an opinion or a recommendation on paradigmships; do we need to start refocusing another way in addressing these problems? We've talked about investing in staff training, we've talked about investing in programs, I just mentioned community programs; but do we need to start thinking in new terms about what can be done to address the
consequences of crowding? Do we need to start thinking of some new approaches to correctional management that maybe the textbooks haven't addressed yet? Let me just throw it out for a little brainstorming response.

MR. STALDER: I think, Sheriff, that, first of all, we are ready as a country, I know we're ready as a state in Louisiana to acknowledge that prison ought to be for people who are violent, who habitually break the law and who threaten our safety. And we haven't always felt that way in Louisiana, having the highest incarceration rate in the nation, which reflects a time in the '70s and the '80s when we decided to slow down an armed robbery amongst 20 and 21 years old was to say you are not going to be locked up for 50 years, now you are going to be locked up for 99 years, and those kids could have cared less about what the sentence for armed robbery was. But we built that long tail on, we're paying the price today. But across America I think you're finding the paradigm shift is that low level drug and property offenders ought to be handled in our communities, that it's cheaper, that it's more effective and that it promotes safety and it promotes the kind of goals this Commission has and that, to me,
is the most fundamental paradigmship that we see going on. And I go back to what I said earlier, it really is no longer a partisan issue, it's really no longer a liberal-conservative issue, it's really no longer those kinds of things that split us so much in the past. Everybody understands that true sentencing reform ought to mean that we keep dangerous people in prison and not dangerous people in our communities, and that our communities can effectively handle those issues and do it in a way that promotes exactly the kind of safety that we advocate.

MR. HANEY: Prisons and punishment have been play things of politics in this country for the last 30 or more years and I think many of the issues that you are addressing here have come about as a result of the wrongheadedness of many policies that were adopted for largely political reasons and, frankly, somewhat irresponsibly because they were not followed with -- as you heard just in this panel, they were not followed with the resources that needed to be invested in making the policies even workable, let alone humane.

A paradigmship, yes, at two levels. One is that we have to go back to viewing prisons, as
you have just heard, as the criminal justice system's
response, absolute last resource, and not compete with
one another over who could talk about putting the most
people away for the longest period of time. That kind
of thinking is what has gotten us here and what has
gotten us many of the problems that you've heard so
much about today and I'm sure in your other hearing.

The other thing, frankly, and I don't
know whether it's been addressed with this Commission
or not is you know that during this period we not only
overincarcerated people, but we changed at the
beginning of this era of overincarceration the
philosophy which we use to justify incarceration.

People went to prisons beginning in the
early 1970s for punishment, not rehabilitation. That,
I think, was a psychologically naive shift. Human
beings do not sit still well, the notion that we could
put them in places and suspend them in animation
somehow I think was just naive, and the notion that we
could put people there and acknowledge the fact that
they were there to be punished, by which we meant they
were there to be hurt. Punishment means inflicting
pain. That we could put people in places for long
periods of time and inflict pain on them during the
period of time that they were there and not have the
responsibility to do something positive or beneficial for them while they were there, I think, has now run its course and we need to go back to thinking about -- again, as you already heard in just this panel, go back to thinking about programming, what could be done to ensure that people come out of these institutions in better shape than they went in.

MR. NATHAN: Craig, I would argue -- I agree with you that that responsibility is not simply the responsibility of the prisoner, it's a responsibility of the society and we know that what we're doing now in the criminal justice system isn't working and we can talk, and I very much agree with Richard, that we have to think about people who simply can't come into the system. We simply don't have room or resources for them, it's a waste of resources.

And, by the way, a footnote, we're competing real well with education. Our education budget in Ohio is flat for the next two. Our correction budget is going up by two-point something percent, which is ridiculously low from the point of view of corrections, we're used to six and eight percent increases, but we're still way ahead of education.

We need to think about the length of
sentence. Somehow, and I notice this with my students, when I say someone goes to prison for five years, that's a slap on the wrist. Tell me whether any of you could give up the next five years.

I met an 86 year old man on death row in Mississippi, they are going to have to put him in a wheelchair to take him into the execution chamber. We are developing geriatric, skilled nursing home facilities in our prisons all over the country or we're letting that population rot, and that's some of us, that's me, where I go, I hope, it's what I need.

But we need to understand that piling time on top of time on top of time isn't accomplishing anything. It's defeating any effort to resocialize or promote re-entry. I think it dilutes punishment, I agree. You tell me 50 years, 90 years, I don't give a damn. What's the difference? My life expectancy is another 12, 13 years.

I mean, I wonder -- and I have no respect for what the man did, but I'm wondering what's this fellow's thinking about, you know, wouldn't a three or a five year sentence make our point? That's a long time. Some of us would be dead, for some of us that would be a life sentence, for all of us that would be a totally ruinous event, and that's what I
find surprising, that people think that -- I hear, I can do that time standing on my head. Well, try it. Try standing on your head 30 minutes or six months or a year.

Our sentences are simply too long and there is no justification. Nothing can be shown to have been accomplished by keeping a person in prison 15 years as opposed to three or four.

MR. BRIGHT: But what would you say about incapacitation, that's the argument, isn't it?

MR. NATHAN: Well, I understand that that's an argument in the first place from the perspective of an inmate who is killed by another prisoner or staff member who is assaulted by a prisoner or killed. Incapacitation is in the eye of the beholder.

But so we take -- let's don't talk about the worst, most vicious, violent crimes, because there are some that I would have difficulty responding to, but let's talk about serious economic crimes.

Do you think that Martha Stewart can serve, what, six months, is more likely to commit a crime than someone who spends five years or seven years and then gets out? I don't know. I think that year was probably a tough year. It would be a tough
year for me, and I just don't buy it.

MR. BRIGHT: I don't necessarily think
that, but I think the question is for the person who
has done three or four armed robberies by the time
they're 19, is five years enough or is a longer
sentence necessary to prevent that person from having
anymore armed robberies, not worrying as much about
the person but worrying about people in the society
and whether or not they're robbed.

MR. NATHAN: Well, you know, the
question of why we live, Steve, in such a violent
society is one that we all have partial answers to.
To tell prison administrators that they're supposed to
resolve that problem is unrealistic. It seems to me
that every time we put someone in prison for ten or 15
years, we've got someone lining up to take that
person's place.

And I just simply don't buy the idea
that by keeping a person in prison, let's say ten
years, that we're going to have any impact on armed
robbery.

And, you know, maybe another way to
look at it is this; maybe it's our responsibility, if
we're given the resources in corrections, we've only
got three or four or five years with this guy, or two
years. You know, the Europeans are doing it. They're not slaughtering each other at the rate that we are, at least not in their criminal realm. And they get along with three and four year sentences for homicide.

MR. FRIED: You don't buy it, but do you have evidence and statistics to support your unwillingness to buy it? There's evidence and statistics that indicates you are wrong.

You don't like it, but you may be wrong, and what Steve says may be correct and supported by the facts. And I don't think you are not buying it is an answer.

If you have facts, please let us have them, but I don't think you have them.

MR. BRIGHT: Well, what would you say, Mr. Stalder, what would your answer to that be?

MR. STALDER: Mr. Bright, I would go back to the paradigm question. I would say I'm just a -- just from -- a little, old, simple guy from Louisiana.

The paradigm shift is not going to occur at the top end of the scale, first. I believe we ought to lock up people who are dangerous and violent for long and certain terms, and I think that that level of incapacitation is something that we owe
ourselves as a society.

But what we have done is locked up too many people who aren't dangerous to us for long and certain terms and that has had a very costly consequence for us as a society, for our states, for our country.

So in Louisiana we did a great thing five years ago, we changed the mandatory minimum sentence for possession with intent to distribute cocaine or distribution of cocaine from five years flat, no parole, no probation, no suspension offense to two years flat, and now we're starting to reap the savings from that, and I think that is consistent with what Vincent is saying.

But I personally believe that those who are violent and cause injury ought to be locked up for long and certain terms, without apology and we ought to pay the price, but we are paying the price for far too many who aren't dangerous.

MR. BRIGHT: Well, I guess the question is can you put sort of a percentage on that; how many of those people that you are getting in your system there are those that don't need those sentences like the drug people.

MR. STALDER: In Louisiana we are
attacking mandatory minimums. I think we probably
intake as many as 35 to 40 percent people who are
either technical violators or people who commit low
level crimes and who face mandatory minimum terms
because of that. We are gnawing at mandatory
minimums.

We have now the political will to say
that for nonviolent crimes, for property crimes and
drug crimes, that we will reduce that and then let the
individual show on their own merits whether or not
they ought to be released. I don't believe in
automatic release. I don't think lock somebody up for
three or five years and let them out, but let them
demonstrate that they participate in educational
programming, let them demonstrate that they tried to
better themselves, let them demonstrate that they are
able to take care of their family, let them
demonstrate that their values have shifted and then
give them the opportunity to show us that as a society
for people who don't pose that level of risk.

MR. KRONE: If I may interrupt here.

This is about overcrowding and, as I understand to
say, it's not the violent criminals that are
overcrowding our prisons, is that correct, so we
really are concerned about those sentences that are
putting nonviolent people in violent situations and
overburdening our prison system, that's what we are
addressing.

MR. NATHAN: Well, one question I would
raise is how much of what we described as correctly
violent crime is drug related, you know? If you don't
have the money to buy drugs, you are kind of a weak
guy like me, you would rather have a gun and you can
make a robbery or a burglary to get the money for your
drugs.

So I'm not sure that you can't go back
to the drug question that's been raised and draw a
pretty clear line of cause and effect, even when you
discuss violent crime.

MR. KRONE: Violent issue as a result
of a medical dependency that we are not treating or
working on.

MR. HANEY: Let me -- Professor Fried
brought up the issue of evidence and let me suggest to
you that there is not one shred of evidence to suggest
that the reductions in crime which we have enjoyed
over the last decade or so are, first of all, remotely
commensurate with the extraordinary increase in the
rates of incarceration.

You heard this morning we were talking
about a quadrupling of the rate of incarceration in
this country at many billions of dollars of investment
and the decrease in crime rates have been significant,
but they did not commence until a very significant
change in the economic picture in the United States
began in the 1990s.

So the extraordinary increase in
incarceration took place in the late '70s and
throughout the entire decade of the 1980s bore not
direct fruit whatsoever in terms of reduced crime
rates. There may have been a carryover effect into
the '90s, no question about it, but statisticians
suggest that only a small percentage of decrease in
crime rates over the 1990s is attributable to the
massive increase in the number of people in prison.

Now, add to that the question of
opportunity costs. What could have been done with
those billions of dollars instead to address crime,
not after, but before it took place, and then address,
or take into account, the issue of the consequence of
these very selective policies of incarceration in
certain communities in the United States, particularly
African-American communities, particularly with
respect to African-American men.

I'm sure you know the statistics that
there are communities, large urban communities in this
country where a third to a half or more of the
African-American men between the ages of 18 to 25 are
incarcerated, and those kinds of incarceration rates
have devastating effects, not just on those men
directly, but on families from which they come, the
neighborhoods in which they live and the communities
to which they will return.

There is, again, no evidence to suggest
that the reduction in crime rates is commensurate with
the devastating human as well as economic costs of
those policies for those communities.

MR. NATHAN: Let me drop one very quick
footnote.

We're also pleased that the rate of
crime is going down. The rate of increase among women
going to prison today is as high or higher than it was
in the '70s. Some day we will have half a million
women in prison in addition to our million and a half
men.

MR. KATZENBACH: You sound as though
you didn't believe in equality.

MR. NATHAN: Well, if that's the
definition of equality, you've pinned me to the wall.

SENATOR ROMERO: It seems to me that
when we talk about crowding and overcrowding, of course, it's subjective, it varies from state to state, from jurisdiction to jurisdiction. I think I would say it's about caseload inevitably, it's about space and it's about resources and, of course, all of this embedded in a political context.

But aside from the sentencing, which I absolutely think needs to be addressed, aside from looking at not only inmates, but the parole population. In California there's 165,000 inmates, 300,000 on parole, and most of them go back on some kind of technical violation, but I think another issue that I've seen, at least, sitting on the public safety committee in the State Senate in California is I don't want to say it's a new trend, but it has increased and that's the question of enhancements.

Use a gun, get this. Kill somebody under the age of whatever, get this additional. So it's not necessarily the sentencing, but it's adding on to the sentencing. Silence in those committees, absent in those committees, the witnesses, our corrections officials.

I guess, if anything, what I really do think that is needed is to have communication with respect to what is the effectiveness of the sentencing
and for how long and what is the worthiness of these enhancements because as long as we have a silence at the witness table when this legislation is going through, it's going to be law and order, business as usual, sounds good for the sound bite for the media, slap on the enhancements.

Any comments from you as to how we might engage corrections officials in our own states and others nationally to address this type of legislation that has come through California and hasn't stopped, and I would imagine if it's happening in California, it's happening throughout the nature.

MR. STALDER: Senator, in Louisiana we call it a fiscal note and when that type of legislation is proposed, I go to the table and I don't attempt, necessarily, to try to shake Louisiana's sentencing laws, which is really a legislative function, but I do go to the table and I say if you do this, this is how many millions and millions and millions of dollars it's going to cost, starting this fiscal year and how it will grow, and, you know we have -- do the charts and graphs and we believe -- I think that's an appropriate role for correctional administrators, is to explain what the consequence of the sentencing structure revision would be and, having
done that, then we find that many, many times people will say, well, I just really didn't realize that that was going to be that expensive and then it pretty well backs up and that takes care of it.

SENATOR ROMERO: Well, you do that in Louisiana, what about your cohorts? I haven't seen that in California.

MR. HANEY: I would call it a correctional environmental impact report that I think would be very helpful to have attached to any law that was under consideration that would increase the numbers of people who are going to prison or the lengths of time they would spend there and have the corrections department come in and say not only what's the direct economic impact of this, but how is this likely to effect the functioning of the prison system, and then until that's done, the law can't be passed.

MR. FRIED: Bringing us back to what is the subject of this Commission, do the three of you, and I guess Mr. Stalder is perhaps the best position to address this, think that it would be useful for this Commission to suggest minimum standards; square feet per inmate, double bunking or not bunking, correctional officer to prisoner ratio, things of that sort, so that you could have a kind of baseline which
said below this it is no longer acceptable and then, of course, your impact statement is a brilliant idea for dealing with the overcriminalization point, because I don't think that's our job.

Our job is to say what is the effect of those things on the conditions in the prison, but in order to be effective could we come out with something like minimum standards; would that be useful? Would anybody believe it? Is it feasible? Does it make sense?

MR. STALDER: Commissioner Fried, I am probably the strongest advocate for meeting minimum standards that you will find anywhere around the country.

MR. FRIED: I didn't know that.

MR. STALDER: I know that Commissioner Ryan is shaking his head. We in the 25 years of federal court supervision of the Louisiana correctional system by subscribing to the standards of the American Correctional Association and the Commission on Accreditation for Corrections, they have volumes of standards, we subscribe to 469 standards for the operation of our adult prisons and we entered into about a 24-month process, we accredited every prison and the federal judge said -- initially said
I'm releasing you from court supervision and releasing you from the monitoring of my special master, as long as you maintain American Correctional Association accreditation. It is a very remarkable tool to maintain minimum standards.

There are those who criticize those standards and I believe that the criticism --

MR. FRIED: What is your view of them?

MR. STALDER: My view of them is they provide a solid foundation upon which to build safe and nonabusive correctional environments, a solid foundation, and that foundation is what we've used in Louisiana. And Commission Nolan I know has been in our largest maximum custody prison and I hope believes that it's a safe and stable facility. It's the oldest and the largest facility in the United States that's accredited by the American Correctional Association.

MR. FRIED: So if you put that together -- you have those minimum standards and you put that together with your impact statement and every time somebody proposes some criminalization, you say fine, here are the standards, we've got to meet those; if you do that, then you can really put a dollar amount on whatever changes in the criminal justice system are being proposed; another five years, fine,
match that with the standards, in our state that means so and so.

MR. STALDER: Yes, sir. And I think as you look around this Commission, Commissioner Ryan, Commissioner Maynard, as you hear of Director Wilkinson that Vincent talked about earlier, strong -- not just proponents of, but participates in the accreditation process and the belief, the firm belief that those standards provide that level of foundation for our operations that result in the type of safety that this Commission advocates for.

MR. NATHAN: Professor, if I could take your question and relay it directly to the issue of crowding.

I think it's very difficult to argue that the ACA standards, which I do support, and the accreditation process, which I do support, that those have been effective in eliminating or substantially reducing crowding in the United States, the standards have simply changed.

I want to make a very quick point about the idea of impact statements and I will do this, you know, in just a minute. There is a problem with impact statements. If I have a system now, and I'll just take the crime armed robbery, and the average
time served is six years, average time served, not
sentence. Now, in order to get some votes I want to
double the sentence from let's say 10 years to 15.
There will be no economic impact in year one or two or
three or four or five. There will be no impact until
we get to the point that someone who, on average,
would have gotten out stays in, and I don't see
legislators thinking in those terms.

I think that when you say to a
legislature there's going to be this terrible
financial impact in 2012, well, I'll be governor by
then.

And so while I do agree that we should
do them, there's no question, we should do it, educate
the public, the press and the legislature, keep in
mind that it's really kind of a free ride for the
folks who are voting for these add-ons or for these
increased sentences because those people are
spending -- these criminals are spending some time now
and until we get to the point they're spending more
time, we're not spending anymore money. So it's not
today's problem and, boy, politicians love that.

SENATOR ROMERO: But as one of those, I
do think that you are right, a lot of people do look
to say it's the next -- especially states that have
term limits, however, there is a free pass. If you
are not there at the table facing those tough-on-crime
legislators, then they get the free pass.

MR. NATHAN: That's right.

SENATOR ROMERO: And so I do think, and
I really like the idea of the environmental impact
report for the prisons, that silence is enabling to
continue that trend to really not being responsible.

MR. NATHAN: And you are absolutely
right and anyone in corrections who is not trying to
educate the legislature on the realities, in my
opinion, is failing corrections as an industry, as a
profession.

MR. NOLAN: Two points. As a
recovering politician, it's not just that they think
they will be governor, they are scratching an itch
that the public feels. The public thinks these
sentences and doesn't think of the cost of them and
we -- I think an important part of this Commission's
work is trying to break that idea that longer
sentences mean a safer community and that there's no
cost.

But having been at Angola, which was
the most dangerous prison in the United States and is
now the safest in the United States, the length of
sentence doesn't really impact that because 95 percent of those inmates are going to die in that facility, it's an astounding situation, but they've made it a safe facility, even with the relative hopelessness of ever getting out.

And, Mr. Stalder, I would like to talk to you about the challenges that you faced in changing that because I would assert to this Commission, it's not just policies, which are very important, it's also leadership and commitment to change, having a vision that there can be a peaceful prison and then setting the standards to drive it. Secretary, if you could talk about the challenges you faced and the leadership.

MR. STALDER: Commissioner Nolan, as you know, it's a fundamental sense of on-site leadership through the warden and support of staff, both correctional officer staff, programming staff and our faith-based community. I mean that's really been -- Angola is the only prison or now that we've spread it a little bit to Mississippi and Florida -- we were the first prison to have an adjunct location of the New Orleans Baptist Theological Seminary on site with a four-year and a two-year graduate program that didn't cost the taxpayers of the State of
Louisiana a nickle and we graduate ministers, who then
go out and work with our chaplaincy to promote the
kind of change in values that's so important.

I guess, Commission Nolan, the only
thing I would say it's necessary but not sufficient to
teach how to people to read and write, it's necessary
but not sufficient to teach people job skills, it's
necessary but not sufficient to deal with substance
abuse, it is absolutely imperative that we deal with
the values issue and our faith-based communities
across Louisiana have really stepped up to do that.

As you know, Angola has three churches
that were built by the faith community in the State of
Louisiana, three. We have built seven chapels at
prisons in Louisiana interdenominational chapels;
Christian, Muslim, Jewish, it doesn't matter, each at
a cost of $450,000, not a nickle of taxpayer money,
every dime contributed by the faith community and that
level of commitment, Mr. Nolan, is what I think has
says the most, coupled with the leadership on site,
for how we reformed our operations, not only at Angola
but throughout the Louisiana system.

MR. KRONE: Well said.

With that, unless there's any
questions, I think we pretty much ran out of time and
we're going to have to thank you all for that insight that you have given us.

And we are going adjourn now for lunch. We will resume again at 2:00. I would like to ask all the witnesses; prior, present and upcoming to exit through the door here. I would like to remind the audience there is a cafeteria available within this building where you can get a lunch and, as I said, we're back here at 2:00. Thank you.

(Lunch recess.)