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HEARING THREE
COMMISSION ON SAFETY AND ABUSE
IN AMERICA'S PRISONS

DATE: November 2, 2005
TIME: 8:30 a.m. to 3:22 p.m.
PLACE: Washington University School of Law
Anheuser-Busch Hall, Room 310
St. Louis, Missouri 63130

Volume II
Pages 245-477

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1 (The proceedings commenced at 8:30 a.m.)

2 MR. RIPPE: Morning, everybody. Welcome to
3 our second day of hearings. It's a beautiful day in
4 St. Louis, and again, we're very fortunate to be
5 holding this hearing at this wonderful university. A
6 special welcome to witnesses and guests, and to
7 Dr. Mary Livers.

8 A common emerging theme in our hearings and
9 the discussions we're having is it's not a surprise to
10 anyone that the impact leadership has had on the
11 prison environment, on prisoners, families, and on
12 communities. So leadership is more than important,
13 it's fundamental.

14 Dr. Mary Livers is a corrections
15 administrator with more than 26 years of experience.
16 Currently the Deputy Secretary For Operations at the
17 Maryland Department of Public Safety and Correctional
18 Services, Dr. Livers oversees the management of
19 agencies and programs that are responsible for the
20 processing, custody, and supervision of offenders
21 confined to detention and correctional facilities in
22 programs.

23 Secretary Livers is also responsible for
24 department programs pertaining to staff training and
25 professional development, victim services, emergency

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1 preparedness, and community reentry services.

2 Dr. Livers received a doctorate in adult
3 and higher education with staff development and
4 training specialties from Oklahoma University. She
5 holds a master's in social work and a bachelor's
6 degree from Louisiana State University. We're very
7 fortunate to have her with us here today. Good
8 morning, Mary.

9 MS. LIVERS: Good morning, General. Thank
10 you very much.

11 Members of the commission, I want to thank
12 you for inviting me here today. My remarks will
13 center on how leadership impacts the issue of violence
14 and safety in correctional institutions.

15 First, let me begin by perhaps overstating
16 what I think you already know as the obvious, that
17 protecting the public, staff, and the offenders in our
18 custody is an extremely complex and daunting
19 responsibility. As you heard throughout the panels
20 yesterday, the women and men who work in correctional
21 environments have a most difficult job and must
22 perform their jobs very professionally.

23 For every instance where a procedure was
24 not followed, where instructions weren't clear or
25 ignored, where decisions of poor character were made,

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1 where people got hurt, there are thousands of
2 instances daily where good decisions were made, policy
3 was followed, and no one was hurt. These positive
4 events far outweigh the incidents of court decisions
5 and hurtful results.

6 While anecdotal accounts of an
7 out-of-control staff puts a face on evil and the
8 resulting pain, the fact remains that these acts are
9 the exception and not the rule. But when they do
10 occur, we have an obligation to look honestly at the
11 issues and attempt to address the root causes. What I
12 hope to achieve today is to give you a broad picture
13 of leadership in corrections.

14 It is indeed humbling to be here before you
15 representing the many bright principled, ethical, and

16 courageous leaders who are part of our national
17 corrections field. Out of respect for them, I'll do
18 my best to represent what I consider to be the state
19 of leadership in this field. Those of us who have
20 made corrections our life's work are in this business
21 because we care about people, and we believe that we
22 make a positive difference in the lives of those we
23 serve. We are not in this for the money. We are
24 certainly not in this for the fame.

25 Most leaders in corrections will not go on

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1 and have a political career or be revered as a hero.
2 They do this work for the satisfaction of knowing that
3 somehow, despite all of the difficulties in managing
4 large and complex systems, they make a difference.
5 This, of course, is the antithesis of what is
6 portrayed in the popular culture, but it's the truth.

7 Respected leaders in corrections that I
8 have known throughout my career are well meaning.
9 They're competent. They're highly educated and
10 ethical people. They are change agents. They are
11 champions for doing the right thing. These leaders
12 serve as the conscience of their organizations.

13 Corrections agencies are as good as their
14 leadership, and good leadership is needed at all
15 levels of the organization. In fact, it is critical
16 to having a healthy and safe correctional environment.
17 For that to occur -- to occur, it must start with the
18 very top, which is why I will be focusing my comments
19 today on top leaders in correction agencies. Those
20 people who occupy commissioner seats, director seats,
21 and in other words, the role of the chief executive
22 officer.

23 I think it may be useful to you if you have
24 somewhat of a profile as to who these leaders are and
25 what they represent in terms of experience and

1 knowledge. According to the Association of State
2 Correctional Administrators, commonly known as ASCA,
3 today's profile of the membership reveals about forty
4 percent of the top positions in correctional agencies
5 are held by those who started their careers at
6 entry-level positions. Sixty-five percent of the
7 members were promoted from within their agency. Five
8 individuals have led more than one correctional
9 agency. Ten members have worked in more than one
10 correctional system.

11 With regard to diversity, there are
12 thirteen African-Americans, nine women who lead prison
13 systems. Excuse me. Fourteen, or 26 percent of
14 today's commissioners are working in corrections for
15 their first time. All have four-year degrees. Some
16 are attorneys, while others have earned doctorates and
17 master's. Some have attended advanced training
18 seminars at the Wharton School of Business or
19 Harvard's John F. Kennedy School Of Public Policy.

20 Most leaders actively seek to expand their
21 knowledge. ASCA began offering all directors training
22 in 1985, and since then twenty programs have been
23 offered for an average attendance of 37 directors each
24 year. Seeing a need to assist new directors in
25 successfully moving to the role of chief executive

1 officer, ASCA initiated new directors' training. Both
2 of these programs have been very successful.

3 It is apparent that there is an underlying
4 value for continued improvement in professional
5 development among directors of correctional agencies.
6 Inherent in professionalism is the maintenance of
7 professional competence, continuous learning. At the
8 center of professional development for correctional
9 leaders is the National Institute of Corrections,
10 known as NIC.

11 No single agency has done more to develop
12 the core leadership of correctional agencies than the
13 NIC. They began training with two small classes in
14 1972. Just one year later, NIC formed an academy
15 division and 2100 people were trained. In its tenured
16 history, NIC has expanded capacity in most states by
17 training state's trainers and providing developmental
18 opportunities to approximately 55,000 participants.

19 The range of these programs included
20 Executive Excellence, programs for high level
21 administrators. Also offered are courses in
22 Correctional Leadership Development, Management
23 Development of the Future, National Sheriff's
24 Institute, Deputy Director's Training, and Warden's
25 Training.

1 NIC also very astutely recognizes the need
2 for curriculum designed to assist women in
3 correctional leadership positions. I can personally
4 attest that this program has been very important in
5 developing and supporting the professional growth of
6 women and as executives in corrections. NIC also
7 offers a number of programs in specialized topic areas
8 such as Women Offenders in Prison Security, Managing
9 the Violent and High Risk Offender, Staff Sexual
10 Misconduct, Defender Work Force Development.

11 Of all these programs, from those that
12 directly address leadership to those that are related
13 to specialized topics, they assist leaders in the
14 development of policy, procedures, and practices that
15 enhance the safety of those who live and work within
16 prisons. There are also a number of other
17 professional associations, such as the Association of
18 Women Executives in Corrections and the National
19 Association of Blacks in Criminal Justice that
20 contribute to the advancement of the field.

21 But none have been more helpful to the
22 professionalism of the field over time as the American
23 Correctional Association, commonly known as ACA. ACA
24 has approximately 20,000 members, made up of all kinds
25 of staff all over the corrections agencies with over

1 eighty chapter affiliates. Their summer and winter
2 Congresses are well attended and are the source of
3 valuable networking and advanced certification
4 opportunities. ACA also offers certification programs
5 that certifies people after they've completed study in
6 exams in one of four categories: Correctional
7 Executives, Correctional Managers, Correctional
8 Supervisors, and Correctional Officers.

9 Since that program's inception they have
10 certified 555 staff in the field since the program
11 started in 2000. This association as well as other
12 professional associations, most of which are
13 affiliates of ACA, do an incredible job of supporting
14 professionals in this work and in bringing important
15 discussions to the forefront that will benefit the
16 field. I've been doing this work for 28 years, and I
17 have found that most correctional leaders are
18 extremely committed to the profession and are very
19 aware of the importance of the role they play.

20 Good leadership at the very top of the
21 organization is of paramount importance in promoting
22 safe and abuse-free prison culture. It is clear that
23 given the right set of circumstances that individuals
24 can engage in unspeakable acts. This can be avoided
25 or at the very least minimized by leaders who

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1 demonstrate the values of respect, dignity, and
2 accountability in their everyday actions. Leaders
3 must define the institutional culture, not only by
4 what they communicate verbally, but more importantly,
5 what they communicate by their behavior.

6 I often tell leadership staff you are
7 judged by offenders and staff by how you spend your
8 time and how you spend your money, not what you say.
9 Leaders will not be effective in corrections if they
10 try to lead from behind a desk. They must take as
11 many opportunities as they can to communicate the
12 mission and help each person in the organization
13 understand how they contribute to the mission. They
14 must actively demonstrate through their interactions
15 that offenders are human beings. They must
16 demonstrate the belief that people, even offenders,
17 especially offenders, are capable of change.

18 Corrections work must be hopeful. It
19 must be positive. Corrections work needs to matter.
20 Just warehousing human beings is not only dangerous,
21 it is depressing. Imagine being an offender and
22 waking up every day with nothing to look forward to,
23 with no hope and no opportunity to better yourself.
24 Or imagine going to work every day in a place where
25 there's no hope and no sense of moving forward or

1 getting better.

2 Institutions must have meaningful work for
3 offenders and programmatic opportunities. It is my
4 belief that correctional staff are less likely to
5 engage in abusive behavior if they are part of a
6 culture that is hopeful and purposeful. It is clearly
7 the job of leadership to create this culture and get
8 staff focused on this higher mission to protect the
9 public and make our communities safer. To achieve
10 this, values-based leadership must be demonstrated
11 throughout the organization, from the very top of the
12 organization to every employee in the institution.

13 The value-based organization must be
14 supported in training academies, in policy and
15 procedures, and in all decisions that effect the
16 safety and quality of life for staff and offenders.
17 While good leadership is an important aspect in having
18 a safe institution, it is not enough to ensure the
19 safety of those who live and work in prisons. Leaders
20 in corrections can only be effective to the extent
21 that prison operations are adequately staffed and
22 funded.

23 I must mention here that while the dialogue
24 regarding staffing almost always revolves around
25 uniformed staff, it is equally important that we have

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1 the appropriate numbers of nonuniform staff, case
2 managers, maintenance, addictions counselors,
3 chaplains, medical staff, and many others must all
4 work as a team to promote a safe and healthy work
5 environment. Today many agencies are facing severe
6 staff shortages in all categories of staff due to the
7 improving economy and the relatively low pay for
8 prison staff.

9 As we all know, appropriately staffing
10 prisons is a critical component of running safe
11 prisons. One paradigm shift that could alter the
12 relationship between the incidents of officer
13 discipline and high officer turnover is raising
14 educational requirements as well as increasing pay
15 levels for correctional officers. In some
16 jurisdictions, though the pay may be competitive, the
17 educational standards have not been elevated.

18 There are examples of studies regarding
19 this issue which clearly demonstrate that levels of
20 higher education correspond to lower incidences of
21 disciplinary actions. Obviously there would have to
22 be public support and public will -- and this is not
23 the first time that you've heard that in these
24 sessions -- to effect the type of changes needed to
25 overall educational requirements and pay skills for

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1 correctional officers.

2 Another challenge that leaders face is
3 regarding the need for program space, provide inmates
4 with opportunity for treatment, education, and job
5 skill classes, and the obstacles are many. There are
6 still many states that operate prisons built in the
7 late 1800s. We have three such facilities in
8 Maryland. These facilities are often crowded, not
9 properly heated or ventilated, they have more
10 maintenance problems than you can shake a stick at,
11 and are extremely staff-intensive due to the
12 inefficient design.

13 They were built to warehouse prisoners.
14 There's literally no room for offender work and
15 program activities. This is a huge problem. I
16 believe Mr. West talked about a similar linear-style
17 facility yesterday in his testimony. These facilities
18 present tremendous challenges to operate a safe
19 environment for a culture that promotes positive
20 change in offenders. Correctional leaders need help
21 in getting these facilities replaced.

22 Another obstacle that leaders face is
23 tenure. One of the facts of life for a CO of a
24 correctional agency is that the average tenure for the
25 top correction administrator in a state system is

1 approximately 3.2 years. As my supervisor, Secretary
2 Mary Ann Saar, reminds me on a fairly regular basis,
3 time is not on our side. So we have -- we often
4 discard the advice of contemporary change-management
5 theories who say take change slow, and we introduce
6 change more rapidly than they recommend in an effort
7 to beat the clock.

8 The fact of the matter is, most of our COs
9 live their lives in four-year increments. We know
10 that this is the window of time that we have to make a
11 positive impact. And believe me, the staff also know
12 that you live in four-year increments. Some staff are
13 more than willing to wait you out and declare this too
14 shall pass. Such a culture change is under way in my
15 state of Maryland, and we are a system in transition.

16 Under the gracious leadership of Governor
17 Robert L. Ehrlich, Jr., and our secretary, Mary Ann Saar,
18 we are undergoing major philosophical change. We are
19 moving from a very restrictive philosophy of managing
20 offenders to an environment that supports secure
21 settings by creating a culture of safety, dignity,
22 respect and accountability.

23 We're moving away from having that feeling
24 of being safe when offenders are all locked up, to one
25 where we're actually safer because we have inmates out

1 of their cells, involved in something hopeful and
2 productive, such as work, education, and other
3 programmatic activities.

4 Effecting change is hard for most of us,
5 but is particularly hard in correctional settings.
6 There is a need and a comfort in predictability and
7 stability. Change feels like chaos; chaos is
8 uncomfortable. But critics do not sway great leaders.
9 Good leaders keep their focus and keep moving forward.
10 Correctional leaders also face competing interests in
11 promoting a positive work environment in other ways.

12 A commissioner in Maryland has experienced
13 frustration with creating a no-tolerance staff on
14 excessive use of force. In one instance, the system
15 attempted to terminate a captain for excessive force
16 on two separate occasions. Backed by the union and
17 legal representation, the captain was returned to work
18 after both incidents.

19 It should be of no surprise that after each
20 time he returned to work, it became more difficult to
21 obtain accurate reports from the officers on duty.
22 The captain must seem like he has more control over
23 them than top leadership. I think that's how
24 correctional officers might have seen that situation.
25 Then finally, on the third incident, the captain was

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1 successfully terminated. It's certainly difficult to
2 make positive changes in a culture when a leader takes
3 a stands of no tolerance to excessive use of force and
4 the perpetrator of abusive acts is sent back to work.
5 This is very similar situation you heard
6 Superintendent Lord talk about yesterday.

7 Let me talk a little bit about
8 transparency, since this issue has also been brought
9 up in previous testimony. Transparency is another
10 issue with competing interests. We all know that to
11 the extent that we can be open and honest with the
12 public, the employees, and the offenders, the better
13 able we are to deal with cultural and moral issues
14 that occasionally challenge our institutions. Secrecy
15 is toxic. We are much better served if we can name
16 the issue and deal with the issues openly. But as
17 usual, it's not that simple.

18 While it would be helpful to disclose facts
19 regarding accusations of neglect and abuse, we're
20 often advised by our attorneys for the legal reasons
21 we cannot release such information. But the other
22 side is when we closely guard information, we give the
23 impression that we are secretive and uncooperative.
24 Damned if you do and damned if you don't. Regardless,
25 we need to strive for more transparency.

1 In the interest of time I will close, but I
2 would like to leave you with a few additional
3 thoughts. Previous testimony may have led you to
4 believe that the way to improve conditions in American
5 prisons was to create more oversight boards over
6 correctional operations. I respectfully disagree.

7 I'm not convinced that we need more of what
8 I consider strictly oversight. I don't think what we
9 need is more people telling us where we have
10 breakdowns or what we need and what we need to do to
11 fix those breakdowns. I think we have a good sense of
12 that already.

13 As was stated earlier, this is not just a
14 corrections issue. This is a public safety and
15 community issue. Do we really want offenders
16 returning to the community more dysfunctional than
17 when they were sentenced, or do we want to give them a
18 chance for success?

19 I think what we do need is more advocacy
20 for our issues. We need more collaborative
21 partnerships that will work with correctional leaders,
22 our professional organizations, and our political
23 systems to change the landscape of American prisons.

24 We need partnerships that will help us look
25 for ways to get public support without demonizing

1 people that do this work. We need partnerships that
2 will help us get old institutions replaced with
3 modern, efficient physical plants. We need
4 partnerships that will help us move -- help us to
5 obtain the kind of staff and programs we need to do
6 the science of changing criminal behavior.

7 We need partnerships that will help us
8 advance that science and that will help us continue to
9 develop best practices. We need partnerships that
10 will help us change from a reactive political system
11 to a proactive political system. Funding may well be
12 the biggest challenge of all since there are always
13 louder voices crying out that there are better uses
14 for funds than spending on correctional systems.
15 Unfortunately, it is usually after a crisis that
16 funding and reforms occur in corrections. The
17 correctional leadership that I represent would like to
18 do better than that.

19 I thank you for your time and
20 consideration, and I will do my best to try to answer
21 your questions.

22 MR. RIPPE: Thank you very much. You know,
23 one can argue that leadership is both a science and
24 then the artful application of that science. The day
25 before I assumed command of an infantry battalion, I

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1 asked my battalion commander if he had any last minute
2 leadership advice for me. He said, don't ever forget
3 that within five days your entire battalion is going
4 to take on your personality.

5 So as you move on, as you look toward
6 developing leaders in the state of Maryland that are
7 going to set the proper tone and environment within a
8 system, what are the practical challenges that you
9 face?

10 MS. LIVERS: Well, I think that's one of
11 the most important things that top leaders do, the COs
12 and the executive -- the top levels, is to choose --
13 put the right leaders in place, the right wardens in
14 place. That's a very, very important aspect is to
15 find the right people. Because they're the ones
16 who -- with 27 facilities around the state of
17 Maryland, we have to trust that those leaders are the
18 kind of leaders that we want to have in place.

19 So we have to do a good job selecting those
20 people, making sure that they have the right kind of
21 values, that they care about people, they care about
22 doing the right thing, that they're fair. They
23 understand the mission, and that they will do
24 everything they can to engage their staff in meeting
25 that mission on a daily basis.

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1 So it's critical that we identify people
2 with talent, people with great attitude, people that
3 are positive and who can take a challenge and convince
4 people that you can overcome that challenge. And you
5 can be a really great organization in spite of all the
6 problems that you might face or challenges you might
7 face.

8 MR. RIPPE: Thank you. Gary.

9 MR. MAYNARD: Dr. Livers, we talked about,
10 last day or so, leadership, and we've always talked
11 about top leadership. What are your thoughts about
12 leadership development at ranks lower than the top
13 leader?

14 MS. LIVERS: Well, if I could, I'd like to
15 back up to -- it's been mentioned several times, the
16 importance of starting people off in training
17 academies with the right kind of training. And I
18 think that's a very important step in making change.

19 What happens, I think, is if we start with
20 academy, you got top leaders that are lined with a
21 vision and a mission. And you start teaching them in
22 your training academies the way that you want it
23 taught, and teaching the important things of how to be
24 successful in correctional environment. Then the
25 challenge becomes, what about all those folks that

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1 have been on the job, and what about all those
2 supervisors that have been doing a job a certain way
3 all these years? How do you impact them? Because no
4 matter what you do at the top or what you teach in the
5 academy, the success is going to be borne out by how
6 well you get the whole organization aligned.

7 I think it's very, very important that we
8 develop specialized training that supports supervisors
9 from first line to middle to upper manager. In fact,
10 we're in the process of doing that in Maryland.
11 Created a separate training division, hired a person
12 who has -- her experience is not in corrections; it's
13 in professional development of adults. And she is
14 helping us build a very effective management
15 leadership training program.

16 It's got to be done at the top. You've got
17 to take care of leaders at the top. You've got to
18 take care of leaders in the middle, and you've got --
19 you've got to teach people the vision -- the vision,
20 the mission through training academies when they first
21 come to through the door. So it's a total
22 organization process.

23 MR. RIPPE: Margo.

24 MS. SCHLANGER: I'm wondering what to do
25 with an officer who's not entirely with the program.

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1 So you have an officer who's been through these things
2 and he's the problem. And what you said about your
3 captain experience was that the solution is that
4 you've got to have a termination that sticks. But I'm
5 wondering what you do with somebody who's not being
6 quite as much of a problem as that.

7 Is there a way to realign people's behavior
8 with the mission you're talking about? Or once a
9 person has gone a few steps down the wrong path, is it
10 really not -- is that not going to end up being
11 effective? Is termination really the only thing you
12 can do, termination or reassignment away from a place
13 where this behavior can take place?

14 I'm wondering what's the process for change
15 among -- let me phrase this differently about
16 leadership. What can good, solid leaders do to help
17 change correctional officers who are starting off on
18 the wrong direction?

19 MS. LIVERS: Well, as I mentioned, change
20 usually means there's some fear associated with
21 change, doing things differently. Particularly in a
22 prison environment. And I think sometimes we forget
23 how adults learn, and I think we are looking at
24 redoing our academies and redoing our training so that
25 telling people -- we heard testimony yesterday,

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1 probably the least effective thing is to talk at
2 people, or tell people.

3 So the thing that works with adults the
4 best is to give them an experience and tie the
5 learning experience to something meaningful on the
6 job. So one of the things we've been doing is we've
7 been taking staff at all levels of institutions to
8 facilities in another state that operate under some of
9 these principles that we're talking about. And we're
10 actually showing them that it really is an environment
11 that feels safe, and it's different from what they've
12 been doing, but it's effective and it's safe.

13 And so by showing people, that's one way to
14 do it. You can get into cost-prohibitive kinds of
15 issues with being able to do that with all staff. But
16 I think we have to find ways to make these changes
17 meaningful to each individual as it relates to them on
18 their job. And I do see people transforming. It does
19 happen. And there is -- I don't think you just write
20 people off.

21 And of course egregious -- the most
22 egregious act has to be dealt with very stringently.
23 Those folks that overtly abuse inmates in those
24 incidents have to be terminated. You have to rid
25 those folks of your organization. The other folks

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1 need to see that there's consequences for that, and
2 there are better ways to handle those situations. So
3 how can you learn from those situations, and how can
4 they learn from those situations to be effective.

5 MR. RIPPE: We have time for one last
6 question. Saul.

7 MR. GREEN: You spoke about oversight and
8 not being convinced that more oversight is really that
9 helpful as opposed to perhaps greater partnerships.
10 How common does a state correction system find itself
11 in an oversight situation? Can you kind of describe
12 the prevalence and type of oversight that you face?

13 But also, would you talk about your vision
14 for partnerships and how those should be formed? Are
15 they initiated by the correction system itself, or
16 where do they come from? How do they come into
17 fruition?

18 MR. LIVERS: Well, I think my experience
19 has been that I think some advocacy groups have taken
20 sort of an adversarial approach to raising issues.
21 And nobody -- in my view, I'm not sure anybody wins
22 from that. To me, it seems much better if we cannot
23 be in adversarial positions, but find the agreement,
24 find the areas that we do agree on, and then work
25 together.

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1 And there's no doubt in my mind that
2 management and unions want the same things. They
3 want -- management wants the best thing for their
4 staff. They want benefits that help their staff,
5 support their staff. They want fair systems in place.
6 Unions want good benefits for staff and for the
7 betterment of the field. They want fair systems in
8 place.

9 I'm sure it's just a pipe dream to think
10 that maybe management and labor can find that common
11 ground and work together to lobby for improvements as
12 opposed to playing the blame game. There's always
13 plenty of blame. That's easy to do. What's hard to
14 do is find productive ways to reach the same goal.

15 MR. RIPPE: Dr. Livers, on behalf of the
16 commission and really everyone present here today,
17 thank you very much for your most helpful testimony.

18 We're going to take a five-minute stretch
19 break. We're going to start promptly in five minutes,
20 and then we'll get the next panel up.

21 (WHEREIN, a recess was taken.)

22 MR. RYAN: Let's go ahead and try and get
23 started now. As the Commission on Safety and Abuse,
24 this particular topic is of unique interest to all of
25 us. It is my pleasure to welcome the three witnesses

1 for the next panel: Sergeant Michael Van Patten,
2 Mr. Randall Berg, and Mr. Patrick McManus.

3 Use of force in the correctional setting is
4 often relied upon by corrections officers as a means
5 of maintaining order and safety. This panel will
6 discuss the situations in which officers rely on
7 physical force, the types of force they are authorized
8 to use, what we mean by excessive force, and what even
9 authorized force may constitute.

10 In addition, the panel will discuss
11 training and the proper use of force and the skills
12 officers need to avoid using force whenever possible.
13 Finally, this panel will ask how correctional
14 institutions can significantly reduce the use of force
15 and particularly eliminate excessive uses of force.

16 Sergeant Michael Van Patten is a
17 twenty-year veteran of the Oregon Department of
18 Corrections and currently works primarily as a
19 trainer. Randall Berg is the executive director of
20 the Florida Justice Institute and is currently
21 litigating a case about excessive use of pepper spray.

22 Patrick McManus is the -- is a former
23 secretary of corrections in Kansas, and an expert in
24 management strategies for controlling use of force in
25 corrections institutions. I would like to thank each

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1 of the witnesses for their time and testimony today
2 and their willingness to share their expertise. Let's
3 start with Sergeant Van Patten.

4 MR. VAN PATTEN: Good morning. I'd like to
5 thank you for giving me the opportunity to speak to
6 the commission. I have been asked to speak on the use
7 of force and related training. Correctional officers
8 working in institutions, facilities, and jails have a
9 continuing threat of force every day while they are at
10 work, whether the force is used by them or the force
11 is used by inmates against them.

12 In essence of saving time, you've got my
13 testimony. I'm going to go through and skip a few
14 pages because a lot of it was discussed yesterday,
15 which is a good thing.

16 Although there are not excuses for officers
17 that abuse inmates within our nation's institutions,
18 there are just some contributing factors that increase
19 the officer's inability to control one's personal
20 actions during a use of force incidents. Other
21 contributing factors can include Survival Stress
22 Reaction or SSR. Some officers -- and some officers
23 just don't use good judgment and common sense during
24 uses of force or critical incidences.

25 Officers have been assaulted or been hit

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1 with cocktails, a mixture of urine, fecal matter or
2 blood, plus all the verbal harassment of officers and
3 their families. And adding some of the other issues
4 that we discussed yesterday can help to create
5 situations that officers may not be able to use good
6 judgment or common sense.

7 Officers that work in close proximity of
8 inmate special housing units are constantly under the
9 SSR or Survival Stress Reaction. SSR state of mind
10 can cloud the judgment and does make a difference, or
11 a definite effect, on their well-being. While the
12 adrenaline continuously works on their minds while at
13 work, it also works on their physical well-being,
14 which in turn affects their family and home.

15 Use of force. Within different states, the
16 use of force laws are different based on the laws
17 written by the legislatures. There are definite
18 differences between state laws which deal with both
19 correctional officers, sheriff deputies, and police
20 officers. In any case, state laws involving the use
21 of force should be the same across the board in
22 dealing with corrections, sheriff's deputies, or
23 police officers. The law itself in training in the
24 State of Oregon DPSST, or Department of Public Safety
25 Standards and Training, train each agency the same.

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1 Each agency creates their own rules and
2 that law that covers their agency during the use of
3 force incidents in training and applicability of the
4 law within each agency. Consistent and frequent
5 training helps to avoid officers from falling in the
6 traps of excessive force. Excessive force is when the
7 type or amount of force is beyond what is reasonably
8 necessary to control the situation or achieve a
9 legitimate correctional objective, or when continued
10 force is used after it is no longer reasonably
11 necessary.

12 During the use of force situations,
13 officers fall back on training when SSR kicks in. And
14 other stresses mentioned will threaten -- cloud the
15 actual -- the actual can impair the good judgment of
16 the officers during the use of force in critical
17 incidents. If quality training -- training directed
18 at the stressors of correctional environment is not
19 provided on a regular or yearly basis. Officers have
20 nothing to fall back on and when they are in the SSR
21 mode.

22 The definition of an order by inmates is
23 any direction given by -- given to an inmate which
24 directs or forbids the doing some act over which the
25 inmate has control. Inmates are responsible for their

1 action, as are the officers, and should be held
2 accountable for their actions over which they have
3 control.

4 It is important to remember that officers
5 work around inmates every day. The officer's daily
6 interaction with inmates, and the use of progressive
7 discipline, are parts of holding inmates accountable
8 for their actions, reducing the risks of future
9 criminal behavior, and reinforcement of those sorts of
10 behavior.

11 Progressive discipline starts at the lowest
12 level and may end at segregating the inmate from the
13 main inmate population. Verbal warnings, reprimands,
14 written warnings, counseling, program failures, loss
15 of leisure time activity, confiscation of property,
16 misconduct reports, or segregation. Not necessarily
17 in that order, depending on the violation or
18 situation.

19 All violations and situations should be
20 assessed by officers and are at the officer's
21 discretion. Officers need to ensure that they are
22 directly and consistently dealing with each violation
23 in the situation every time to ensure that silent
24 approval is not given to inmates. If there are other
25 mitigating factors such as the conduct of the inmate,

1 his attitude, his actions, the nature surrounding the
2 violation, this will determine the level of discipline
3 and the officer's actions in the matter of the
4 judgment of the officer.

5 Force should never be used as punishment or
6 discipline, but used to bring the inmate into
7 compliance, overcoming resistance, and control the
8 inmate based on the inmate's actions. Force should
9 escalate or de-escalate based on the actions of the
10 inmate and the officer's perception.

11 What is happening at the time the force is
12 used? Force is appropriate for dealing with either
13 aggressive resistance or passive resistance. Force is
14 used starting with lowest type and the amount
15 reasonable to the specifics of the situation and only
16 used to obtain a legitimate correctional objective.

17 Force should not -- force should be
18 terminated as soon as possible, consistent with
19 resuming or maintaining control of the inmate.
20 Officers should start with nonforce alternatives, like
21 talking an inmate into compliance, giving verbal
22 warnings, issuing verbal commands, demonstrating a
23 show of force before actual force is used. If timely
24 circumstances permit, legitimate correctional
25 judgments include the following for self-defense.

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1 MR. RYAN: Michael, try to finish up as
2 quickly as you can.

3 MR. VAN PATTEN: Okay. We're already done.
4 All right. Well, I've got a whole lot of others, as
5 you can see.

6 MR. RYAN: I see.

7 MR. VAN PATTEN: I'll stop here, and if you
8 guys want to ask some questions on some of the topics
9 that I didn't get to --

10 MR. RYAN: We'll give you a chance a little
11 bit later to pick up on some of those. Mr. Berg.

12 MR. BERG: Thank you, Mr. Ryan, and fellow
13 commissioners. It's a pleasure to be here today. I'm
14 sorry I was unable to get an advanced statement out to
15 you, but I've been without power in Miami for ten days
16 due to Hurricane Wilma.

17 I was asked to speak to you today about the
18 latest method to physically abuse inmates, and that is
19 chemical acts. Prior to the 1999 murder of death row
20 inmate Frank Valdes at Florida State Prison, the
21 method de jure for punishing inmates who misbehave was
22 to do a brutal cell extraction. The extraction of our
23 client, David Skrtich, in 1998 at Florida State
24 Prison, by six correctional officers is a perfect
25 example.

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1 Upon entering his cell, one officer used an
2 electronic shield to shock Mr. Skrtich, knocking him
3 to the floor. He was then punched and kicked numerous
4 times on his ribs, ankles, and knees. Two senior
5 officers who was present acquiesced in and took no
6 action to stop their subordinates from punching and
7 kicking the inmate. The result of what the department
8 characterized as a successful cell extraction made it
9 necessary to life flight Mr. Skrtich 75 miles away to
10 a hospital in Jacksonville.

11 His injuries nearly caused his death. He
12 was hospitalized for nine days, and he had to do rehab
13 for up to a year. The prison doctor said, and I
14 quote, that the shoe impressions on inmate Skrtich
15 were probably made from a stomping motion as opposed
16 to merely holding him down. The prison doctor further
17 told the inspector general that, in his opinion,
18 Mr. Skrtich's injuries were consistent with physical
19 abuse.

20 What did the Florida Department of
21 Corrections do? Absolutely nothing. How did this all
22 occur? It appears that the officers were intent on
23 punishing Mr. Skrtich because of an insulting letter
24 he wrote to a female correctional officer. A year and
25 a half later Mr. Valdes was murdered by nine

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1 correctional officers at the same prison. Two of the
2 officers who killed Mr. Valdes were on the very cell
3 extraction team that used excessive force on
4 Mr. Skrtich.

5 The warden at Florida State Prison during
6 the Valdes murder and the Skrtich administration was
7 James Crosby, current secretary of the Florida
8 Department of Corrections. Prior to the Valdes
9 murder, brutal cell extractions, many resulting in a
10 significant physical harm, were the norm. But since
11 the Valdes death and significant media attention to
12 the murder trial of Mr. Valdes, the preferred method
13 of choice has become chemical agents, particularly
14 pepper spray and tear gas.

15 If an inmate in solitary confinement, many
16 of whom are mentally ill, looks out of a window or
17 attempts to talk to another inmate in an adjoining
18 cell, or bangs on the cell door to get the attention
19 of the guard, that inmate runs the risk of having his
20 cell sealed and large quantities of pepper spray and
21 tear gas pumped into his cell.

22 The increased use of chemical agents is
23 staggering in Florida. It now constitutes about fifty
24 percent of all reported use of force incidents. It
25 occurred 6,045 times in a three and a half year period

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1 from 2001 till mid 2004.

2 Governor Jeb Bush's appointment as
3 secretary, the very warden at Florida State Prison who
4 was on watch when Mr. Valdes was murdered and the
5 investigation that was done of the Skrtich beating,
6 sent a clear message to the field that inmate abuse
7 would not only be tolerated, but it would be rewarded.

8 The huge increase in the use of chemical
9 agents during the past five years on his watch is a
10 prime example. And the results of being sprayed with
11 chemicals can be devastating. It causes severe burns,
12 asthma attacks, seizures, vision problems, not to
13 mention the long lasting effect it has on the mentally
14 ill or mentally challenged.

15 I would like to show you some pictures to
16 humanize what I'm talking about of some of the -- our
17 clients who've been subject to pepper spray. Mr. Kirk
18 Massey is a 41-year-old diagnosed with
19 obsessive-compulsive and delusional disorder. He
20 takes psychotropic medication to treat his mental
21 illness. These are color photographs of Mr. Massey
22 after he was pepper-sprayed, and this is about four or
23 five days later.

24 Mr. Sylvester Butler has a history of
25 psychiatric problems and is a borderline

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1 developmentally disabled. The use of chemical agents
2 on Mr. Butler is, at least in part, attributable to
3 his psychiatric and developmental problems.

4 Jeremiah Thomas is a 31-year-old man with
5 an extensive history of psychiatric problems. He
6 suffers from schizo-affectiveness disorder, which
7 causes him to experience auditory hallucinations and
8 bouts of mania during which he does not sleep for days
9 and makes rhythmic noises by talking to himself or
10 banging on his cell walls and doors. Mr. Thomas is
11 also asthmatic.

12 This hopefully will give you some example
13 of a problem that exists at least in one state. And I
14 would welcome your questions at the end. Thank you.

15 MR. RYAN: Thank you, Mr. Berg.

16 Mr. McManus.

17 MR. MCMANUS: Thank you. I'd like to
18 repeat my own pleasure of being here and confess to a
19 dual dilemma. One is that you've had such good
20 witnesses and such good discussions in the past, to
21 try to add more seems almost impossible or redundant.
22 The other is the flip side of that, and that is there
23 are so many topics to cover that one doesn't know
24 where to start. I'll try to discipline myself by
25 simply highlighting a couple points and allow the

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1 dialogue between the commissioners and the witnesses
2 to probably bear more fruit than that.

3 One thing I'd just like to comment on my
4 colleague Sergeant Van Patten's description of the
5 polarity in most prisons and jails between staff and
6 inmates is almost the sense of siege and report that
7 that really scores with my experience in a lot of
8 states and in a lot of prisons and a lot of jails. I
9 think most staff would have some of those feelings.
10 And most inmates would probably reciprocate.

11 There are codes of conduct, staff codes of
12 conduct with inmates that just simply never quite
13 meet. Unfortunately, that description frightens me
14 because I think until we can begin to undo some of
15 those things, it's going to be very difficult to
16 affirmatively pursue prison cultures and prison
17 environments and jail environments that are more safe
18 and less destructive.

19 I'll just comment briefly, not because it's
20 unimportant but because you've heard about it already
21 this morning and in previous days, the issue of
22 leadership. I think leadership at the top levels, not
23 just in departments, but particularly within
24 institutions, the warden, the chief administrator of
25 the jail -- you're right, General, take on -- the

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1 talk about things won't be anything more than just an
2 academic exercise, but I think not. If we want to
3 build a garage, we have to have an idea of what the
4 garage is going to look like before we start. If we
5 want our prisons to be humane and just and centers
6 where human rights are respected, we do need to talk
7 about it. And I think we need to talk about it more
8 than we typically do in the corrections business in
9 this country.

10 One quick story and then I will be quiet.
11 I had an opportunity a couple years ago to do some
12 work in an advisory group at the International Center
13 For Prison Studies in London. And they were putting
14 together a prison handbook, a handbook for prison
15 staff based on human rights. And in the course of
16 that I was embarrassed, actually having been spent an
17 obscene amount of time in the corrections business in
18 this country, about how unfamiliar I was with the
19 international instruments dealing with human rights in
20 incarceration.

21 There's dozens of them. They've thought
22 through many of these issues. They've written down
23 and articulated very strong positions. And it's not
24 that we are not aware of human rights in our prisons,
25 but we don't talk about them very much, and we rarely

1 talk about them in terms of international standards.

2 So again, there's no magic bullet there.

3 But perhaps in the course of our discussion today, or
4 at some later point, there might be some value in
5 trying to think about some of these issues in a little
6 different way, hoping that the rethinking of it can
7 eventually lead to some changed behavior.

8 MR. RYAN: Thank you, Mr. McManus.

9 Let me start with kind of an overriding
10 question. Technology being what it is, we have things
11 from tasers to pepper balls, to mace, to OC spray, to
12 stun belts, to all of those types of things in the way
13 of technology. We have types of things in training
14 from IPC skills, personal communication, to the
15 ability to create certain teams that can go in and
16 have cell extractions and all those types of range of
17 things. And each officer is trained in all that, and
18 supervisors are trained in all that.

19 I presume we can say that we have policies
20 and procedures that are out there in most agencies.
21 What are the best practices to put all of that
22 together to perform the duties and responsibilities of
23 keeping the -- the facility safe and secure, and the
24 community safe and secure, and getting the job done of
25 corrections officers and the mission that they have.

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1 Is there any way to kind of capture all of that and
2 put it forward in some fashion?

3 Mike, how do you do that? You're a trainer
4 in all of this.

5 MR. VAN PATTEN: Well, it starts at upper
6 echelon of the administration. You've got to have
7 clear, direct, and concise directions, clear down
8 through the superintendents of the institutions. And
9 you've got to follow that up with training to make
10 sure that everyone gets the message, not just the new
11 officers coming through the academy. We train them,
12 but you've got to get the message to the senior staff,
13 and promote the same message and accountability.

14 We have gone through the transition that a
15 lot of these states are going through now about eight
16 to ten years ago, with the code of silence after your
17 use of force issues. And culture inside the
18 institution that I work with, built in 1866, Morgan
19 State Penitentiary has changed. But it's taken them
20 eight to ten years to do that through the training.

21 We've actually had lieutenants and
22 sergeants fired that wouldn't come under the new
23 policy and the change in the rule of force and the way
24 we were training it. And that sends a message. Plus,
25 you've got the new culture of officers coming in, and

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1 you're training those officers to this message. And
2 once that culture starts to change, the attrition and
3 retirement, that older generation or culture of
4 officers is slowly moving out and into the new era of
5 how we're treating the inmates.

6 MR. RYAN: Mr. Berg.

7 MR. BERG: I think some of the comments
8 that have been made this morning dealing with culture
9 and the way an institution changes, be it the Army --
10 I was an officer in the United States Navy. You know,
11 I would see it on my ship when a new CO would come
12 aboard, and the culture of the ship would change with
13 each CO. And that's part of the problem.

14 If you continue to appoint people as
15 wardens, as secretaries who condone the use of force,
16 the excessive use of force to punish people and to
17 brutally harm people, then you're going to have
18 problems in the institutions. And all the modern
19 technology that we have, taser guns and pepper spray
20 and electronic shields and everything else, you know,
21 it's going to be used, but used for the wrong
22 purposes, and that's to punish inmates. I've seen it,
23 and I'm sure many of you have seen it in various
24 capacities.

25 You've got to change the leadership at the

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1 top to make certain it's a top-down sort of
2 environment that we live in, be it the CEO of a major
3 corporation or the warden or secretary. It needs to
4 change, and the attitudes within that institution can
5 change pretty rapidly. It doesn't necessarily take
6 years. It just needs someone who's willing to say the
7 buck stops here, and I'm going to hold people
8 accountable for what they do.

9 MR. RYAN: Mr. McManus.

10 MR. MCMANUS: Yeah, let me add one kind of
11 more practical point. I'm not sure it's practical in
12 large systems. I've done it in smaller jails. That
13 is addressing the issue of middle management. As
14 important as leadership at the top is, it's your
15 sergeants and your lieutenants that actually run the
16 prison. They know what's going on way more than the
17 warden does even.

18 Abuses don't occur, I don't think, unless a
19 large number of them know about it. This is where
20 your training can be subverted, simply because the
21 culture and the customs and the practices of the
22 prison tend to be far more influential in shaping the
23 behavior of new staff than what they got in preservice
24 training.

25 What I tried doing in a small jail in

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1 Georgia is working with middle managers, the sergeants
2 and the lieutenants, in the role of trainer. You try
3 to get away from this notion that training is
4 something you got over here from these people, these
5 specialized people, and instead insisted that that was
6 part of the job responsibility of the lieutenants and
7 sergeants.

8 As a practical matter, we simply took the
9 policy manual for the jail, said over the next twelve
10 months we're going to figure out a way that you are
11 responsible for all the people on your shift knowing,
12 understanding the policies. Not just in a mechanical
13 sense of here's what you do in these circumstances,
14 but try to understand, for example, why it's important
15 that there's some due process or inmate disciplinary
16 write-ups.

17 Because often they don't understand. They
18 see it as imposed from management, who is as much the
19 enemy as the inmate often, and don't really feel any
20 sense of being part of that management. Part of it
21 simply is we've never taken the time to sit down and
22 say, this is why it's important. This is why it's an
23 issue. And to allow them to disagree and, in fact,
24 end up changing policies because sometimes they were
25 right and the policy was wrong.

1 It's that level of interaction,
2 particularly with middle management staff, that I
3 found really, really helps to reduce the likelihood
4 that abuse is going to occur further down the line.
5 It's not a magic bullet, again, but it's one technique
6 that might be worth exploring as a way of trying to
7 get away from the dichotomy between inmates and staff,
8 and also the dichotomy between staff and management,
9 to bring in that middle management group, which I
10 really think is -- next to leadership is the most
11 critical bunch of people running a prison or jail.

12 MR. RYAN: Thank you, Mr. McManus. Saul.

13 MR. GREEN: I have a question about
14 use-of-force reporting. It seems to me that an
15 essential part of this is that in use-of-force
16 incidents they are probably investigated and reported,
17 and the results bring confidence to staff, the
18 inmates, the public about when use of force is used
19 and that the level is appropriate.

20 Are there stand -- are there standards for
21 how use of force should be investigated or reported?
22 Who conducts the investigation? What people are
23 interviewed? And how a final decision on the
24 appropriateness of the force is arrived at?
25 Particularly interested in light of Mr. Berg's

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1 testimony about serious use of force that were never
2 responded to. Can you all talk about how they are
3 investigated and reported?

4 MR. BERG: I can talk about Florida and our
5 experience in Florida. The use of force in terms of
6 use of pepper spray, I think, out of -- I had my
7 statistics with me earlier, but I think there were
8 like 2,000 reported cases, and of the 2,000, I think
9 there was one where they found excessive use of force
10 using chemical agents out of 2,000. The reason for
11 that is it was an improper use of force.

12 The problem that we have in Florida, I
13 think, is the inspector general who does the
14 use-of-force investigations is within the Department
15 of Corrections. It's like giving the fox the keys to
16 the henhouse. So you don't have an ombudsman. You
17 don't have someone outside of the very department that
18 they're the watchdog over looking at the use of force
19 and whether it was properly justified and whether
20 anything was done about it.

21 So for Florida, I don't know about -- this
22 deputy secretary from Maryland was testifying earlier
23 about they don't need any more oversight. Well,
24 Florida needs some more oversight, but it needs to be
25 outside the Florida Department of Corrections in an

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1 ombudsman capacity or inspector general capacity that
2 would have some accountability and some public
3 credibility.

4 MR. VAN PATTEN: In the state of Oregon,
5 when we changed our rule on force, we have the
6 four-step review system during any critical incident
7 or even any use of force where you have to put your
8 hands on an inmate that is resisting, all right, and
9 not complying.

10 First, it starts at the level of the
11 officer in charge, the captains and lieutenants. Once
12 the reports are completed, he reviews, whether it's
13 videotaped -- all planned use of forces that we have
14 are videotaped. He reviews that. It's checked off
15 whether he thought it was justified or not.

16 Then it goes to the superintendent and the
17 assistant superintendent at securities level. They do
18 the same thing. Then it goes to the department head
19 for the chief of security. They review it. Then it
20 goes to the inspector general.

21 So there's a four process in the state of
22 Oregon. And one of the things that we've dealt with
23 is back when I started in '85, you get together and do
24 a report and most of the reports looked the same. But
25 we all know my perception on something that I view is

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1 going to be different than another officer that was
2 standing there and seeing it or even a noncorrectional
3 officer, if they viewed a rule of force. Anyone who
4 witnessed it has to do documentation on it in their
5 own perception and hand it in with the paperwork, so
6 that when you do the review, you can see if there's
7 any inconsistencies.

8 And then they also recognized in the
9 department that we do have critical stress reaction,
10 or Survival Stress Reaction. Most of the officers
11 that fall back on that, you can see them when they're
12 getting ready to go into a cell extraction, your
13 adrenaline. Kind of me when I was getting ready for
14 this meeting today to testify. You get that upwelling
15 in your inside because your adrenaline is going, your
16 heartbeat is going up. And you train the staff before
17 the cell extraction, the supervisors talk to the staff
18 about breathing correctly. Relax, be calm, this is
19 what we're going to do.

20 It starts at that level. And if it's a
21 critical incident, I mean serious critical incident
22 just like if you were involved in a car wreck, even
23 DMVs give you 72 hours to do the paperwork because it
24 takes that long through critical stress amnesia to
25 remember everything. That's why when the officers do

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1 reports sometimes it doesn't look correct, because
2 that sometimes 35 percent will come back the next day,
3 75 probably the day after that. So they give them
4 time.

5 We don't have to -- if it's a critical
6 incident, to do that report right then because then it
7 makes the paperwork look bad. Those are things that
8 we've done to help correct that type. We're also
9 training the officers during use of force to disengage
10 when the inmate is in compliance or in control, and
11 that's a philosophy change in corrections.

12 We realize that just like in business, that
13 the inmates are a commodity. They're not warehousing
14 anymore because they're all going to go back into
15 society, 95 percent of them. And you've got to start
16 role modeling the pro-social behavior, dealing with
17 the officers at the first line, dealing with the lower
18 issues at the smallest point before they get to bigger
19 issues. And our uses of force and cell extractions
20 have gone down because of that, because your ability
21 to communicate, as you've heard over the last few
22 days. That's what we do. So you can make a
23 difference.

24 But like they were saying, you have to have
25 clear direction from the director -- and the buck does

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1 stop there -- that he holds the superintendents
2 accountable for what's going on in their institutions,
3 and the superintendents hold their mid-management and
4 their line staff, their sergeant and lieutenants. I
5 agree with what he says, just like the military.
6 Sergeants are the backbone. Lieutenants are the
7 backbones of the correction system. They're the ones
8 that if you go training -- when I started, it was not
9 -- forget about what you got here.

10 You can learn more on the job than what
11 you're going to learn there. But as you train those
12 mid-managers to what the same thing you're training
13 those staff, they know what is going to be expected of
14 those staff, and they can hold them accountable for it
15 also.

16 MR. RYAN: Mr. McManus.

17 MR. MCMANUS: Just as a quick comment. The
18 issue of internal versus external review is a much
19 bigger issue than we're going to resolve here,
20 although I expect the commission is going to have to
21 grapple with that. One of the problems with external
22 review, one of the reasons it's so feared is that
23 there's an assumption -- perhaps an accurate one --
24 that people on the outside don't understand the
25 stress.

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1 I love the -- now that we can name that
2 Survival Stress Reaction, I never knew what to call it
3 before. It helps to name things. That they don't
4 appreciate that. And then so therefore they won't
5 give the officer a fair shake.

6 The problem with internal review is exactly
7 the opposite. That is there is a tendency to be so
8 supportive of staff that it may be not be as critical
9 as it ought to be. I don't know if there's a way for
10 us to think about reviewing these incidents in a less
11 disciplinary oriented way. Medical practice has begun
12 to do this where when there's not blatant malpractice
13 issues but when there have been mistakes made, that
14 there's a context for internal review, which is not
15 oriented towards disciplining, but rather towards
16 learning.

17 That may be a long leap to try to do that
18 within a prison context. But again, I think if the
19 culture begins to get more appreciative of the stress
20 that the officer is under, but also the understanding
21 that the very environment in a prison is conducive to
22 excessive use of force as much as we would like to say
23 it is not, the vastly uneven distribution of power in
24 prison really makes it almost predictable.

25 It does make it predictable. There's going

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1 to be a use of force. So to try to root that out or
2 deal with it seems to me we need a more neutral ground
3 to discuss it. To review it honestly, to admit
4 mistakes without having to feel that we're going to be
5 crashed down upon by some outside force. Again, I
6 don't know that we're going to solve the problem, but
7 I think you're going to have to deal with that.

8 MR. GREEN: One comment. I've seen this
9 internal investigation versus oversight investigation
10 context in law enforcement settings where, of course,
11 in many agencies have civilian oversight. One area I
12 deal with on a regular basis is I'm monitor over
13 Cincinnati Police Department, and it was a requirement
14 that citizen oversight be put in place there.

15 And it's pretty strenuous. I mean, it's
16 well funded. There's a sufficient investigatory
17 staff, and it was very much resented by the police
18 department when it was put in place. What we've seen
19 over three years, though, and much of the reaction was
20 as you described, Mr. McManus, that these are people
21 that don't understand. These are civilians.

22 But what we've seen is that the correlation
23 on parallel investigations, in terms of the outcome,
24 is about 95 percent. And as a result, the police
25 department has calmed down a great deal, and it does

1 provide an extent of confidence to the community, who
2 large segments of which were up in arms about the
3 policing there.

4 And so I think there are parallel examples
5 where it clearly works well and shows -- and brings a
6 degree of confidence and time to all of the
7 participants.

8 MR. MCMANUS: I agree. When we use the
9 word transparency in prisons, that's one of the issues
10 that the public really does need to see what goes on
11 and be able to look. So I agree that the oversight is
12 there. Just a delicate issue, and I think you're
13 right. Over time it will probably evaporate.

14 MR. BERG: Sergeant Van Patten brought up
15 something I'd like to add to. That is in Florida that
16 nonspontaneous use of force is videotaped in all
17 incidents, with the exception of the use of chemical
18 agents.

19 MR. RYAN: Interesting. I understand there
20 are some students that need to leave. Before we go
21 into the next question, this might be a good
22 opportunity for folks to take off. Everybody stay
23 where they are that are testifying, and commissioners.

24 (Mr. Sessions leaves.)

25 MR. RYAN: I know there's a couple folks on

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1 the front row that have a question. I'm going to
2 defer to the co-chair just to ask the next question
3 right over here.

4 MR. KATZENBACH: I'm just curious. We
5 talked about the use of force, and it's easy to see
6 when there's a grossly excessive use of force. It
7 seems to me it's not so easy for your -- for the
8 people using it in some situations quickly where they
9 have to make decisions. And they may well use
10 somewhat excessive force, but they see, in retrospect,
11 somebody looking at it after the fact.

12 What I'm curious about is, what is the
13 proper -- how do you deal -- I can see how you deal
14 with really excessive use of force, the bad actors,
15 but how do you deal with the more marginal situations?
16 What's the proper discipline? How does that -- how is
17 that dealt with by management.

18 MR. VAN PATTEN: In our institution, we
19 have what's called -- and we train this. We have
20 recoverable and nonrecoverable errors that the
21 employees can make, not just in use of force, but
22 there's other issues, code of conduct, all that other
23 stuff. So if one does -- and that's why we did the
24 separate paperwork.

25 I mean, one thing, you don't lie about it,

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1 right? You document what happened. Admit when you're
2 wrong, and you go on. You correct it. Either through
3 training or back through use-of-force training or
4 defensive tactic training or whatever, and you deal
5 with it on a one-on-one, and of course, one-on-one,
6 and you hold them accountable for that.

7 Does that mean that you're going to fire
8 them? No. It just depends on what's the issue. If
9 it's a real excessive use of force, which we haven't
10 had in a while, yeah. I mean, then it becomes a
11 police issue because it's a felony, right, or -- a
12 felony, but it also can be civil rights violations.
13 And it's based on the officer's perception.

14 My perception and your perception of the
15 corrections is wide different because I've been in
16 there twenty years. And you guys are on a steep
17 learning curve right now on what we actually do. But
18 you gain perception through knowledge, through
19 training, through education, through experiences. All
20 right?

21 One thing my grandfather told me, and I
22 relate this to my officers and students that I teach,
23 is I have not created -- or I have not made a lot of
24 mistakes in my life, or any in fact. What I've done
25 is created a lot of learning experiences for myself.

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1 You learn from those mistakes and you go on. And
2 managers will hold you accountable for that if it
3 doesn't go beyond that recoverable error, past that
4 line.

5 MR. KATZENBACH: The point I'm trying to
6 make in a way is that when you're using any kind of
7 force, when there's any kind of violence involved, the
8 people involved in that incident can get carried away.
9 And the force almost always becomes somewhat
10 excessive.

11 MR. VAN PATTEN: We've trained every
12 officer that dealing with the use-of-force issues,
13 that -- and it's basically taken the use of force into
14 that realm of a staff member packing any contraband,
15 into that realm, because we train them that not only
16 are you going to be in trouble, but everyone on that
17 team is going to be in trouble, and you could possibly
18 lose your job.

19 So it's taken that bit of that code of
20 silence as you've heard out of that into a different
21 area of officers' conscience. And they're trained to
22 help each other. If you see an officer getting red
23 zone or SSR, which sometimes they do, I mean
24 tunnel-vision-lighthouse effect, deer-in-the-headlight
25 look, hearing goes, right? Talk them -- talk to them.

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1 Deal with it. Hey, stop. And we train that,
2 especially with the new officers and even seasoned
3 staff to let them know you have to be able to watch it
4 and help each other in that incidence.

5 MR. RYAN: We have a couple questions up in
6 the front row that I can't always see. So please jump
7 in. Go ahead.

8 MR. DUDLEY: Mr. Berg, you clearly seem to
9 be saying that those who are mentally ill are
10 particularly likely to be victims of excessive use of
11 force.

12 Sergeant Van Patten, you commented on --
13 you kept using the term actions over which the inmate
14 has control. At least suggesting that there were
15 inmates who were acting and didn't have control. I'm
16 assuming that you were also suggesting things related
17 to mental illness and other sorts of problems.

18 My question is: What do you think is the
19 problem here? Is it that these individuals are not
20 recognized as having mental health problems and/or
21 there's an absence of protocols specifically focused
22 on dealing with individuals with mental health
23 problems as opposed to other behavioral problems,
24 and/or people just don't care that they have mental --
25 they don't care that they have mental health problems,

1 and they still get the same sort of treatment?

2 On the flip side of that, Sergeant Van
3 Patten, are there -- is a part of all of this in
4 recognizing that officers have this Survival Stress
5 Reaction, is there a part of all of this that helps to
6 monitor which officers have such severe Survival
7 Stress Reaction that it makes them so likely to use
8 excessive use of force that there should be some other
9 intervention for the officer? Not just kind of
10 acknowledging that they have this, but something
11 should be done about it at some level of severity that
12 it increases the risks of excessive use of force.

13 MR. VAN PATTEN: We have done that in a few
14 cases where officers clearly are having problems, and
15 they've done -- having do psychiatric review on them
16 as a return to work. There's been a few of those.

17 To address your first question first, any
18 of our segregation units, any of our separate housing
19 units, all of our inmates are tagged that have medical
20 issues, especially with OC. If they have asthma or
21 anything like that, they're tagged. You can't use it.
22 You have to use another tool.

23 As far as reactive use of force for
24 officers carrying OC on the yard, we have the small
25 canisters, and they're trained to do small bursts. Of

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1 course, the inmate is forewarned, "If you don't stop,
2 I'm going to spray." So that helps cut down on that.

3 As far as the mental health, you have to
4 train the officers to look at it, because officers
5 that are working the front line deal with most of
6 these inmates that are having mental issues. So
7 you've got to give training to them to recognize the
8 signs, whether they're not taking their meds or it's
9 just a behavioral issue that he's doing.

10 So you've got to train them so that they
11 can call a counselor, get them up there to get help.
12 You'd be surprised how much problems that alleviates.
13 I mean, the front line staff. You deal with the small
14 problems at the bottom level before they become big
15 problems. And especially, like I said, in special
16 housing units they're tagged and caseworkers do
17 monitor that.

18 MR. MCMANUS: If I could just respond to
19 what you're asking. I've been dealing in recent years
20 a lot with smaller jails, jails in general which have
21 much more -- much higher turnover rate and not as
22 stable a population as prisons tend to have. I think
23 the issue of mentally ill people in jails have become
24 an enormous problem, particularly as it relates to the
25 use of force.

1 Those behaviors are typically the ones that
2 are going to create that kind of reaction in staff,
3 particularly if they don't recognize it as a result of
4 mental health problems. Because the jails are smaller
5 and because they're spread out, they don't -- they're
6 not as visible as issues that occur in state prisons.

7 State prisons typically have mental health
8 professionals. They have access to it. Many small
9 jails do not, and they're just in the very early
10 stages of dealing with that. To the point that I
11 truly believe that training in recognizing symptoms of
12 mental health -- mental disorders should be an
13 absolutely fundamental part of any preservice training
14 for jailers.

15 So you get to the point of looking at
16 standards and issues like that. I think training
17 around that topic is critical and critically needed,
18 particularly in jails.

19 MR. RYAN: Mr. Berg, any response to those?

20 MR. BERG: Well, I'm just troubled by the
21 fact that we are locking people -- we're locking up
22 lots of people now who are mentally ill because we've
23 closed down a lot of our mental institutions around
24 this country. And we're seeing today in our prison
25 system and jails large numbers of mentally ill people

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1 who, but for their mental illness, wouldn't be harmed
2 in the way these gentlemen have been harmed by being
3 gassed. This is the non spontaneous use of pepper
4 spray OC and CS on people who are mentally ill. And
5 corrections needs to take that type of punishment out
6 of corrections.

7 The General asked a question about -- and I
8 hate to be legalistic, but David Skrtich's case went
9 to the 11th Circuit and qualified an impunity appeal
10 by the Department of Corrections. And the 11th
11 Circuit said in his decision, quoting Whitney Versus
12 Albers, they said, "The force is deemed legitimate in
13 a custodial setting as long as it is applied in a good
14 faith effort to maintain or restore discipline and not
15 to maliciously and to physically cause harm."

16 I think that's the issue that we need to
17 deal with in excessive use of force. In these
18 instances where guys are locked up and they're looking
19 out a window or they're trying to talk to someone and
20 they've been in solitary confinement 24/7, and they're
21 mentally ill -- you and I would go mentally ill if we
22 were locked up 24/7. Years on end, literally.

23 And the sad thing is, these guys were
24 released directly to the street. Think of what that
25 does to our public. What -- we're putting our public

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1 at risk when we do that type of harm to people, lock
2 them up 24/7 for years on end and release them
3 directly to the street. That frightens me. It should
4 frighten the public and hopefully you.

5 MR. RYAN: Thank you. Mr. Krone.

6 MR. DUDLEY: Are you saying that
7 training -- are you arguing that training of officers
8 to recognize signs and symptoms of mental incompetency
9 really won't address it? Are you saying --

10 MR. BERG: I think you need to take people
11 out of this kind of environment of 24/7 lockdown who
12 are mentally ill, and deal with them in a therapeutic
13 setting where they can get help and people can deal
14 with them. Because otherwise, you know, they're caged
15 animals, and they're going to react that way once
16 they're released to the street.

17 But you just can't treat them in the
18 fashion that Florida has treated them. Florida locks
19 up more people in solitary confinement,
20 percentage-wise, than any other state in the country.
21 And it's a problem, and it needs to be dealt with.

22 MR. KRONE: I want to kind of back up a
23 page from the actual application of use of force to
24 what root causes lead to the need for use of force. I
25 know I've seen in your opening about -- you talk about

1 the changing of prison culture. You talk about the
2 need to try to lessen the use of excessive force, the
3 use of cell extraction.

4 I have a little bit of experience being in
5 prison and the wrong end of the excessive use of
6 force, and I know one of the major causes of that is
7 gangs. Security threat groups lead to everything from
8 assaults, physical assaults on inmates and staff, to
9 riots in the prison.

10 My question to you, of course, because if
11 you lessen some of the control of the STGs, of gangs
12 in prison, if you can get away from some of the
13 violent natures, some of the more tendencies that lead
14 to the use of need for force, lead to need for cell
15 extraction, need for riots, what policies, procedures,
16 and practices have you found effective in dealing with
17 STGs and trying to lessen their power or negate their
18 power of control over other inmates and having people
19 become leaders and leading to violence and, of course,
20 to your need for excessive force or any force.

21 MR. VAN PATTEN: Our Policy Number 69,
22 Security Threat Groups, I've been a Security Threat
23 Group team member for ten years dealing with it, and I
24 also teach it at the community college.

25 You can't control all of them because as

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1 you know, they're going to do what they're going to
2 do. And most of those groups, fifteen percent, is
3 usually what the average across the nation is for
4 security threat groups are the ones that actually
5 causing most of the incidences inside our institution.
6 And you'll have a sporadic uprising of extortion from
7 other groups.

8 But to the recruitment and stuff, Oregon
9 has a zero tolerance to security threat group
10 behavior. No signs, no drawings, no nothing. And we
11 monitor them. We log them with category, and we
12 reinterview every year and document all of that in our
13 findings. We move -- we use interstate contacts
14 sometimes.

15 We use moving through different
16 institutions. We use our intensive management unit,
17 takes the risk down to the high profile, which is a
18 programming unit dealing with anti-gang message or
19 pro-social behavior to get them out of that.

20 But to control it, as you know, they're
21 going to do what they're going to do. You have 24/7
22 to do it. Reactive use of force on the yard dealing
23 with gang fights and stuff, the officers during the
24 training realize and are trained that, you know,
25 you've got other inmates responsible.

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1 And excessive uses of force don't
2 necessarily happen on a reactive use of force because
3 other inmates are watching, and as you know, if you do
4 that on the yard, you know what's going to happen, all
5 right?

6 Most of them happen in controlled settings,
7 all right? Like in our special housing units and
8 stuff. That's why we videotape all of them. That's
9 why we give them the tools, all right? We call them
10 less than lethal, and we categorize the inmates.

11 We have inmates, if we use OC on them, our
12 policy is we don't use electronic immobilizing devices
13 on them because of the possibility of flameage. We
14 actually had one do that about six years ago. Policy
15 is if you do that choice, you don't go to that one,
16 you go to the next level. And so you have to look at
17 all this stuff and train the officers to do that.

18 Is there enough training for officers in
19 preservice, and all that, across the United States?
20 In some states there are. I mean, the list he read
21 off yesterday was impressive. I said where is that
22 at? I wish we had some more of that. And you can do
23 that through forty hour in-service for senior staff,
24 but you've got to send the clear message to the
25 officers that are doing it, and the supervisors in our

1 institution are always present during cell
2 extractions.

3 And another thing we do, if the officer who
4 was involved with that inmate does not get involved
5 with the use of force if we have to go in on cell
6 extraction. That alleviates that part of that officer
7 might wanting to retaliate against an inmate.

8 MR. RYAN: Thank you, Sergeant. I know
9 Margo was trying to get in on a question. We just
10 have a couple minutes left here.

11 MS. SCHLANGER: My question is about uses
12 of force that are really to maintain order rather than
13 to maintain security. So what I'm thinking of is
14 prompting this question is a few opinions I've read,
15 judicial opinions in systems where uses of force
16 tended to be around, you know, getting a lunch tray
17 back, that kind of thing.

18 So there's an inmate and he's, no, I'm not
19 going to give you the lunch tray back. Then you get
20 quite brutal consequences that come from that. What
21 I'm wondering is what is the right thing to do when an
22 inmate says, well, I'm not giving you the lunch tray
23 back. What can you do apart from the go in there with
24 a team to -- not even to extract the inmate, to
25 extract the tray.

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1 These are -- these were, as I say, with
2 quite brutal consequences. There was some question
3 whether the extraction of the lunch tray really covers
4 for a beating, or whether it was sincere. Assuming it
5 wasn't cover, what's the right way to run that need to
6 maintain order? How might that be approached?

7 MR. MCMANUS: Let me just respond to it
8 quickly. Cell extraction is one of those things that
9 I think we do more than we need to do. Partly just to
10 establish who's in charge and who's the keeper and
11 who's kept. With the lunch tray -- and that's
12 actually -- they won't give up a lunch tray or toss it
13 up on the run or whatever. My experience has been
14 just don't give them the next meal tray. They get
15 hungry and the behavior changes. We sometimes
16 overkill when we really don't have to.

17 If an inmate is threatening physical harm
18 to himself or someone else, you have to respond to
19 that. But if it's simply a matter of he won't come
20 out and he's supposed to come out, or he threw the
21 tray out or won't give the tray back and he's supposed
22 to, I think we shoot ourselves in the foot by
23 overreacting, risking staff, and risking harm to him.

24 So I don't know what percentage that is. I
25 don't have those numbers, but I think a fairly

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1 significant number of reactions like that are,
2 frankly, not necessary. You may disagree with me
3 completely.

4 MR. RYAN: I made a mistake. You have
5 another half hour, so it's okay.

6 MR. VAN PATTEN: Actually, on some of that
7 I don't disagree, and you're right. Some agencies and
8 some staff do overreact. But the department has to
9 set clear, legitimate correction objectives. What are
10 we trying to obtain? What's our goal here when you're
11 doing these?

12 Is it the need for self-defense or defense
13 of another person against an inmate by using
14 reasonable force, prevent escape from state
15 correctional facility, to prevent escape during
16 transport, to prevent serious destruction of property,
17 taxpayers' dollars, right? Quell a disturbance or
18 overcome an inmate's resistance to a lawful command.
19 The officers give them lawful command. We have
20 different punitive -- not punitive. We have different
21 incentive and nonincentive programs that we use to
22 deal with the inmate.

23 Whether it be that type of situation, if
24 you let that inmate get away with it, what's the next
25 two inmates going to do? So now you've got them

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1 grouping together, all right? And you can't let that
2 happen. Now, you go in as an excuse just to get the
3 tray in? No. You try talking to them. You give them
4 lawful commands.

5 Your first thing to do is get someone in
6 there that can communicate, and nine out of ten times
7 they will back up to the bars because they don't want
8 you coming in. We're going to take it from them and
9 give him a misconduct report, and they're going to get
10 other damages and holding him accountable for not
11 doing that.

12 A lot of times we just -- before all of
13 this started -- when I started, we were just
14 warehousing inmates. Now you have to hold them
15 accountable for their actions, like my colleague here
16 said. They're going back out into society. If you
17 don't hold them accountable, like society is holding
18 them accountable, for actions that they have done in
19 the community and sentenced to prison, you've got to
20 continue that clear through the sentence, clear
21 through probation, through programming, training,
22 holding them accountable for their actions.

23 And you're going to have some that aren't
24 going to be able to follow that, some mental health
25 issues that we've got also, but 75 percent of those

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1 inmates you can deal with. The five percent of them
2 are going to be going back out in into the public.

3 MS. SCHLANGER: It sounds like you don't
4 really agree with what Mr. McManus said -- where he
5 said the consequence ought to be, you don't give your
6 lunch tray back, you don't get the next tray. You're
7 a little bit more worried that you don't get the lunch
8 tray back, then next time you got a bigger problem.

9 MR. VAN PATTEN: Those are some issues. In
10 Oregon -- I do agree with him. We do have feeding
11 orders where if they don't do that, next time he won't
12 get his meal, all right. If he's throwing food on
13 officers, they make what's called a neutral loaf, all
14 right? It mix all the food together into one loaf,
15 and it tastes like you know what because I've tried it
16 just to taste it.

17 But there are other alternatives to force
18 you can use and you've got to have available for the
19 staff, for the officers, for captains and lieutenants
20 who are dealing with this. Including every time
21 before we use a use of force it's got to be cleared
22 and call either the superintendent or the officer in
23 charge or the officer of the day to let them know
24 what's going on.

25 What type of tools are you going to use?

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1 Chemical acts, EID, hand-to-hand, it's got to be going
2 through that process. And superintendent knows what's
3 going on and authorizing that use of force. It's not
4 just us making that decision.

5 MR. BERG: Most of the corrections experts,
6 and I'm sure Mr. McManus will correct me if I'm wrong,
7 but most of the ones I deal with in terms of when to
8 use force and to use the type of force I think you're
9 talking about is is the inmate abusing himself or a
10 danger to himself or others? And then the second
11 thing is whether or not he's destroying state
12 property, excessively destruction of state property.

13 Those are kind of the criteria or the rule
14 of thumb that I think most correctional experts would
15 agree as to whether it's now time to use force to deal
16 with that problem.

17 MR. MCMANUS: I think that's right. When
18 we get into kind of vague things, how much is
19 significant destruction of state property? I mean,
20 mark a wall up doesn't equate, it seems to me, to
21 marshalling your SWAT team and going into the cell.

22 The one line that I'm always very nervous
23 about is when the reason for the use of force is the
24 refusal to follow a direct order. That covers a
25 multitude of sins. And there has to be some judgment,

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1 and there has to be some control. And I think it's an
2 issue of supervision and leadership from the top, that
3 you don't -- because you can always create a situation
4 where somebody is not following a direct order. If
5 that alone will trigger a use of force response, then
6 you're heading for a lot of trouble. But with the
7 proper leadership and proper supervision -- it gets
8 beyond training into real supervision, that people
9 understand in this place we don't use force that way.

10 MR. SCHWARZ: I have a bunch of questions
11 that come out of the videotapes. And apparently in
12 Oregon if it's a planned use of force, there's
13 videotape used. In Florida, if it's a nonspontaneous
14 use of force videotapes. So a group of questions.

15 First, how often is that done in other
16 states? How often is that required in other states?
17 Second, is it effective as a deterrent? Third, what's
18 the standard in which one defines planned and
19 nonspontaneous? Is it subjective or is it objective,
20 and on the objective side, for example, does it
21 include every removal from a cell which by definition
22 is planned?

23 Does it include every time an officer has
24 spoken to a superior about the use of force, and which
25 I guess by definition is planned or not spontaneous?

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1 And does it -- on the harder side, does it include any
2 time, to pick a phrase from the Bible, two or three
3 are gathered together to approach an inmate? That is
4 a stream of questions on the subject of the
5 videotaping.

6 MR. BERG: The one thing I'd like to ask
7 about use of videotaping, as I said earlier, it's
8 required to be used when there's a nonspontaneous use
9 of force in everything except for pepper spray, which
10 you can draw your own conclusion on that one, why they
11 do that.

12 But one of the reasons they said they don't
13 use the videotape is because they quit acting out when
14 we come around with the camera. So we said why don't
15 you just issue cameras to people and let them walk
16 around with them. In fact, that will end the inmate
17 banging on the door or talking to the neighbor, but of
18 course, they don't do that.

19 MR. VAN PATTEN: Videotaping in our
20 department has made a difference because, as we all
21 know sitting here, it can either help you or it can
22 hurt you. And the officers know that. I do a
23 half-hour class during the use of force just on the
24 videotaping because not only do you have to watch out
25 for excessive force, you have to watch out what the

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1 officers are saying because it's all being videotaped.

2 In our institutions throughout our
3 department, we have added digital computers to all the
4 cameras that we have. So everything is being recorded
5 digitally, and the officers are trained that you have
6 to be aware of that and conscious, that if you do
7 something wrong, the superintendent is going to see
8 and they're going to hold you accountable, and that
9 has made a difference on that.

10 As far as dealing with reactive versus
11 planned, if time and circumstances don't permit the
12 ability to have a supervisor present, the ability to
13 videotape, the ability to get a plan together, time is
14 on our side. Officers have to react right now.
15 There's a fight or a stabbing or whatever. Even in a
16 cell if an inmate is in there stabbing himself,
17 sometimes we might have to react to save his life, all
18 right?

19 That's a judgment call on the officers
20 dealing with what's going on. I mean, you have to do
21 that in knowing that when you're being videotaped
22 there's other inmates around, there's other staff
23 coming to help. Not to use excessive force. Once the
24 inmate gets into compliance, or in control, and
25 restraints or on the ground or whatever is when the

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1 force stops unless you have to maintain control.

2 I mean, the inmate has already shown he's
3 clearly agitated. You're not going to put cuffs on
4 him and release him. You're going to escort him,
5 maintain control. One thing, if the officer -- or
6 inmate trips and falls, who's liable for him? His
7 hands were restrained. You've got to protect not only
8 that inmate from himself, but from other inmates too.

9 MR. SCHWARZ: Is it actually written down
10 in Florida that even when you're on nonspontaneous use
11 of force, but if you're planning to use a videotape,
12 don't worry? Planning to use pepper spray?

13 MR. BERG: Yes.

14 MR. SCHWARZ: And how -- what was the
15 justification for that?

16 MR. BERG: Because they'll quit acting out.

17 MR. RYAN: Not in Orange County, Mr. Berg.

18 MR. BERG: Pardon me?

19 MR. RYAN: Not in Orange County.

20 MR. BERG: Right.

21 MR. BRIGHT: Could I turn just on the facts
22 here to be a little clear on them? Mr. Berg, you
23 talked about these three people here who were chemical
24 agents used. I wanted to ask, were all of these
25 isolation cells, or were some of them and not others?

1 And then secondly, how much is this -- or was this at
2 Starke maximum security prison or was it different
3 prisons?

4 And how much is this a problem throughout?
5 You got a lot of prisons in Florida and you have a lot
6 of prisoners. How much is this a widespread problem
7 as opposed to isolated incidents?

8 MR. BERG: It's widespread in Florida. As
9 a result of a class action dealing with super-max
10 confinement that we settled with the state, they have
11 consolidated their close management units, and close
12 management is what's solitary confinement in most
13 states. They've consolidated it now down to five
14 institutions, and may have a sixth.

15 We have focused solely on the use of pepper
16 spray in those secure institutions that have close --
17 what is called close management. That's been the
18 focus of our litigation. And to answer your question
19 about whether there are other inmates sometimes that
20 are double-celled, and it may be one inmate who's
21 acting out who is the objective of being pepper
22 sprayed, but both inmates get it. Not just both
23 inmates.

24 I'm sure a number of you have been on cell
25 wings where pepper spray, excessive use of pepper

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1 spray and tear gas is being used, and it permeates the
2 entire wing. We have actually had -- and you were
3 going to have a psychiatrist testify in Tampa but he
4 was unable to appear about medical people who are on
5 the wing being pepper-sprayed as well, and how long
6 and how it affected them.

7 They complained about it. The correctional
8 officers complain about it. They can't complain too
9 much, but they do complain about it privately. But
10 it's a serious problem in Florida. I don't know about
11 other states. I don't know about Georgia.

12 MR. BRIGHT: All of these three people,
13 they were in this close custody in one these six
14 institutions?

15 MR. BERG: Correct. They're in close
16 management. There's three grades, close management
17 one, two, and three, with one being most severe. They
18 were in CM-1.

19 MR. GREEN: I'm curious. In terms of use
20 of force we're seeing -- again, I'm going back to the
21 law enforcement setting where more and more the use of
22 taser are being employed by law enforcement agencies,
23 and of course the description is that they are
24 momentarily immobilizing people, but impact and the
25 effect is much less than other forms of use of force.

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1 Are we seeing -- to what extent are we
2 seeing the taser being used as an instrument to try to
3 control situations in prisons and jails?

4 MR. VAN PATTEN: In Oregon we do have the
5 taser. We don't have the new X-26, the one you're
6 talking about which does have a memory chip in it and
7 only lasts five seconds for the pulse. It does work.
8 And it does give the officers the opportunity not to
9 get directly involved because most of our -- most of
10 our staff injuries occur on reactive use of force, at
11 least talking about Oregon is where we get hurt,
12 responding, breaking up a fight.

13 So you give the officers the tools, the
14 ability to break up a fight between two inmates, gang
15 members or whatever without having to use physical
16 contact unless you're restraining the inmate, and you
17 prewarn the inmate before you use any, and the taser
18 does effectively work, especially when you just arc
19 it. They know what's coming next, all right.

20 That's a show, of course. Just holding up
21 a can of pepper spray, you're giving them orders. Any
22 time we use of force in our institutions, every inmate
23 that was involved is seen by medical staff and it's
24 documented, all right. That should be happening
25 everywhere, especially with pepper spray. Checked

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1 every ten minutes and every fifteen minutes thereafter
2 for the first hour because of the chemical reactions
3 and stuff, whether it be inmate or staff because some
4 staff have accidentally gone downwind and been
5 sprayed. And if you're not going to give them the
6 medical attention after that, that's what's going to
7 happen. You have to give them that medical attention
8 whenever it's being done, and not just the inmate.
9 The staff also.

10 MR. BERG: I don't have much experience
11 with taser, but I do have a colleague out in
12 California who has a wrongful death action in a
13 products liability case against a taser going on right
14 now because it killed someone. That's the risk of
15 using taser. We do not -- I can't recall getting any
16 letters from inmates or complaints about the use of
17 taser in Florida. It may not be used.

18 MR. MCMANUS: I'm sure staff would have
19 access to whatever actual numbers there are on the use
20 of taser. My sense is pepper spray and those kind of
21 chemical agents seem to be the far preferable one
22 because they're easy to use, they require less
23 training, and -- but that's simply a hunch. I think
24 the numbers are probably out there, but I just don't
25 know what they are.

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1 MR. DUDLEY: One of you mentioned, I can't
2 remember actually which one, that external oversight
3 and review might be more helpful and more meaningful
4 if it was directed towards identifying positive
5 changes in the system or at least pointing in the
6 direction of change as opposed to simply being
7 punitive and about punishment. And I'm trying to
8 understand that in the context of the argument that
9 most of these problems are really the result of, you
10 know, some aberrant individuals as opposed to systemic
11 problems. So I'm trying to --

12 MR. MCMANUS: I'm guilty of making the
13 statement. I don't know that -- certainly there is
14 stress and there are pressures on individual staff
15 people to respond in certain ways. I don't know that
16 that is the crux of the problem with the use of force.
17 I think it's far more than we care to admit. It's an
18 institutionalized response that's based on a way of
19 thinking about how people relate to each other in a
20 prison. To the extent that you're going to always
21 have individuals who in a given point in time
22 overreact, react improperly, I'm not sure that there's
23 any way we can totally control them with oversight,
24 whether it's internal or external.

25 What I was trying to get at is that people

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1 in these situations will make mistakes, honest
2 mistakes. I think I start with the assumption that
3 they are not evil, that they are not motivated by a
4 desire to hurt other people, although there are some
5 individuals I suspect who have those characteristics,
6 but that they're trying to do a job, very difficult
7 job, as well as they can.

8 The oversight issue, the response to
9 mistakes, legitimate, honest mistakes that are made is
10 often punitive, and I think to that extent it
11 reinforces the notion that we just aren't going to
12 tell you about it. If the response is going to be
13 that I or my colleague is going to be crucified for
14 what was an honest mistake, then we're just simply not
15 going to talk about it. That's the environment that
16 I'd like to see changed to the extent that we can do
17 it so that it's seen as yes, a mistake, but that we
18 are supportive.

19 I want to go back to this human rights
20 issue because I think that is essentially a human
21 rights issue as far as staff is concerned. That we
22 can't expect staff to treat prisoners as human beings,
23 fallible, who make mistakes who need to be -- to be
24 dealt with in an appropriate way if management of
25 prisons don't deal with staff that way.

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1 I think whether it's merely a perception or
2 whether it's a reality, I think the extent we change
3 how we deal with staff is going to have an effect on
4 how they deal with inmates. So in that context,
5 that's when I talk about oversight and review of
6 incidents in a nonpunitive sense, that's what I was
7 trying to get at. Not that we should excuse behavior
8 or misbehavior or that we should just assume that
9 these are honest mistakes. There are some behaviors
10 that are not honest mistakes. There are some that
11 are.

12 MR. DUDLEY: It seems to me it's a central
13 issue as to whether you conceptualize this as
14 individual aberrant behavior or a mix of systemic
15 issues and maybe behavioral issues, and that if you
16 don't kind of grapple with that, if you come down very
17 differently on what needs to be done about this, that
18 seems --

19 MR. MCMANUS: I agree. I think that's
20 exactly right.

21 MR. BERG: There's something else that's
22 been going on in Florida which I'm sure Commissioner
23 Ryan is aware of. A lot of the officers on the
24 use-of-force teams and they do have teams particularly
25 in Florida State Prison, there are about I think five

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1 that have been arrested by the feds for importing and
2 distributing steroids, and we're beginning to think
3 that there's a correlation between these large
4 gentlemen who were on the cell extraction team being
5 on steroidal rages because some of those very guys had
6 been indicted by the United States of America for
7 importing steroids from Egypt.

8 So we certainly need to do something about
9 those people. If the institution isn't going to deal
10 with it, it's too bad we have to wait until the
11 federal government indicts these people, and the five
12 correctional officers who were tried for the murder of
13 Frank Valdes, it was tried in Starke before a home
14 jury, and the federal government never indicted these
15 men for civil rights violations. They still can, but
16 they never have.

17 MR. RYAN: Mr. Maynard.

18 MR. MAYNARD: Mr. McManus, you're talking
19 about the culture change and how important that is.
20 Could you be a little more specific about you how you
21 would approach that in a prison itself and how long it
22 might take and what's involved in that?

23 MR. MCMANUS: Probably the best way I can
24 describe it more than find it, and I mentioned in my
25 -- when I pointed out in my testimony the notion of a

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1 warden -- and I really think this actually takes place
2 more at the institutional level than frankly at the
3 central office level. I think the central office can
4 lead, they can encourage, they can hire, fire, put
5 people in position, but prisons still operate pretty
6 much as autonomous organizations. They're department
7 systems, but they operate pretty much.

8 The warden is the key person. It has to be
9 a warden who is, first of all, sensitive to the issue
10 of human rights and not faking it. I don't know if we
11 can train them. The real question is how do you find
12 these people and how do you support them. A person
13 you know, I'm sure, Frank Wood was a warden in
14 Minnesota, started in the high security prison in
15 Minnesota twenty years ago now. Had the luxury of
16 hiring staff, hand-picked, and establishing a culture.

17 He used to meet with every person that was
18 hired in that institution, and sit down and talk about
19 how he wanted them to treat every individual there
20 like it was your father or your brother or your nephew
21 because they were somebody's, and that attitude of
22 respect was carried out with staff. He referred to
23 inmates as mister.

24 The warden was around the prison every day,
25 many times during the day. The staff got used to

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1 seeing him. The inmates got used to seeing him.
2 People who were uncomfortable with that style of
3 operating a prison left, and they were able to attract
4 other people who felt very comfortable in that
5 setting. You don't find those circumstances or those
6 people.

7 But I want to point out this was a maximum
8 security facility. It was not -- despite the view
9 people have that Minnesota only has blue-eyed
10 Scandinavians, therefore we have no problems, when
11 Marion was in a state of great turmoil after the
12 lockdowns there, a lot of Marion prisoners were sent
13 to Oak Park Heights, which is the prison that was run
14 this way. Inmates said when they were greeted, once
15 Frank leaves the prison is going to change. It hasn't
16 changed in twenty years. I don't believe they've had
17 a murder there. I don't believe they've had a suicide
18 there in a high security prison.

19 Again, all I can say is I've watched that
20 kind of thing occur, and watched not just the
21 influence of an individual, but watched the entire
22 culture change so that now it would be very difficult
23 for someone to go into that environment and try to
24 change it back again.

25 That's not a recipe for all places, but in

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1 my experience after almost forty years, I guess I've
2 come to the conclusion that training is important,
3 policies are important, all of these things are
4 important and critical, but the leadership that an
5 individual gives is the one essential characteristic
6 that sort of trumps all of them. They often go hand
7 in hand. I don't know if that's responsive to your
8 question.

9 MR. MAYNARD: Most of our -- probably our
10 more difficult cultures in the old prisons that are a
11 hundred years old or older, and we typically don't
12 have the luxury of changing the administration in
13 those as quickly as you described.

14 MR. MCMANUS: Exactly.

15 MR. MAYNARD: Certainly it is a problem.
16 I've dealt with it for years. It's not easy to deal
17 with.

18 MR. RYAN: Gentlemen, we have just a couple
19 minutes left. Am I right this time, Mr. Wool?

20 MR. WOOL: You are correct.

21 MR. RYAN: One of the struggles I've had is
22 the whole concept of using the concept of use of
23 force, which tends to have the trainer going we're
24 going to talk about use of force today. Is there a
25 better way of putting the terminology? For example,

1 I'm going to train you in control techniques, adverse
2 behavioral incidents. These are the types of matrixes
3 that we come up with.

4 Are there some better terms because for a
5 couple hundred years now we've been using use of force
6 as a training technique. I'm going to train my
7 officers on how to deal with using your force. Is
8 there a better way of doing that? Is there a
9 different approach that would allow us to train staff
10 to think differently instead of having in the back of
11 their mind I've got to use force on this? Is there
12 something we should be talking about terminology? I
13 believe Mr. McManus brought that up. I'm curious as
14 to that.

15 MR. VAN PATTEN: When you get right down to
16 it, force is force. There's no other way to describe
17 it, right. Now, the training you have -- you have to
18 train to the law and the rule, all right. If you go
19 out of that, you can be subject to penalty. Your
20 added training that goes along with that rule of force
21 or cell extraction training, your OC training,
22 defensive tactics training, all right, can help to
23 minimize that.

24 I mean, the word use of force in itself
25 conjures memories of the movie Cell House D with James

1 Cagney. That's what it conjures, and if you can
2 change that word -- yeah, if I have to use force, I
3 have to use force. I mean, I wasn't hired to be a
4 punching bag by the inmates. Actually, to change the
5 form, I mean, there probably are a couple of words in
6 the vocabulary that we could use, but still when it
7 comes down to it, inherently in itself just that
8 thing, it is violent. No ifs, ands, or buts about it.

9 That's one of the reasons why we videotape.
10 And when it's civilians in our committee who see some
11 of these tapes, it's inherently violent even though we
12 didn't use or try not to use -- we still have that one
13 percent that might -- excessive force. And the
14 perception of the public is that's just inherently
15 violent. But there's nothing you can do in the
16 controlled environment.

17 MR. RYAN: Mr. Berg.

18 MR. BERG: I'll leave it to my corrections
19 experts. Force is force, and I don't know how you're
20 going to sugarcoat it with a new term.

21 MR. MCMANUS: I don't know if it's a case
22 of sugarcoating or if it's a case of trying to reframe
23 the issue. Let me just -- let me just quickly
24 describe how the British, for example, one use of
25 force. This is the handbook for prison staff based on

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1 human rights. Here's how they have their chapter on
2 operating secure, safe, and orderly prisons. Here's
3 how they break it down.

4 They first of all talk about framework.
5 They talk about the balance between security and
6 social reintegration programs. The balance between
7 security and contact with the outside world. The
8 balance between control and well-ordered community.
9 When control and good order break down, conditions in
10 maximum security of difficult and interruptive
11 prisoners. You ultimately are talking at some point
12 about using force. And whether it makes any
13 difference as to how you approach it or how you train
14 people or how you think about it, perhaps it doesn't,
15 perhaps it does.

16 MR. RYAN: Thank you. Can you give us --
17 for the commission, if you were to give us one word to
18 think about regarding this whole concept as we go into
19 our deliberations over the next couple of months, what
20 might that be? What do you want us to hear from you
21 as the last word on use of force at least for today?
22 Mr. Van Patten.

23 MR. VAN PATTEN: Training.

24 MR. RYAN: Okay. Mr. Berg.

25 MR. BERG: Get the mentally ill out of

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1 prisons.

2 MR. RYAN: Mr. McManus.

3 MR. MCMANUS: Human rights.

4 MR. RYAN: Gentlemen --

5 MR. KATZENBACH: That's two words.

6 MR. RYAN: I thank you very much for this.
7 We really appreciate it. We'll take a break here and
8 come back.

9 (WHEREIN, a recess was taken.)

10 MR. BRIGHT: Good morning again, everyone.

11 Our final panel here this morning is going to talk
12 about accreditation, and particularly accreditation by
13 the American Correctional Association. We have four
14 panelists, Jeff Washington, Evelyn Ridley-Turner,
15 Brian Dawe, and Michael Hamden who have joined us.

16 Let me just say a word about the subject
17 and then a word more about the members of the panel.
18 These standards have been promulgated, as I said, by
19 the American Correctional Association to get some kind
20 of uniformity in the correctional institutions. The
21 accreditation process is controversial. Not everybody
22 is for it, but some people are, and that's one of the
23 things we'll talk about today in terms of the value of
24 it. But there's certainly a lot of correctional
25 professionals who believe that it's been a very

1 valuable tool.

2 And what we want to ask our panel to talk
3 about is their perceptions of the accreditation
4 process from the point of view of correctional
5 officers, from the point of view of management and
6 prison rights advocates, which we have one of each on
7 the panel here. And in addition, to talk about how
8 the process can best be used to improve standards in a
9 facility, and whether accreditation is effective or
10 not, whether it brings about accountability, whether
11 they're really met once somebody is certified. Are
12 they -- do we continue to monitor them to see that
13 they continue to live up to the standards that they
14 were?

15 Jeff Washington is the Deputy Executive
16 Director of the American Correctional Association, and
17 he's on the ACA's Committee on Accreditation For
18 Corrections.

19 Evelyn Ridley-Turner has been in the
20 corrections business since 1974, and I think for the
21 last five years has been a commissioner of corrections
22 in Indiana.

23 Brian Dawe worked as a correctional officer
24 for sixteen years, and he's now the director of
25 Corrections USA.

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1 And finally, Michael Hamden is executive
2 director of the North Carolina Prisoner Legal
3 Services, and he has also been on the board of the
4 American Correctional Association's Commission on
5 Accreditation since 1998, I believe.

6 Thank you very much. We're delighted to
7 have you. You honor us with your presence. And
8 Mr. Washington, if you could start, that would be
9 great.

10 MR. WASHINGTON: Mr. Bright, thank you very
11 much. Mr. Chair, the other commissioners, we thank
12 you for having the opportunity to speak before you
13 this morning. The task that you set forward is not a
14 difficult task as it relates to discussing
15 accreditation. But first, let me tell a little bit
16 about the American Correctional Association.

17 The American Correctional Association was
18 founded in 1870. The ACA has nearly 20,000 members
19 and over eighty chapters and affiliates. ACA
20 represents all facets of corrections, including
21 federal, state, military correctional facilities,
22 prisons, county jails, detention centers, probation
23 and parole agencies, community corrections, halfway
24 houses, correctional officers.

25 We take a holistic view of this entire

1 business of corrections. ACA also promotes public
2 policies as they relate to corrections. ACA develops
3 a standards with its Standards Committee and
4 administers the accreditation process. Each
5 commissioner has been given three documents from the
6 association. And at your leisure, I hope that you
7 take the opportunity to go through those documents.
8 If you do that, you will see that there is ample
9 information to give you a good picture of what the
10 association does.

11 The first document I'd like you to refer to
12 is the ACA folder. Within that folder you have copies
13 of ACA's Public Correctional Resolutions and ACA's
14 Public Correctional Policies. These resolutions and
15 policies are voted on by ACA's membership. ACA's
16 membership votes for a delegate assembly, the
17 legislative body of the association, to tackle issues
18 that the membership feel are important to the business
19 of corrections.

20 Within these two documents you'll see where
21 ACA has taken public stands on certain aspects of
22 corrections that will inform you and give you a
23 picture of what we stand for and how we support our
24 correctional members.

25 The next document that you have is the

1 ACA's Standards Manual. This manual is the fourth
2 edition of the adult correctional institution's
3 standards. These are the standards that are used by
4 adult prisons, state-operated facilities, facilities
5 operated by the military, and facilities operated by
6 the Federal Bureau of Prisons.

7 Within this document there are over 450
8 standards. Ten percent of those standards being
9 mandatory standards that deal with life, health, and
10 safety issues. And the others considered nonmandatory
11 standards, those standards that still have to be
12 complied with as an agency or program enters the
13 accreditation process.

14 The other document that you have in front
15 of you is a book called Measuring Excellence. And
16 it's a history of corrections and standards and
17 accreditation written by Paul W. Key. It was a book
18 written a number of years ago, but it takes an
19 outsider's look at the accreditation process, asks
20 some of the questions you put forward here this
21 morning, and answers some of those questions. It
22 talks about the process not being a perfect process.

23 It also talks about some improvements in
24 the process to make the process more long lasting and
25 more effective. Mr. Key took the opportunity to

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1 review all the history of accreditation, accreditation
2 as administered by the American Correctional
3 Association began in 1974, with the first facilities
4 being accredited. He took a look at those facilities
5 that were accredited then. He took a look at those
6 standards that were in effect at that time also.

7 He pointed out very clearly that the
8 standards that the American Correctional Association
9 have had with -- the standards we have today are those
10 standards which began as 36 principles in 1870 at the
11 first meeting of our association. An opportunity for
12 individuals to sit down and decide what was good
13 correctional practice. And the way we operate and do
14 business today, we feel that we've improved upon those
15 original 36 principles of how to operate good
16 correctional facilities.

17 And we hope that in the future, with
18 outside influence, with information from members who
19 have the opportunity to suggest changes in standards
20 and with a diverse members of our 28 member
21 accreditation commission, we feel that this process
22 can do more to make operating correctional facilities
23 better, to make them safer, safer for staff, safer for
24 the offenders, and safer for the public. Thank you.

25 MR. BRIGHT: Ms. Ridley-Turner.

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1 MS. RIDLEY-TURNER: Thank you. I want to
2 thank the commission members for inviting me here
3 today to talk about accreditation. Just one
4 correction. I was commissioner in Indiana until
5 January of this year. Left the office after 31 years
6 in corrections.

7 I've been involved with accreditation
8 throughout my career in corrections, and when Governor
9 O'Bannon interviewed me before I was appointed
10 commissioner, one of the things he wanted to know,
11 what were my goals? What did I want to do with the
12 Indiana Department of Corrections? And one of my
13 goals -- it wasn't all of them -- was that I wanted to
14 have agency-wide accreditation for the Indiana
15 Department of Correction.

16 The governor probably, very like you, asked
17 me why I felt accreditation was important? What would
18 that do for our agency? And you know, I shared with
19 him, and hopefully in my written materials and in
20 talking with you today I can share with you why I felt
21 it was important for our agency to be accredited.

22 I shared with the governor that I felt that
23 while all our facilities had policies, we had
24 procedures, we had operational standards for operating
25 the facility, when you have 34 facilities in an

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1 agency, that's quite large. Sometimes things get
2 misconstrued in the interpretation. And I shared with
3 him that I wanted to have a process so that we could
4 look internally, and that's part of the process. You
5 have mock audits. You look at what you're doing.

6 There's standards that you live up to, but
7 it's also a little beyond that. It was getting staff
8 involved to move toward a concerted effort and one
9 goal. I wanted our staff to believe that we were in
10 this together, that we were working to do things in
11 their best interests, and that accreditation was not
12 something that I on high was pushing down and
13 mandating that facilities had to do.

14 I was mandating that we had to be
15 accredited, but I was in the fray as well. I wanted
16 all our agencies -- that meant central office. That
17 meant I had to get my hands dirty. I had to go and
18 make sure we were living up to standards. The
19 standards were different for facilities.

20 I was responsible for juvenile and adult
21 facilities, and in looking at that it wasn't that we
22 weren't doing a lot of the things that standards set
23 out. As Jeff mentioned, there are life, health,
24 safety. It covers all areas of the operations of a
25 facility. But what was more important to me is that

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1 you could go from facility to facility and everyone
2 knew what everything meant. It was operational
3 procedures. It was life, health, safety issues. We
4 were all going by the same agenda.

5 When we -- when I left office, just to end
6 there, we had all but two of our facilities
7 accredited, and that included our central office, our
8 training facility, as well as our industries
9 facilities. What was involved with accreditation was
10 more than just going by and complying to have the
11 audit done and then everybody sit back and say we got
12 through it. It's over.

13 What I wanted to do was to make this really
14 part of our operation, and we got to the point that
15 our policies were being prepared in compliance with
16 the standards, and this was for the right reason. It
17 was because it made sense to do it that way. Then
18 everyone knew what the policy was. They knew what the
19 ACA standard was, and we were moving to have all our
20 internal audits that would be conducted in the off
21 year of the three year accreditation and
22 reaccreditation, we would go by those same standards
23 because it made sense to go by those same standards.

24 This wasn't a thing of make work. We
25 didn't want people to feel that, as I said, this is

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1 just a process you go through. You sit back and it's
2 over. We wanted to live by the standards.

3 While we were going through some of the
4 audits and getting through the process, I'm not going
5 to leave you with the impression that everybody jumped
6 up and said, oh boy, she's wonderful. We want to do
7 this. It wasn't that way. I had a lot of naysayers,
8 and even some of the naysayers were my own executive
9 staff, some of the superintendents.

10 A lot of them felt like this was just
11 something else to do, and if we leave her to her own
12 devices, she'll be gone and then we can get back to
13 business as usual. But I had a lot of converts in
14 this as well. I'd go to the facilities and I'd meet
15 with the staff and we'd talk about the importance of
16 accreditation, and I had superintendents and other
17 staff coming up and saying, you know, I thought we
18 were doing this right, but the audit and what it
19 pointed out was we thought we were on track, but we
20 needed to do a little bit more.

21 So you know, when you're working in a
22 facility, when you're doing operations 24/7, sometimes
23 it gets to the point that you can't see the forest for
24 the trees, and that was what I was finding out with
25 some of our facilities. They did have procedures in

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1 place, but I think what this does, it gives you a peer
2 review. It gives you the opportunity to work towards
3 a common goal. And I believe that, for me, that was
4 the purpose of accreditation and why I felt the value
5 in the Indiana Department of Corrections. Thank you.

6 MR. BRIGHT: Mr. Dawe.

7 MR. DAWE: Thank you. Good morning and
8 thank you. I'd like to thank the commission for this
9 opportunity. When I grew up my friends and I often
10 played cowboys and Indians, cops and robbers, soldier,
11 fireman, etc., the usual array of role playing that
12 children do. But no one I knew then or any
13 correctional officer I know now grew up locking their
14 friends in the basement and playing correctional
15 officers.

16 It's not a job you grow up aspiring to do.
17 A lot of that has to do with the perception held by
18 the public about corrections. My organization
19 believes we can change that by bringing down the
20 walls. We believe that by exposing corrections to the
21 light of day, that we can change that perception and
22 hopefully the future of corrections in a positive way.
23 I believe that accreditation can play a vital role of
24 promoting that transparency and changing that
25 perception.

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1 As corrections is constituted today, line
2 staff are often put in situations where failure is
3 almost a certainty, and then they're blamed for that
4 failure. As an example, when I worked I was the only
5 officer in a housing unit with sixty inmates. One of
6 our common, which is a small eight by ten room, was
7 converted to hold six inmates in three bunk beds.

8 I would ask anybody on the commission or
9 anybody in the public today to choose your five best
10 friends to be placed in that situation and to see how
11 long you are friends. The bottom bunk can become a
12 life and death situation. That is a situation
13 destined for failure, and that's what we have to work
14 in. Accreditation can expose those situations and set
15 standards to rectify them.

16 That ratio of sixty inmates to one officer
17 I have worked under is more common than not. It
18 underscores one of the most dangerous things in
19 corrections today, that of staffing ratios.
20 Nationally, that ratio is reported at 5.4 inmates per
21 one security staff member. Anyone who has ever gone
22 behind the walls knows how ridiculously misleading
23 that ratio is.

24 The number of inmates are simply divided by
25 the number of staff to establish that ratio. It's a

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1 lie, and it's a dangerous one for all of us.
2 Accreditation can help to expose that. They can
3 expose those ratios, and they can also help us
4 establish mandatory staffing levels. Those are just
5 two examples of where accreditation can help.

6 So what should the accreditation process
7 look like? In order for an accreditational process to
8 effectively address the issues that plague
9 corrections, it must be fearless in its willingness to
10 expose the problems it discovers, be transparent and
11 open to public scrutiny, seek to raise standards
12 whenever possible, monitor facilities that have been
13 accredited, and must not be beholden to those
14 facilities for its economic survival.

15 Corrections professionals promote an
16 accreditation process that provides a mechanism by
17 which we can measure the success of failure in our
18 nation's prisons and jails. Evaluating our
19 correctional facilities is a necessity if we are to
20 establish standards that balance the need for humane
21 treatment of those who are incarcerated for the safety
22 of the public, the staff, the officers, and the
23 inmates. I would propose an accreditation process
24 that includes the following:

25 Number one, the standard by which a

1 facility will be evaluated must be known in advance.

2 Number two, the accreditation should be
3 conducted using, but not be limited to, corrections
4 professionals.

5 Number three, there should be no advanced
6 notification as to when an accreditation will occur.

7 Number four, the accreditation team should
8 have no familiarity with the administration of the
9 facility it is evaluating.

10 Number five, there should be no financial
11 link between the organization accrediting the facility
12 and the facility itself.

13 Six, evaluations should be based on
14 practical applications, not procedural ones.

15 Seven, the results of the accreditation
16 process should be available to our elected officials
17 and the public at large, redacting only that limited
18 information that may compromise the safety and
19 security of the facility or would violate statute.

20 Number nine, follow-up monitoring should be
21 done with on-site visits. I'm sorry, that was number
22 eight.

23 Number nine, recommendations to address
24 concerns raised by the accreditation team should be a
25 part of the evaluation and should include steps that

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1 meet to establish those standards.

2 Number ten, and above all else,
3 accreditation should be as transparent as possible.
4 Secrecy in corrections can be deadly. If best
5 practices can be shared in a network nationwide, why
6 should society be willing to accept anything less?

7 Over 95 percent of the individuals we
8 incarcerate will be released back in our communities.
9 We must do all we can to foster an environment that
10 maintains public safety while providing opportunities
11 for the inmates in our care to positively assimilate
12 them back into society. With that I thank you once
13 again, and would welcome any questions at the
14 appropriate time.

15 MR. BRIGHT: Thank you. Mr. Hamden.

16 MR. HAMDEN: Good morning. Thank you for
17 the opportunity to speak with you.

18 My name is Michael Hamden. For the last
19 twenty years I've been employed by North Carolina
20 Prisoner Legal Services first as a staff attorney, and
21 for the last ten years as its director. I also have
22 the privilege of co-chairing the American Bar
23 Association's Corrections and Sentencing Committee and
24 served as the ABA's liaison to the American
25 Correctional Association. In the American

1 Correctional Association I have the honor to serve on
2 the Standards Committee, the group that promulgates
3 standards, and on the Commission For Accreditation For
4 Corrections.

5 I'm not the spokesman for any of these
6 organizations. I'm here to share with you my
7 experiences and observations to the extent those have
8 a bearing on your work. ACA accreditation
9 accomplishes some very important things. One thing
10 that people should understand, that it is almost
11 entirely a voluntary process. Almost everyone who's
12 involved in ACA accreditation does so because they
13 choose to set the highest standards for the operation
14 of their facility and not because they're compelled to
15 do so.

16 The process is collaborative and
17 supportive. It focuses on efforts to improve the
18 facility and to professionalize the people who work
19 there. It has the effect of improving safety and
20 standard of life for people who work in the facility
21 and people who are confined there.

22 Finally, I'd just like to thank the
23 commission for your work and for undertaking this very
24 important project. I thank also the staff and
25 especially the Vera Institute. Thanks very much and

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1 be happy to address any questions you may have.

2 MR. BRIGHT: Thank you. If I could just
3 ask the first question, since I sort of got the mike
4 here, Mr. Washington, it was said here it's a
5 voluntary process, right?

6 MR. WASHINGTON: Correct. It is, sir.

7 MR BRIGHT: No institution is required to
8 do it unless you're a warden -- excuse me. Unless
9 your commissioner says we're going to certify all
10 the --

11 MR. WASHINGTON: Well, in the early days of
12 the process there were a number of states that were
13 required by way of lawsuits and the settlement of
14 lawsuits, and/or required by way of their legislature
15 to be involved in the process. But as far as the
16 Association is concerned and the Commission is
17 concerned, it is a voluntary process.

18 MR. BRIGHT: I meant this question, which
19 is how transparent is that process? And secondly,
20 what if somebody is certified -- an institution is
21 certified, what sort of audits are conducted after
22 that to see that they maintain the certification? And
23 thirdly, if someone's accreditation is revoked, how is
24 that accomplished?

25 MR. WASHINGTON: Let's get the terminology

1 correct. The American Correctional Association
2 accredits its correctional facilities. We are
3 accrediting those facilities. So the way an audit
4 takes place is that once an agency signs a contract or
5 a program signs a contract with us, a staff person is
6 assigned from our staff to be the liaison for that
7 agency to help walk them through this process.

8 We have a contract with the agency that is
9 asking for accreditation. The American Correctional
10 Association and the Commission enter into a contract
11 with that agency. Those agencies are usually
12 governmental agencies. So the process is transparent
13 in that instance, where if you have a question or if
14 the outside public wants to talk about what's going on
15 at that facility or have a copy of the report which is
16 a result of the audit, it's available through that
17 government, through that government entity, through
18 the Department of Corrections, but not through the
19 American Correctional Association.

20 The other question that you ask, follow-up
21 audits. If a facility is accredited by the
22 Association, the accreditation is good for three
23 years. During that three-year period, time period, we
24 have the ability to go back to that facility and
25 monitor if we feel that that is necessary. If there

1 are significant events that take place at that
2 facility, or if we get information from outside
3 sources or newspaper articles, we'll inquire as to
4 what's going on at that facility.

5 Also, every facility or program that is
6 accredited is also required to give us an annual
7 report. And in that annual report they talk about any
8 significant changes at the facility. They talk about
9 if there's been a change in management of the
10 facility, and as I said before, any significant
11 events. So we have the opportunity to continue to
12 have dialogue with those programs during the
13 three-year period.

14 If a facility is revoked at this point, an
15 agency has to sit out for one year. We go back to
16 work with them to figure out what those problems might
17 be and bring them back in for an audit and a review by
18 the Commission in order to restore them to the
19 accreditation process.

20 MR. BRIGHT: Is that public knowledge? I
21 mean, if you -- for example, the Fulton County Jail in
22 Atlanta, by some miracle, got accredited. If it
23 were -- if its accreditation were taken away, would
24 that be public knowledge or would that not be?

25 MR. WASHINGTON: We do not do a press

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1 release saying we've revoked the accreditation process
2 of any facility or any program.

3 MR. BRIGHT: Why not?

4 MR. WASHINGTON: What was mentioned by
5 Ms. Turner was this process is collaborative. It was
6 also mentioned by Mr. Hamden. It's a collaborative
7 process.

8 The American Correctional Association's job
9 here is to improve corrections, and we feel that we
10 can do that by working with correctional facilities to
11 help improve their programs. And in our view we
12 prove and help to improve those programs by working
13 with them. There are enough individuals out there who
14 will continue to lobby against them, who will notify
15 the public of problems, who will also take issue with
16 things that happen at the facility.

17 I've worked for the American Correctional
18 Association for twenty years, and in those twenty
19 years I've done all I possibly could, either working
20 in the standards department or working in the
21 executive office now, to help correctional facilities
22 and programs in this country. And I feel that my
23 association has done the exact same thing.

24 MR. BRIGHT: Well, it's sort of like the
25 bar association disbarring a lawyer and not telling

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1 anybody when it happens.

2 MR. DUDLEY: I mean, what you're describing
3 seems to me an enormously important function in
4 supporting the member organizations and helping them
5 to improve their performance by meeting these agreed
6 upon standards. I guess what I'm curious about is if
7 at some point there was a requirement that
8 correctional facilities be certified or accredited in
9 order to exist in the same way that hospitals must be
10 or whatever, would you see this -- and particularly in
11 light of some of the other comments, would you see
12 this, the process that you're doing, as appropriately
13 assuming that function, or would that undermine your
14 work in the sense of actually trying to help member
15 organizations improve their function, and there should
16 be some other organizations that would do that type of
17 accreditation? You know what I'm saying?

18 MR. WASHINGTON: Let's examine the process
19 that you speak of. The national -- the Joint
20 Commission on Hospital Accreditation is probably one
21 of the most powerful accrediting groups in this
22 country. They hold the power of either continuing the
23 operation or closing down hospitals in this country.
24 That is not a power that I look forward to our
25 commission having. We are a helping body. That's

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1 what we've --

2 MR. DUDLEY: I recognize that.

3 MR. WASHINGTON: That's what we are known
4 for. That's what we would continue to be. But the
5 Joint Commission on Hospital Accreditation has
6 something else. There's Medicaid funding and other
7 governmental funding tied to those hospitals achieving
8 their accreditation and keeping it, and there's a huge
9 lobbying effort by the Joint Commission on Hospital
10 Accreditation in order to maintain that particular
11 spot and pulling that kind of money in for helping
12 correctional -- helping hospitals remain accredited.

13 There's not that kind of money set aside by
14 the federal government to help state facilities or
15 local facilities improve. There was at one time when
16 we had the crime bill. There was money put out there,
17 but that money was only put out to build facilities,
18 not to help keep those facilities operating after you
19 built those facilities.

20 So one of the things you look at is states'
21 rights in this. Are you going to have something
22 mandated from the federal government and mandated with
23 no money, or are you going to have something mandated
24 from the federal government that comes with
25 appropriate funds in order for you as a correctional

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1 figure to be able to do your job.

2 MR. DUDLEY: So you're saying that if such
3 were the case, all they could do is simply close a
4 correctional facility, and what would be the purpose
5 of that?

6 MR. WASHINGTON: Well, exactly right. What
7 would happen in that instance, you have got to deal
8 with the employees that are there. You have got to
9 deal with the offenders who are there. Our purpose in
10 this entire field in dealing with corrections and
11 dealing with accreditation is to help improve
12 conditions. Where we find problems we want to give
13 the administrator solutions to those problems and help
14 them better their facility.

15 If they can't remain in the process, then
16 we ought to walk them through how they can come back,
17 and provide the assistance to get there because our
18 ultimate goal is to provide safer facilities, safer
19 for the community, safer for the staff, and safer for
20 the offenders who are in the facilities.

21 MR. DUDLEY: I'm clear about that. I guess
22 I was trying to get a sense as to in light of some of
23 these other comments, were you feeling that -- and I
24 think what you're describing seems to be enormously
25 important. I guess what I was trying to understand is

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1 whether or not you felt there was any role for a
2 different type of process that was controlling in a
3 different sort of way.

4 MR. WASHINGTON: Well, I think that you
5 still --

6 MR. DUDLEY: I'm not sure there is.

7 MR. WASHINGTON: I think you still run into
8 the problem of a process if it is mandated. It has to
9 be mandated by someone and you're looking -- you're
10 dealing with state facilities and/or private
11 facilities, but state facilities in particular that
12 are operated by the states and looking at state
13 sovereignty. Right now the state department of
14 corrections is not being mandated to do anything that
15 is not funded by the federal government, and that's a
16 clear separation that remains.

17 MR. SCHWARZ: I wonder if the discussion
18 that's been going on could be helped if it was made
19 somewhat more concrete, and for the two of you who are
20 at the Commission, you said, Ms. Ridley-Turner, when
21 you were in Indiana there was an example of an audit,
22 or audits. And you said something like the audit and
23 what it pointed out was helpful to you. And so I
24 think it would be helpful if you said what that was.

25 And Mr. Washington, maybe you could also be

1 more concrete by giving examples of where you believe
2 the practice shows that the cooperative, helpful
3 effort that you describe has, in fact, made a
4 significant difference in trying to be concrete on it.

5 MS. RIDLEY-TURNER: I might address one
6 example this brings to mind that I was addressing with
7 them was tool control. Tool control is a mandatory
8 standard. If you're in a maximum security facility,
9 you want to know at all times where all your
10 instruments -- tools are, because tools can become
11 weapons.

12 This was in our maximum facility. They
13 thought they had a great tool control system in line.
14 It was there. It was by policy. They were following
15 it to the letter, they thought. When we were getting
16 ready for accreditation at that facility, they went
17 through, they looked at the standard. And I had an
18 accreditation manager appointed at central office
19 whose function it was to go around, among other
20 things, and help the facilities come on-line to become
21 accredited.

22 When they went and did the mock audit, they
23 found that there were tools in places that tools
24 shouldn't have been. The superintendent was asked
25 about this. And we developed immediately at that

1 facility a different tool control process. The tool
2 control was something that needed to be for the
3 operation of the facility.

4 What pointed it out was the audit and
5 getting ready to come to accreditation to meet the
6 standard. They found that there was a big gap in
7 security. There was a breach there that needed to be
8 fixed, and went about doing that. That came about
9 because they were attempting to go through the
10 accreditation process.

11 But that's just an example that sprang to
12 mind. Those are some of the things that get pointed
13 out when you go through the auditing process.

14 MR. WASHINGTON: In every standards manual
15 that we have, we have a standard that requires that
16 there be fire inspections at the facility, and those
17 inspections are to take place annually. And those
18 inspections are to be completed by an individual who
19 does not have control over the facility or work
20 directly for anyone in that facility.

21 Throughout those manuals, both adult and
22 juvenile, it has sort of opened correctional
23 facilities up to other agencies to come in and give
24 them a helping hand in improving fire protection at
25 the facility. That's a positive. When in the past it

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1 might have been more difficult to have the fire
2 marshal of a particular jurisdiction to have the time
3 to come into a correctional facility.

4 So I think that a prime example is that we
5 feel that those facilities are more safer, even
6 facilities who aren't in the accreditation process,
7 but who do have these standards manuals. You can
8 usually suggest that they're probably doing fire
9 inspections on an annual -- on an annual basis.

10 A question I would put forth, there are at
11 least two of your commissioners who throughout their
12 correctional career have latched on to this process
13 and feel that it was appropriate for them to use
14 throughout their processes, as working from one state
15 or one facility to another.

16 I think that's an example that individuals
17 have latched on to, and we feel they're good
18 management tools to not only manage and help manage
19 inmates, but also in dealing with staff. Because
20 throughout this process we feel that it's transparent
21 enough that inmates know what's required, staff know
22 what's required, and the administrators are also held
23 to a standard because they know what's required.

24 MR. SCHWARZ: Could you give an example, is
25 it -- like fire inspections, but actually affects how

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1 the relationship between correction officers and
2 prisoners works, and how you -- specifically how your
3 audits have made something happen? I'm trying to help
4 you bring out a more concrete description of what's
5 happened.

6 But I think to make the record, you ought
7 to help us and tell us about some specific things that
8 you think have been done that help on cutting down on
9 excessive force like we discussed in the panel before
10 you, or relating to other matters that are important
11 in the life the prisoners live and the life that
12 correctional officers live within the institution.

13 MR. WASHINGTON: Sir, I would think that
14 every standard that we have in the manual is important
15 in the life of the offenders.

16 MR. SCHWARZ: Give some examples of where
17 you think -- and because you're -- you've got them,
18 you've been there twenty years, of where you think
19 there have been some specific improvements in
20 particular states in how they handle the problems that
21 exist.

22 MR. WASHINGTON: I can't give you specific
23 examples on what's happened.

24 MR. SCHWARZ: You don't have to tell me
25 about a state, but do it just sort of as a generic.

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1 MR. WASHINGTON: I can't give you specific
2 examples of states, but let's talk about a number of
3 the standards. There's a standard that requires the
4 square footage standard, for example. The old
5 standard that we talked about talked about seventy
6 square feet of space in a cell. After research, we
7 took a look at that particular standard, and it was
8 better to take a look at that standard asking for 35
9 square feet of unencumbered space. Space, that is,
10 that you would need to be able to exist to move around
11 in a cell or in a housing unit, and we felt that that
12 was very important.

13 The standard that deals with the shower
14 ratios. The standard specifically talks about the
15 shower ratios for individuals in a housing unit. That
16 has gone a long way to provide assistance for
17 individuals to be able to use the showers, which is
18 very basic.

19 We have the standard that talks about meal
20 preparation. Very important, the standard that talks
21 about meals in the facility. That at least two of
22 those meals have to be hot meals, and that between the
23 first and the last meal they can't be more than
24 fourteen hours. Very, very important to provide
25 individuals with the appropriate nutrition and to

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1 provide them with the appropriate meals they need to
2 be able to exist.

3 MR. HAMDEN: I have some concrete -- each
4 of the standards that Mr. Washington recited to you
5 has been the basis for some action in a panel hearing
6 in front of a facility or sometimes, in some cases, in
7 front of the systems. They're system-wide policies
8 that are not in compliance with the standard that can
9 be addressed on a system-wide basis in the context of
10 a single accreditation hearing.

11 And I can remember a couple of cases. One
12 specifically where prisoners in punitive segregation
13 were being deprived of exercise completely, had no
14 opportunity to exercise at all. And the facility
15 appeared and requested a waiver from compliance with
16 the standard on the basis that this was designed to be
17 punitive, and the deprivation of exercise reinforced
18 the message that you're not going to behave as you
19 behave. That doesn't comply with standards. It is
20 not a subject fit for a waiver and excuse not to
21 comply with the standard.

22 And we discussed, with the facility, the
23 legal implications of failing to provide adequate
24 exercise for prisoners, including those in segregated
25 status. They changed the policy.

1 Another facility that I can remember was
2 feeding an incredible number of people. I'm not going
3 to get this exactly right, but they had something like
4 three shifts, and they were feeding and allowing
5 something like ten to twelve minutes for each group to
6 eat. Well, I mean, that doesn't comply with
7 standards, if it's even physically possible.

8 And by discussing that and having the
9 benefit of input from their peers who have dealt with
10 crowding issues and these types of challenges, get
11 ideas for how to address the problem, and if that kind
12 of help can solve the problem, then that facilitates
13 the process. So those are two examples that I can
14 think of offhand.

15 MS. SCHLANGER: You all have a great deal
16 more experience with this than I do, but I've been
17 working or in and around prisons and issues to do with
18 prisons for about ten years now. For ten years I've
19 been hearing the same complaints from some folks about
20 accreditation. And I don't know the truth of these
21 complaints, but I would really like to hear you all
22 address them because I've never heard them addressed.

23 Those complaints about accreditation are
24 that it's not tough enough, that the standards are too
25 low. That's one set of complaints. I think you have

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1 actually talked about some of that. But the bigger
2 complaint you hear about accreditation is that it's
3 about paper compliance, that it's not true, that it's
4 all about whether or not the folks at the facility can
5 talk a good game and have the right policy in place,
6 but not about whether they've complied with that
7 policy.

8 So particularly when you hear this
9 complaint it's about the use of force policy. I'm
10 getting back to Mr. Schwarz. So the idea is, yeah,
11 there's a use of force policy, but you know what, they
12 violate it. And ACA accreditation is not geared at
13 understanding that kind of noncompliance. It misses
14 real problems.

15 Again, I'm not -- I'm not putting this
16 forth as true. I'm just telling you what I've been
17 hearing for ten years. So that the argument is it
18 misses real problems. And how do we know it misses
19 real problems? Well, because every year there are
20 accredited facilities that face really serious
21 lawsuits or where people die in force situations or
22 whatever. And so we know that it's not right.

23 And I do remember one in my old hometown,
24 where the ACA came back to a facility months after it
25 had been accredited and revisited it. And I'm going

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1 to get this terminology wrong, but lifted the
2 accreditation until it solved things when some
3 problems came to light after the site visit. So
4 that's the problem you hear about accreditation.

5 And there's one more problem you hear about
6 accreditation -- I think Mr. Dawe spoke to it also,
7 and that is that it's so opaque that if you're a
8 community member who has, you know, democratic reasons
9 to want to know what goes on in a governmental
10 facility in your hometown, that you can't find it out.
11 And that accreditation is so opaque that it -- all you
12 can find out is we're accredited. But you can't find
13 out sort of the inner workings of that in a way to
14 know how serious to take that.

15 So again, I mean, I've just -- I don't want
16 to sound like I'm attacking you because I'm really
17 not. I don't have a view on this, but I've been
18 hearing people say this stuff for a long time. And as
19 I say, I've never heard anyone answer it. So I'd
20 really like to hear since we have three people who
21 work on accreditation a lot and who are very good
22 faith and, you know, who are trying to do all the
23 right things, I'd like to know how you respond to that
24 set of critiques.

25 MR. DAWE: Yes, if I may. As a line

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1 officer, I went through several accreditations. And I
2 can tell you one of the biggest problems we had with
3 that was we knew well in advance who was coming, when
4 they were coming, and you could always tell the day
5 the accreditation team would be there because there
6 would be more staff. You'd be tripping all over them.
7 And the day after the accreditation team left, the
8 staff would then be gone.

9 So it became a situation where it was very
10 easy to step up to the plate and meet the minimal
11 standards, knowing that full well within 48 hours you
12 were going back to the way business was done as usual.
13 And also knowing that you would not see an
14 accreditation team for three more years.

15 The paper audit at the end of every year
16 after the first year is simply a matter of the
17 Department of Corrections signing off saying, yeah,
18 we're doing the same things you told us to do a year
19 ago, and there's no checks and balances on that. That
20 leads to one of the biggest problems in accreditation,
21 and that is familiarization between the ACA
22 accrediting team and the institution they're
23 accrediting.

24 Yes, I can understand Mr. Washington and
25 the ACA's feeling that they should work in concert

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1 with the administration for progressive change, and
2 that's understandable and applaudable in many cases.
3 However, there is a failure to address the real
4 issues. The staffing issues, the inmate violence, the
5 recidivism rates, the issues that we deal with on the
6 line every day.

7 Sure, it's nice to have a policy that says
8 you must have protective vests. But if the department
9 goes out and buys ballistic vests that protect you in
10 the chance of a gunshot, and doesn't provide
11 stab-proof vests, which is really what we're in danger
12 of having happen to us, then that's a fallacy that
13 that policy in any way is helping the department of
14 corrections or the men and women who work there.

15 The final thing I'd like to say on this is
16 the economic link. As long as you are paying to be
17 accredited, that accreditation is going to be flawed
18 and lacks credibility in my mind. I think there
19 should be governmental oversight. I think
20 accreditation should be done by a governmental agency
21 not linked with the facilities, especially not
22 economically with the facilities they're accrediting.
23 It causes a tremendous conflict of interest.

24 The ACA, being a nonprofit association, I
25 understand that, but there's a lot of money involved

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1 here. And there's a lot of money that changes hands
2 for one accreditation. 12,000, 15,000 dollars an
3 accreditation. Remember, this is a voluntary process.
4 What superintendent in his right mind is going to
5 spend 15,000 dollars to have the public know they
6 failed.

7 That leads to the next problem, which is
8 visibility, which is transparency. I do not buy, and
9 do not believe, that anybody should stand behind
10 accreditation process and say we can't disclose that.
11 It's up to the department of corrections to disclose
12 that. I don't buy that. I think all us as citizens
13 of this country, and the officers that work there and
14 inmates that are incarcerated there need a better deal
15 than that. We need to expose this to the light of day
16 as we do so many other problems in corrections. And
17 hiding behind that veil of secrecy does no one any
18 good.

19 MR. BRIGHT: Mr. Washington.

20 MR. WASHINGTON: I'm troubled, and I need
21 to tell you why I'm troubled. I've sat through these
22 commission hearings for a day and a half, and there
23 has been no other panel that has sat here and where
24 individuals on that panel have been attacked. And I
25 don't feel comfortable with that. Or the process that

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1 those individuals are talking about has been attacked.
2 And I don't feel comfortable with that. I feel that
3 this panel has been stacked against accreditation,
4 against the association.

5 You can take a look at Mr. Dawe and his
6 comments concerning this whole process. I will not
7 respond to the accusations that he's made. I've
8 clearly stated how transparent we believe this process
9 is, and how we are in this process to help. You talk
10 about whether or not agencies or individuals out in
11 the public have the ability to be involved in this
12 process. They do. There's a notice put in public
13 areas that tell individuals that a hearing is about to
14 take place, and they have the opportunity to either
15 call our agency or send us letters or contact the
16 facility and ask for an interview with the audit team.

17 Let's talk about the audit team. Over 650
18 correctional individuals who we feel are appropriate
19 to do the job they're doing, and they do it on a daily
20 basis for not very much compensation. They do it
21 because they believe in this process, and they believe
22 it's something that needs to go forward.

23 The amount of money that an agency spends
24 on accreditation, between seven and 10,000 dollars,
25 yes, we think it's very important that they spend that

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1 money. We also understand that there is no other
2 organization out that accredits correctional
3 facilities that has government backing.

4 You talk about whether or not an agency or
5 a facility fails the accreditation process, what
6 happens after that. There are hospitals every day
7 that fail the Joint Commission on Hospital
8 Accreditation, and you still go to those hospitals.
9 They have operations. They have people who die in
10 those facilities.

11 There are universities across this country,
12 like this, that are accredited by organizations that
13 will credit educational facilities. But we know that
14 they graduate people who are illiterate and who can't
15 practice law or who can't do other things, but we
16 continue to send our children to those colleges.

17 You're holding corrections to a higher
18 standard than you're holding any other profession in
19 this country, and I take offense to that. I think
20 this process is transparent. Individuals who want to
21 participate in this process have the ability to do
22 that. And I think as corrections professionals and as
23 the oldest correction association in this country, I
24 feel we stand strong on what we've done in
25 accreditation and what we've done for the profession

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1 of corrections, and will continue to do so.

2 MR. BRIGHT: Anybody else? Yes, sir,
3 Mr. Hamden.

4 MR. HAMDEN: Yes. With respect to
5 Mr. Washington, who obviously feels very deeply about
6 this process, and rightfully so, in my opinion a lot
7 has been accomplished. A lot of good work goes on.
8 On the other hand, I think Mr. Dawe makes good points
9 and Commissioner Schlanger certainly addressed some
10 criticisms that I've heard. And I'll take a shot at
11 answering them.

12 The standards are not tough enough in some
13 respects. I agree there are standards that do not
14 come to the level I think we could accomplish, but I'm
15 a member of the Standards Committee, and one of twenty
16 or so members, all of whom are correctional
17 professionals with great experience and expertise.
18 And I would not represent to you that I know better
19 than they do.

20 These things are discussed and debated, and
21 sometimes hotly debated. A vote is taken, and then we
22 have a standard or then we have a revised standard.
23 That's the process by which this happens. It's a good
24 process. It's an open process, and it invites input
25 from the public and from people who have criticism.

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1 And I think I speak for the commission, not formally
2 but on a personal level, that we are concerned about
3 the integrity of the process and welcome help to
4 improve the process. So that's the standards
5 question.

6 Paper compliance, there is a lot of
7 paperwork involved. But before a facility has an
8 audit team on the premises they work a year to
9 eighteen months to prepare for the audit, and that's
10 not simply paperwork. That's changing procedures and
11 educating people and getting people involved. Then an
12 audit team, usually comprised of three people who have
13 expertise in some aspect of correctional operations,
14 come into the facility. And usually those are
15 collegiate visits. Sometimes they become heated and
16 hostile. But the object is always to improve the
17 operation of the facility.

18 After the audit, the facility has an
19 opportunity to respond in writing to the findings of
20 the auditor, and then the facility sends
21 representatives to the panel hearing to advocate its
22 position to argue about whether they were in
23 compliance or whether they should be allowed a waiver
24 not having to comply. And due process is built into
25 that. Again, I am really proud to be part of that. I

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1 think it's a wonderful thing, very supportive.

2 I also agree there are ways in which it can
3 be improved. And the commission is involved in
4 continuously improving its operation, and open to
5 criticism and happy to have any help we can get.

6 Not adequately transparent, I think there
7 are respects in which that's true. I don't believe
8 that we advertise or announce that facilities have
9 been accredited. I don't think we do that. And I
10 know that we don't advertise that accreditation has
11 been revoked. We do ask for input from people in the
12 institutions, staff, offenders.

13 I'm not sure that that -- the word that
14 there's an accreditation pending reaches the general
15 community, and I think it would be if it did. I also
16 think that advocacy groups interested in the operation
17 of the prison should be aware of the process and
18 should know that the commission welcomes input of all
19 kinds, and particularly well-founded criticism.

20 I mean, we want to know how the facility
21 operates. We would like to identify and to address
22 the problems. There is an economic link, and that is
23 the way that the process is financed at present.
24 There is an inherent conflict in that, and it is
25 uppermost in the minds of commissioners, and I'm

1 pretty sure uppermost in the minds of agency
2 representatives.

3 I believe we do a reasonably good job of
4 putting that consideration aside. For example, the
5 commissioners have no specific knowledge of the terms
6 of the contract or the amount that is being paid or
7 any concern about that aspect of it. It is basically
8 a review of the material we have in front of us, the
9 report from the representative of the agency, and a
10 determination by the panel as to whether the
11 facility's in compliance.

12 So in summary, I would say it's a great
13 process. I'm proud to be part of it. There are lots
14 of ways that it can be improved. We're working on
15 some. We'd like to have ideas about how that can be
16 further improved and welcome input from anybody who's
17 interested.

18 MS. RIDLEY-TURNER: I might add from my own
19 perspective, again, I think that your comment about
20 the paper compliance, I think it would be hard-pressed
21 for me to tell my superintendents when they were going
22 through this that this is just a paper compliance.
23 Because as I indicated to you, they got their life
24 blood into it. And they knew that this is how we were
25 going to be monitoring them for time to come.

1 And maybe that's just the management of the
2 particular state agency or the facility taking it in
3 too and believing that this is a process that works
4 and not making it a paper process. I don't know. But
5 I see more than just pushing papers and becoming
6 compliant. Correctional agencies, we have policy, we
7 have procedure. I mean, that's how we run.

8 This is just the manner of saying there's
9 secondary compliance to see that you're doing it,
10 you're not just saying you're doing it. It's a way to
11 look back for the manager of the facility as well as
12 for the auditors when they come.

13 And one thing that I don't think Jeff
14 mentioned, but one of the standards required, I
15 believe, that we have a citizen's advisory committee.
16 So it is quite open that some of the facilities had to
17 go out and invite the community into the facility in
18 order to meet that standard. So facilities that had
19 not had advisory committees operating before, I had
20 facilities going out and inviting citizens to come in
21 and to become part of the advisory committee.

22 And these committees began to function in a
23 way they would come in at least quarterly, and they
24 would find out what was going in the facility. And
25 that was opening up what normally had not been an open

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1 facility to the public to come in and see. So I think
2 that's some transparency that comes about because of
3 ACA. That we do have to do this if we want to be
4 accredited, not just that's the right thing to do, but
5 that's another thing that happens.

6 MR. BRIGHT: Mr. Maynard.

7 MR. MAYNARD: I have, of course, been a
8 member of the Commission on Accreditation and the
9 Standards Committee, and I've been an auditor for many
10 years. I have been warden where institutions were
11 audited and accredited, and so as director went
12 through several. I don't think I ever -- there was
13 never one audit that I went through, or my
14 institutions went through, that I thought we had
15 anything made. It was always really a question down
16 to the last. But I didn't feel any of the -- you
17 know, that since we paid, all of a sudden we're going
18 to be passed.

19 I think -- so my perspective on the
20 accreditation has always been from the other side,
21 saying here is a group of standards that we imposed on
22 ourself. Nobody else is doing it, and we think we
23 want to raise our own standards. So I'm kind of like
24 Jeff. When it's criticized I think, well, we're being
25 criticized for doing something on our own that tries

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1 to improve our profession.

2 I guess the question depends where you
3 stand, depends on where you sit. I'm sitting over
4 here now. I'm feeling the people say help us figure
5 out what is -- what should we recommend in terms of
6 accreditation. I think, you know, the idea that this
7 system is not the best, that may be true. But what is
8 better, and who has done anything to do anything
9 better, and who's going to fund it?

10 I know -- I know there are institutions out
11 there that I wished everybody had to go through some
12 accreditation process because I think it really
13 improves the operations. But I don't know how we, or
14 how anybody, can say that the system is mandatory,
15 that it is required. We can't do that, but it seems
16 like to me that it would be better if we did have a
17 system that was -- had some more force to it to cause
18 more people to be involved.

19 I think as was mentioned, you know, there
20 are institutions where -- accredited institutions
21 where people die. There are accredited hospitals
22 where people die. It doesn't guarantee anything. But
23 I think over time, I think that evidence will show
24 that -- and having run accredited institutions, I
25 think they're run better than institutions that are

1 not accredited.

2 I just think it's a management. It's
3 simply good management standards that deal with
4 administration segregation, how long people can be on
5 administrative segregation, how often they have to be
6 reviewed. There's lots and lots of standards that
7 deal with better management within the organization.
8 But still again, over here, the question is what would
9 the system look like that would be better than what
10 we've got? How would it be funded, and what would it
11 look like?

12 MR. DAWE: Is that directed at me, sir?
13 First of all, let me make it perfectly clear, if I
14 haven't done so already, that we are very much in
15 favor of an accreditation process. We think that that
16 is critical to progressive change within a
17 correctional environment. Our problem is not with the
18 ideology behind accreditation, nor the ideology behind
19 the ACA.

20 Our problem is with the methodology and how
21 the end result is evaluated and how change is asked
22 for. We've had several meetings with the ACA.
23 Mr. Washington may not be aware of that. I've written
24 to them on numerous occasions, Ron Angelo from
25 Virginia, who come down to our conferences and spoke

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1 with us on the ACA.

2 So we have tried to be involved with the
3 ACA at those levels. We seem to get brushed aside
4 quite often because our concerns are not within the
5 realm of what the ACA is trying to do. We want to be
6 the tougher. I think one of the problems we have in
7 corrections is we're not tough enough. I find it odd
8 that I'm the only one up here on this side of the
9 table questioning the ACA, yet Mr. Washington feels
10 attacked.

11 I'm a correctional officer. I think we
12 took a pretty bad beating up here the last couple of
13 sessions. So I feel too we have been under attack.
14 What we're looking to do, we're looking to make
15 changes so that we can better evaluate these systems.
16 One of the things we're very concerned with is
17 staffing ratios. There's very little on staffing
18 ratios or anything mandatory.

19 Additionally, how can we make this system
20 better? I think we have to try and take the money out
21 in some manner. Now, we can't mandate certain things
22 from the federal level, but we may be able to mandate
23 from the state level that there is some type of
24 outside accreditation process or some way to take the
25 link between the ACA or whoever the accreditation body

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1 is, and with fiscal -- their fiscal stability in a
2 pass/fail from their institutions, there has to be a
3 way to make those changes.

4 I'm not proposing that I know what that --
5 what that way is, but I am proposing that we need to
6 do everything we can find -- to find a way to do those
7 things. We can't -- we can't settle for status quo.
8 It's not working. The glass is less than half full,
9 and we need to look for ways to better that.

10 One of the ways we can better that is by
11 looking at a process of accreditation. Not saying the
12 ACA accreditation doesn't mean anything. It means a
13 lot in certain instances. I've got no problem with
14 that. I think in certain instances they should be
15 applauded for the job they do and the willingness to
16 do it, but it does not go far enough. The
17 relationships are too cozy in our opinion. We know
18 when it's coming. I don't know how you can have an
19 accreditation process when you know it's coming before
20 it gets there. There's no checks -- unannounced
21 checks when handling things like that happen.

22 Those things can be changed relatively
23 easily without a monetary problem. And I think those
24 things should be changed. I think, yes, everybody
25 needs to know the standards by which they will be

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1 accredited, but they don't need to know the date the
2 accreditors are coming. They don't to -- they don't
3 need to be told a lot of the prerequisite things that
4 are happening now.

5 They need to have them walk in the door and
6 find out the staffing they saw when they walked in the
7 door when they knew it was coming is a hell of a lot
8 different than the everyday staffing. And those are
9 things that are obvious to us that work on the line.
10 I worked the line for sixteen years. I saw many of
11 these instances.

12 So let me just finish by saying that
13 ideologically we are on the same page. We need to a
14 accredit our facilities. We need them to be
15 transparent. We need them to be open to public
16 exposure. We can do a lot more than we're doing in
17 the current system to bring that to fruition and to
18 make it better for us all.

19 We all have the same objective here. We
20 want first and foremost in corrections is public
21 safety. That's our number one goal. The second from
22 an officer's standpoint is the safety of the staff
23 that we work with. Third is the safety of the
24 officers, my brother and sister officers. The fourth
25 is the safety of the inmates. Those are the four

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1 categories by which we have to -- should be judged.

2 In order for us to judge those categories,
3 we need to take a strong, unrelenting look at how to
4 make these changes possible. Let's not make it
5 easier. Let's make it harder.

6 MR. BRIGHT: Mr. Washington, go ahead. I'm
7 sorry.

8 MR. WASHINGTON: Twenty-five years ago --
9 or I think it was in 1974 when this process began, it
10 began because the courts felt that judges didn't want
11 to operate correctional facilities. And they
12 basically told the corrections professionals you've
13 got to, number one, develop some standards or we're
14 going to run these facilities for you. And now that
15 you've developed those standards, you need to develop
16 a process by which you can measure whether or not
17 you're doing what you say you are doing.

18 And since 1974 those standards have gotten
19 increasingly tougher in areas that they need to get
20 tougher in. This whole process, one forgets, is
21 minimal standards. It does not stop a facility from
22 going beyond those standards. When you're looking at
23 dealing with correctional facilities across the
24 country, you find a level at which you can operate and
25 you can bring facilities up to that level. And you do

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1 understand that there are facilities and programs that
2 will go beyond that level, and you applaud them and
3 you do all you can to help them.

4 There are 3300 jails in this country. And
5 most of those jails are small jails, mom-and-pop
6 operations that we talk about. And today those jails
7 feel that they, in some instances, can't get into this
8 process. I disagree. They can. But we've had to
9 make the process more friendly to be able to deal with
10 them and deal with the predicaments that they have in
11 operating small facilities, in small communities, with
12 small resources, or with less resources.

13 The philosophy that we have set in place as
14 it relates to this process is I look at this glass as
15 being more than half full. I know that these
16 facilities are better than they were. They can and
17 could and should be better. We will work with them to
18 get to that point, but that's where we have a
19 philosophy difference. We're willing to work.

20 In some instances, if you take a look at
21 litigators who deal with correctional litigation and
22 take a look at the commission and what we do in
23 accreditation, we're about doing things. The same
24 things. You want a result because of what you feel
25 has happened in a facility, and you do it by way of

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1 litigation. The American Correctional Association and
2 Commission has chosen to do it with accreditation,
3 holding agencies to a standard.

4 Be it a minimal standard, but a standard
5 that takes into consideration life and health and
6 safety issues and makes those standards mandatory, and
7 deals with the other standards as being non-mandatory
8 standards. But an agency buys into compliance with
9 every standard that's applicable to their facilities.

10 As long as we continue to work in the
11 process, of course we're going to try to improve it.
12 Of course, at every one of our Standards Committee
13 Meetings we have testimony from the outside. We work
14 very closely with outside groups to deal with changes
15 in the standards.

16 One that comes to mind very specifically is
17 the standard that deals with telephones and telephone
18 communications. That standard was pushed through by a
19 group called CURE, Citizens United for Rehabilitation
20 of Errants. That standard was put together and forced
21 through and explained to the Standards Committee that
22 this was wrong. That it was wrong to charge
23 exorbitant fees to individuals who call folks from
24 correctional facilities. And the Standards Committee
25 listened, and the Standards Committee made that

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1 change.

2 With the PREA Commission and the inferences
3 on sexual abuse within correctional facilities, the
4 Standards Committee stepped to the plate and developed
5 standards that deal with sexual abuse. So I say we're
6 responsive. We could do better. We want to do
7 better. Because the professionals who are on the
8 Standards Committee and those people who are on the
9 Commission, I know we will do better.

10 I think it's the best process that we have
11 now. I think it has worked. I'd like to see it
12 improved. It will be improved, but I think it's the
13 best thing we have going, and the association will put
14 its backing behind it.

15 But my first and most important job is to
16 make this process and this profession as professional
17 as I possibly can. All the other things will fall off
18 into that. We'll have safe facilities, safer staff,
19 safe for the offenders, safe for the public. I think
20 that we do that, and we'll continue to do that.

21 MR. HAMDEN: Just one concluding thought.
22 The question as to whether the commission can
23 propagate some requirement that all correctional
24 facilities follow some accreditation process. I think
25 it's clear not. But I don't know that there's any

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1 reason that Congress couldn't do so in connection with
2 the power they have over the purse. I think virtually
3 all correctional facilities receive federal funding in
4 some kind. So if that were the commission's
5 recommendation, then there probably is a way that it
6 can happen.

7 MR. BRIGHT: All right. Mr. Krone and the
8 General.

9 MR. KRONE: Well, here the question was the
10 answer I was looking for. We were hearing all about
11 the flaws, we were hearing about I can't do this, I
12 can't do that. I want to know why we can't get it
13 mandatory. What good is having all the great work
14 you're doing, all the importance it is if we can't
15 make it even across the board something that sounds
16 like you're saying it can't be done, it can't be done.
17 I want to know how we as a commission can overcome
18 that obstacle.

19 If I open up a restaurant and they tell me
20 I don't have to wash my hands, I know I'm going to
21 wash my hands because I'm pretty sure the rest of the
22 public might not want to eat at some of those places
23 that don't have to. If you've got these good rules in
24 place and the important things you're trying to
25 improve constantly -- I mean, I don't like the idea of

1 thinking after a hundred years you still haven't
2 figured out a way to get this implemented nationwide,
3 get this into use because they really do need it.

4 Maybe if that would have been done twenty,
5 thirty, fifty years ago we wouldn't have to have this
6 commission now. But my question is going to be what
7 obstacles -- how do we as a commission overcome this
8 candor of it's not being done obstacle and say how do
9 we get this implemented across the board some way? If
10 not mandatory, statutory, but at least, you know, give
11 the people in corrections the encouragement, the
12 reason, the motivation to say, well, I'm going to do
13 it voluntarily, and all of them, the peer pressure
14 alone would make them want to do it.

15 MR. SCHWARZ: I think with the power you
16 have on this commission then you should make a
17 recommendation, and whatever that recommendation will
18 be, we'll see how and whether or not the public
19 follows.

20 MR. DAWE: If I may, Mr. Krone, if you look
21 on what I presented in my written testimony, I set out
22 some standards that we've talked about at Corrections
23 USA. The first one is the standards by which a
24 facility would be evaluated must be known in advance.
25 That's done -- can be done and that's not a problem.

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1 Number two, the accreditation should be
2 conducted with correctional professionals. We're
3 there. Most of that is being done now.

4 Number three, there should be no advance
5 notification as to when the accreditation will occur.
6 We can certainly do that. It's not being done.
7 There's no physical problem with that.

8 Number four, the accreditation team should
9 have no familiarity with the administration
10 facilities. We can do that. That's not a problem.
11 That can be done.

12 Number five, there can be no financial
13 link. There's a problem. Now, that's something we
14 may have to look at from a mandatory standpoint, some
15 type of federal funding to set that up.

16 Number six, evaluations are based on
17 practical applications. My example is of the
18 ballistics vest versus a stab-proof vest. We can do
19 that too.

20 Number seven, the results of the
21 accreditation process should be available to
22 everybody, to the public. The public pays for our
23 prisons. They're going to pay for the inmates when
24 they come out. They pay for them when they're in
25 there. There needs to be full accountability and full

1 disclosure. Again, of course with the caveat that you
2 can't disclose anything that would disrupt the safety
3 and security of the institution or violate state
4 statute.

5 Follow-up monitoring should be done with
6 on-site visits. We can do that. That doesn't seem to
7 be a problem. Recommendations to address concerns
8 raised by the accreditation team should be a part of
9 the evaluation and include steps to meet the
10 established standards, and that's already being done.

11 And number ten, accreditation should be as
12 transparent as possible. Virtually everything we're
13 standing for can be done readily today. It does not
14 need to wait for later on to fill the glass. We can
15 do that now, and that's what I propose we do. We want
16 tougher standards. We want it safer for everybody
17 beyond those walls, and we're going to strive to make
18 sure that we do that.

19 MR. KRONE: And we're going to take up a
20 collection after this and maybe we can get that
21 funding. Everybody drop a dollar in the door when you
22 go out.

23 MR. BRIGHT: General.

24 MR. RIPPE: I just want to follow on to
25 what Director Maynard and president-elect Maynard

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1 said, Mr. Hamden, and a little bit of what Ray said.
2 I think this is a mountaintop kind of a question.
3 Here's what I'm trying to come to grips with.

4 I spent most of my life in the United
5 States military. Even, you know, in National Guard
6 units there's mandatory uniform standards that
7 everyone trains to. I think that we'd all expect
8 that. I mean, if I was here to say that we're going
9 to lift all the standards and make it voluntary for
10 military units, I think everyone would be horrified.

11 So what I'm trying to come to grips with
12 and the commissioners and the many, many discussions
13 we've had is, you know, what should we recommend?
14 Should there be some set of mandatory standards that
15 raise the common denominator, and if so how should we
16 check to make sure that we've in fact done that?
17 That's really what we're trying to come to grips with
18 today.

19 I would like to personally be on the record
20 thanking and commending ACA for all they've done to
21 try to make our prison and jails better. So that's --
22 if you can help me help us out there, that -- I mean,
23 that's a big mountaintop question, but we're going to
24 be asked that. Should there be standards? And if
25 there are, how should they be checked and enforced?

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1 MR. WASHINGTON: Well, there are standards.

2 MR. RIPPE: I know there are. I know there
3 are. I know that, but what I mean by that is
4 standards that everyone is required to comply with.
5 That's the question we're going to be asked to answer.

6 MS. RIDLEY-TURNER: I would just say as a
7 former administrator of an agency, one who volunteered
8 to comply with standards, I think it's a good thing to
9 have and, you know, it would be ridiculous to say that
10 I would not support mandatory standards if we had to
11 do it, but I think that opens up another issue with --
12 and it's been relayed here -- the funding for it.
13 What if something comes up that the agency as much as
14 they would like to comply, the money is not available
15 because that, again, becomes -- if it's a federal
16 mandate, one of those what we call unfunded
17 mandates --

18 MR. RIPPE: There's no easy answer here.

19 MS. RIDLEY-TURNER: Well, you know, that's
20 the reality, but I think that as a former correctional
21 administrator of an agency, I had felt that the
22 importance was there and did not have any problem with
23 agreeing to have standards for that agency, and I
24 would think that a lot of my colleagues around the
25 board have embraced the process as well and would not

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1 back away from standards. Whether they be mandated,
2 that would be something that if it happened, I don't
3 know that there would be a lot of disagreement, but I
4 think you have to look at who's going to fund it, how
5 is it going to get funded, and who's going to pay for
6 the things that need to be done for that agency to
7 have them make compliance basically.

8 MR. HAMDEN: I would say that there are
9 national standards and they exist both in the form of
10 ACA standards, but more importantly in the form of the
11 Constitution and laws of the government and the
12 decisions of our courts about the way that prisons
13 must operate at some minimal level that provides
14 humane treatment of prisoners, and I think that it
15 serves the correctional profession well if those
16 standards can be clearly articulated in the context of
17 correctional operations, and I have no reservation in
18 saying that I think that that would be a service to
19 the correctional profession and our communities and
20 the people who are in prison. So ...

21 MR. RIPPE: Thank you.

22 MR. BRIGHT: Mr. Ryan.

23 MR. RYAN: Yeah. Let me just throw out I
24 have absolute bias in this. I'm a commissioner. I'm
25 on the Standards Committee. I have an accredited

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1 facility. I'm going to become accredited under health
2 confinement and community corrections. That's my next
3 goal. So with that as a bias sitting here, I think
4 that standards are absolute.

5 I worked in California and now in Florida.
6 California had minimum jail standards state
7 regulations. We have Florida model jail standards
8 state regulations. So the regulations are out there.
9 I don't care whether it's mandatory, it's -- how much
10 it costs, it's the way to do business. If you're a
11 good businessman and you sit there and figure out what
12 the best way to do business is, ACA has put out an
13 outstanding model for that business. If you want to
14 be good in your business, you at least had better do
15 this, and so it's been outstanding.

16 So with that as my bias, getting -- the
17 expectation from the commission is what to do with the
18 information that you've provided on this. As a
19 commission, going back to what Steve was saying, what
20 should we do with your information? What is it that
21 we really need to do with it? Do I as a commissioner
22 ask in my final report to say everybody should be
23 accredited at a certain level? The mandatory
24 standards, maybe the -- only the mandatory standards
25 should be the basis for every jail and prison in

1 America.

2 That's something the commission should set
3 as a standard of expectation and set it up. If you
4 have the other 400 standards, you ask everybody should
5 try to get -- as we do -- ninety percent of those
6 should be your goal, and a time achievement over the
7 next five years or something. What do we do with your
8 information? What should we as a group have on the
9 final page of the report regarding standards and
10 accreditation?

11 MR. WASHINGTON: Tim, I have a bias here
12 also.

13 MR. RYAN: I notice.

14 MR. WASHINGTON: I would hope that your
15 report would say that after looking throughout this
16 profession that we see a process by which facilities
17 can and do operate transparently and also operate
18 constitutionally and are safe and secure. This
19 process should be made available to all those
20 individuals who operate correctional facilities or
21 programs.

22 Now, that's not mandating it. That's
23 telling folks what's out there. That's making it
24 available and folks knowing that this process is there
25 and talking a little bit about the process. And you

1 know, you can use anecdotal stories if you'd like
2 about facilities that have been involved in this
3 process and what has happened to them. Now, I'm not
4 telling you to make it mandatory, but I think that you
5 should in that report talk about this process and the
6 number of years it's been in existence, why it came to
7 be, and how it's helped the profession.

8 MR. RYAN: Thank you.

9 MR. BRIGHT: Mr. Schwarz.

10 MR. SCHWARZ: I think the mandatory
11 discussion that Commissioner Maynard started is really
12 the heart of the matter. If it were mandatory -- and
13 I have no bias coming in, but listening to the
14 conversation, it seems to me making accreditation
15 mandatory would be a good thing. If it were mandatory
16 some of the other process questions quite likely will
17 be looked at differently, and it seems to me two
18 process questions have been talked about.

19 One is pre -- whether the visits are
20 preannounced and whether they are off -- thereafter
21 occur again without being preannounced. If the
22 accreditation were mandatory, just one listener
23 believes that that would make the case in favor of not
24 preannouncing very, very strong.

25 Now, the other question that's been talked

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1 about, confidentiality of results. Frankly, I think
2 that can be argued on either side even if it's
3 mandatory. I think the United States accepts that the
4 International Red Cross can -- has a right to come in
5 to all those things we're running which I guess they
6 call prisons overseas, and the condition there is that
7 the results are confidential.

8 I could imagine even in a mandatory system
9 that a process would work better if the results were
10 confidential, but I think that could be debated. What
11 I'm sure about is if the -- if it were mandatory to
12 have accreditation, one would have a different kind of
13 discussion about the process issues that have been
14 going back and forth. I mean, I don't know if that's
15 a comment by a commissioner or a question, but if
16 anyone wants to react to it, I would be interested.

17 MR. HAMDEN: I concur. I think you're
18 exactly right.

19 MR. BRIGHT: Dr. Dudley.

20 MR. DUDLEY: Well, to show how up in the
21 air we are about this, I don't really understand the
22 announce, unannounced thing. Having been responsible
23 for being on that side of the table, hospital
24 accreditations as an accreditor and as an accreditee,
25 I guess, a person being accredited, I think it depends

1 on the -- I'm more focused on your other argument in
2 the sense of, you know, kind of what are you actually
3 doing when you're doing the accreditation, and if the
4 accreditation process actually makes sense.

5 Then I don't think you can pretend to be
6 good one day because you know somebody is going to be
7 coming in. And if the accreditation process is
8 actually a real process, then that can be seen through
9 because it just otherwise falls apart. But that's
10 just my opinion. I have a different sort of question,
11 though.

12 What I was trying to get at before is to me
13 I see the importance of -- and I kept trying to say
14 that, of what's actually going on right now, and for a
15 person responsible for a system who is dedicated to
16 improving the quality of that system or that
17 particular institution, and has the legislative
18 support or whatever, sort of whoever is responsible
19 for the funding to actually help them then institute
20 whatever improvements need to be done, and then
21 therefore volunteer to go through this process with
22 the goal of upgrading the quality of the institution
23 and services, all of that makes perfect sense to me,
24 okay.

25 My question is is that if you mandate this

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1 for somebody who doesn't necessarily want to do it, or
2 for somebody who's faced with executives or a
3 legislature or whatever who's not interested in
4 funding to improve the system -- in other words, they
5 don't have all those sorts of reasons and capabilities
6 to voluntarily upgrade -- I guess I'm trying to
7 understand -- and maybe I didn't ask the question well
8 before.

9 What would be the T in mandating it? I
10 mean, you know, my point was is that, you know, I
11 mean, for us we have the medical societies or whatever
12 that will do what you're doing. You know, we have a
13 parent-physician's program. We have all sorts of
14 things they'll help physicians get their act together
15 within the profession, right.

16 And then there's this whole other thing
17 that happens where, you know, our license can be
18 removed and we can't practice. You know, if we
19 don't -- if we fail these internal systems. And you
20 can't practice or the Joint Commission will close your
21 hospital, and I just can't envision that there's going
22 to be some mandatory process in which that we'll
23 decide if you blow this, we're just going to close the
24 jail and you just have to let these people go.

25 I mean, that's my question. You know,

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1 what's the point of mandating it? What would be --
2 what would make anybody do anything if you mandate
3 this program? I'm just trying to understand what that
4 would be to make it meaningful.

5 I mean, you could mandate that everybody go
6 through what you go through now, right? And then you
7 can give them all the advice in the world on how to
8 improve their program. If they say we just don't want
9 to do that or the legislature says we're not going to
10 fund these institutions to do that, then what was the
11 point?

12 MR. BRIGHT: Mr. Dawe.

13 MR. DAWE: If the legislature refuses to
14 fund it, that's one issue. But if the institution
15 refuses to comply, you can remove the administrators.
16 You don't have to close the facility. If they can't
17 comply and if their managerial skills do not bring it
18 up to the point where they can comply with these
19 mandatory standards, they can be removed. It's clear
20 that that's a problem. You don't have to close the
21 facility obviously. But from a legislative
22 standpoint, that's a different question. There has to
23 be a lot of political pressure brought to bear on
24 that.

25 MR. WASHINGTON: Well, then the question is

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1 who removes the official? Have you created a new body
2 that trumps the governor of a state or -- I'm trying
3 to follow you on this.

4 MR. DUDLEY: I'm trying to figure it out.

5 MR. BRIGHT: Mr. Hamden.

6 MR. HAMDEN: If passing the standards were
7 a precondition for federal assistance, that would be
8 pretty much the end of it, I think. If you had to
9 comply with the standards in order to be eligible for
10 federal funding, then you have participation.

11 MR. BRIGHT: Mr. Green will ask the final
12 question of this panel.

13 MR. GREEN: I was looking at the numbers
14 that were provided as part of our briefing materials
15 in terms of the number of institutions that either
16 have gone through accreditation or are in some stage
17 of accreditations. The numbers seem very low
18 percentage-wise.

19 I know it's been alluded to that these are
20 perhaps financial considerations that drive the
21 decision whether or not to ask for accreditation and
22 to start that process, but part of it, I guess I'm
23 just trying to gauge the attitude of the profession.
24 How much of this in terms of what seems to be low
25 numbers -- I think for prisons I think it was less --

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1 it was around twenty percent and for jails it's much,
2 much lower. What is driving the lack of participation
3 voluntarily in this process?

4 MR. WASHINGTON: I think that part of it is
5 not being educated that the process is attainable. I
6 think that is -- that is a huge part of it. When you
7 say financial considerations, it's not the fee that's
8 paid to us. It may be the financial considerations
9 that a facility has to deal with in order to be
10 brought to compliance with the standards, and it may
11 mean improvements within the facility.

12 It may mean additional staff to do one
13 thing or the other. Not necessarily forced by the
14 standards, but as a result of requirements within the
15 standard. So those are the financial requirements
16 that are sort of heaped upon agencies in some
17 instances, and they can't make it.

18 And it may also be that we have to do a
19 much better job of communicating the possibility of
20 achieving this process out there to our corrections
21 professionals. We may have a smaller number of
22 facilities that are accredited, but I assure you that
23 even in those facilities that aren't accredited, they
24 have a copy of this book and are doing some sort of
25 compliance with this -- with this standards manual.

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1 If they don't have a copy of this book,
2 they do have a copy of another book that we produce
3 called Policy and Procedure Development Manual, a
4 manual which guides them through the development of
5 policies and procedures to help them operate their
6 facilities. So there are a number of things that we
7 have as an association that we provide to the
8 profession that may bring them to this process, but it
9 may not, but they are informed.

10 MR. BRIGHT: I want to thank on behalf of
11 the whole commission everybody on the panel. I
12 particularly want to thank Mr. Washington for the
13 materials that you gave us. I think all of -- both
14 the materials and your statements are immensely
15 valuable. You can tell there was a great deal of
16 interest on the part of the commission, and we're most
17 grateful to you for being here with us. Thank you
18 very much.

19 (WHEREIN, a lunch recess was taken from
20 12:41 p.m. until 1:51 p.m.)

21 MR. SCHWARZ: Let's get started here. Is
22 Dan Ellis still here, the former dean? Okay. Sitting
23 in the back of the room, the former dean of the law
24 school here and a graduate of a great New York law
25 firm. And the person who built this building.

1 So the next panel may also spark some
2 controversy as the last one did. It's going to
3 consider the pros and cons of public and private
4 prison facilities. And I'm going to introduce Richard
5 Seiter, Frank Smith, and Sharon Dolovich.

6 Private prisons and jails have become more
7 numerous and there are a number of disagreements and
8 discussions about whether that's a good thing or bad
9 thing, which I think our panel will elicit.

10 Richard Seiter is currently Executive Vice
11 President and Chief Corrections Officer at the
12 Corrections Corporation of America, and has worked in
13 the corrections field for three decades. He's
14 presently on sabbatical from one of this city's
15 universities, St. Louis University.

16 Frank Smith is a field organizer with the
17 Private Corrections Institute, which name does not
18 exactly indicate to one what it does because it's
19 described as an anti-private prison group, the Private
20 Corrections Institute.

21 And Professor Sharon Dolovich is spending
22 this year as a fellow at the Radcliff Institute For
23 Advanced Study in Cambridge, the tiny vestige of what
24 was once a huge institution which has now been
25 swallowed by Harvard, on leave from the UCLA School of

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1 Law. She's the author of a forthcoming article,
2 "State Punishment and Private Prisons."

3 So we should have a good, lively
4 discussion, and thank you for coming, and we'll start
5 with you, Mr. Seiter.

6 MR. SEITER: Thank you, Mr. Schwarz. I
7 want to thank the commission for inviting me here to
8 appear before you today, but more importantly, I want
9 to thank this esteemed group for your willingness to
10 tackle what I consider as one of our nations most
11 important domestic policy issues.

12 As you well know, there are over 2.2
13 million people incarcerated in our nation's prisons
14 and jails, and we spend approximately sixty billion
15 dollars a year housing them. As a taxpayer, I want
16 our public correctional policy to be one that is as
17 effective and efficient as possible. As a
18 correctional professional, I want continuous debate on
19 what we do and how we do it. In order to keep the
20 public focused on correctional policy, I believe there
21 should be discussion and debate by a wide sector of
22 influential people.

23 For too long only we in corrections talked
24 to each other about our policies and approaches. We
25 who worked in corrections were the invisible public

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1 servant, asked to do a dangerous and difficult job,
2 but really expected to keep the issues below the radar
3 screen. It is critically important in my mind that
4 those outside of corrections and outside government in
5 the corporate, religious, not-for-profit, academic,
6 and media world to together discuss our nation's
7 correctional policies. I hope that the work of this
8 commission spurs those discussions.

9 I've been invited to discuss the role of
10 the private sector and specifically how the profit
11 motive impacts safety and security. I think I have a
12 unique opportunity to look at correctional policy from
13 many perspectives. I've been a federal prison warden
14 in two institutions and assistant director of the
15 Federal Bureau of Prisons, director of a state
16 correctional system in Ohio, and academic teacher,
17 writer, and researcher, and now as a chief of
18 operations for a private prison company. I welcome
19 this opportunity and wish to make just a brief few
20 points.

21 First, there's not a competition between
22 the private and the public sector, and as a
23 correctional administrator I see more similarities
24 than differences in our operations. We view each
25 other as partners, finding ways to meet the challenges

1 facing correctional agencies charged with holding
2 criminal offenders. This partnership may assist by
3 adding capacity, finding cost efficiencies, or
4 handling special groups of offenders.

5 Second, private prisons are accountable to
6 their public sector partners and government oversight
7 agencies. Private correctional providers must meet
8 requirements of very rigorous RFPs that are
9 competitively bid, that are monitored for performance,
10 and they may face liquidated damages for failure to
11 perform. They must constantly meet the expectations
12 or their contracts will not be reviewed.

13 Third, the profit motive does not undermine
14 quality performance. The benefit of the private
15 sector is that it provides a chance to start anew in
16 what we do and to look for ways to be more efficient
17 in how to meet and deliver quality correctional
18 services. Many private correctional companies are
19 committed to operating within the standards of the
20 accreditation process of the American Correctional
21 Association as discussed by the last panel.

22 At the Correctional Corporation of America,
23 54 of the 60 operating facilities are accredited.
24 This year, twenty accreditations or reaccreditations
25 occurred with an average score of 99.1.

1 Fourth, private prisons are committed to
2 and offer extensive inmate programs. For example,
3 during the month of August 2005 CCA's educational
4 programs had an average daily enrollment of over
5 18,000 students. Between January and August 2005,
6 more than 1,580 inmates earned GEDs or high school
7 equivalency diplomas, and more than 4,600 completed
8 vocational training certificates.

9 In addition to our educational core
10 programs we offer prisoner reentry, parenting, and
11 family and life skills programs. As well, we
12 currently have 2,500 inmates at CCA facilities
13 nationwide who are participating in residential and
14 addiction treatment and behavioral programs, and
15 another 2,500 who are participating in drug abuse
16 outpatient counseling. These programs typically last
17 nine to twelve months and are operational at 22 CCA
18 facilities.

19 Finally, we have 29 faith-based residential
20 unit programs in 26 facilities with over 2,600 inmates
21 participating daily. Again, these are full-time
22 assignments and inmates participate six to eight hours
23 per day for six to eight months. There have been over
24 5,600 inmates that have graduated from these programs
25 since their inception in 2004.

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1 And finally, the profit motive does not
2 undermine prison safety. There's nothing we value
3 more than creating a safe and secure environment for
4 staff and inmates.

5 On a personal note, I would not have taken
6 the job with CCA if I did not believe I would ever
7 have to choose between profitability and good quality
8 corrections. Even if opponents of prison
9 privatization argue that private companies are
10 motivated by profit, they would have to admit that the
11 disturbances, murders and suicides or escapes are very
12 costly in terms of dollars spent or lost business.
13 And therefore, it's only rational to believe and
14 understand that if the primary motivation of the
15 private sector is to increase profits, they would
16 still do everything possible to provide a safe
17 environment and prevent such costly incidents.

18 I want to thank you again for the
19 opportunity to appear before you and participate in
20 this distinguished panel. I look forward to an
21 engaging discussion.

22 MR. BRIGHT: Mr. Smith.

23 MR. SMITH: Hi. I'm Frank Smith with
24 Private Corrections Institute, which sounds pretty
25 fancy, but it's a name we stole from Charlie Thomas

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1 actually.

2 MR. SCHWARZ: And how did you set it up
3 with that name when your function is to question the
4 appropriateness of private --

5 MR. SMITH: I didn't do that. Ken
6 Kopczynski did that, and I think he did that to just
7 kind of goad the private sector because Charlie had
8 started the process of taking the name and dropped it
9 because he got into a lot of trouble, I guess. And so
10 Ken just figured, well, we'll use it. There we are.
11 I hope that didn't come out of my time. Can we start
12 over? Really. Start the clock. Okay. All right.

13 So anyhow, we're an all-volunteer
14 organization. We have a board of directors of about
15 eight people from around the country that have been
16 activists, advocates, corrections professionals, all
17 volunteers. Our executive director is Ken Kopczynski
18 who does this out of his home, volunteer basis. And
19 I'm -- you know, they say a title is more worth than
20 money. I don't get any money, but I'm the volunteer
21 field organizer.

22 In fact, I live on about 1,200 bucks a
23 month. I do this almost all out of my pocket. I was
24 very fortunate to be able to come here today. I
25 appreciate the commission inviting me and putting me

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1 up in such a nice place. I'm usually under a bridge
2 or on a couch somewhere.

3 But anyhow, let me tell you what I do.
4 I've been involved in the provision of services in
5 prisons and federal services, substance abuse
6 treatment services, research for many, many years, in
7 fact going back to 1971. In the course of doing that,
8 about nine years ago I got intensely interested in
9 private prisons.

10 I had actually got some interest -- I was
11 working in the State of Alaska at the time. I got
12 some interest in the issue because in 1991 the State
13 of Alaska wanted to ship hundreds of prisoners to
14 Texas, and I brought up a study that was done back in
15 1972 actually by my ex-boss's brother from the
16 California Department of Corrections. It was
17 in-house, and it was Norm Miller, Norman Miller -- and
18 I'm sorry, Don Miller and Norman Holt.

19 And they discovered that in a remote
20 prison -- it was Susanville. I'm sorry, it was Sonora
21 Correctional Center, that recidivism was measured by
22 -- against a number of visits in the last year of
23 incarceration where they look at people who got one,
24 two, three, or zero visits. They found out that
25 people who got visits from three or more people, not

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1 the number of visits, but the number of visitors,
2 recidivism was one-sixth the rate of people that got
3 no visits.

4 When Alaska contemplated sending all these
5 people off to a private pen in Texas, I said wait a
6 minute here, and I passed out about 50,000 studies.
7 In 1996 a couple of communities -- and I was still
8 working for the state as a child protection
9 investigator, case manager. A couple communities,
10 Delta Junction and Anchorage, asked if I would assist
11 with fighting siting in their towns.

12 Anchorage is a big city. And I did and
13 they -- Anchorage, which was done by Wackenhut, GEO
14 Group these days, went down in about a year. And
15 Delta Junction, the prospects of taking over Fort
16 Greely and getting a forty million dollar conversion
17 bond to make it a prison in the local town finally
18 failed in 19 -- about 1990. And then they tried to
19 site about six other towns. This is Cornell that
20 bought out a local operator called Opus [phonetic].
21 And I got involved in fighting every single one of
22 those sitings, and actually, we won them all. Good
23 news this morning, the town of Lamar, Colorado against
24 Cornell.

25 Anyhow, I started working in Colorado.

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1 People asked me around the country, Kentucky, South
2 Carolina, California. In Colorado I got intensely
3 involved in a couple of prisons -- prospective
4 prisons. Lamar and Pueblo, and in the course of doing
5 a radio show I got in touch with a couple of
6 whistle-blowers who called me up. I gave out a bogus
7 E-mail address that they would get me -- remember and
8 could get me with, and I developed this vast network,
9 it's become a vast network of whistle-blowers, no
10 money at all, from every major corporation, from
11 CiviGenics and MTC, the smaller ones, two, three, four
12 percent, up to CCA and Wackerly.

13 They include an ex-executive vice
14 president, ex-vice presidents, wardens, directors of
15 training, line workers, nurses, unit managers,
16 everybody. They were telling me horrible things about
17 the accreditation process, about pay scales, about
18 turnover, about treatment of workers, about
19 atmospheres of sexual harassment, about all sorts of
20 things that were very scary to me, and I started
21 doing -- I have been doing this for a lot of years in
22 different venues -- Freedom of Information Act
23 requests to open records at the request of the states.

24 Got an enormous amount of material. In
25 Alaska I found one company which will remain nameless

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1 was trying to wire -- clearly wiring a 985 million
2 dollar bid. I sought -- the monitors, particularly in
3 Colorado, completely ignored their duties because of
4 their symbiotic relationship, the Colorado DOC and the
5 privates, because it's tapered. They couldn't build
6 new prisons, so they depended desperately on these
7 prisons, and overlooked things that were just
8 unbelievable.

9 Things that in the CCA Crowley, for
10 instance, I could have predicted -- I could have
11 predicted the riot that happened there last July 20th.
12 Not the day of course, but who was going to be
13 involved, what was going to be used for weapons, what
14 was going to precipitate it, the long and short-term
15 precipitants. I mean, it was very clear to me the
16 monitors didn't want to hear it, the staff was
17 terrified of some things that were happening, and I
18 knew about it and the monitors didn't seem to care.
19 My whistle-blowers talked to them, and they ignored
20 it. I even made overtures to them and they ignored
21 it.

22 So here I am in the situation where nobody
23 cares, and finally the joint explodes and they burn
24 down a couple of pods. That's the situation that I
25 have seen. That's the situation I've seen

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1 consistently around the country. I've visited CCA
2 prisons inside and on the outside. Went by Crowley
3 while it was still smoking. And I'd like to talk
4 about -- I hope you ask me questions too about ACA
5 accreditation and how it affects all this. Thank you
6 very much.

7 MR. SCHWARZ: Okay. Professor Dolovich.

8 MS. DOLOVICH: First I'd like to thank the
9 commission for giving me the opportunity to speak with
10 you today. I realize I'm the last speaker on the last
11 panel after a very full two days of testimony, so I
12 will do my best to keep you engaged, as I know we all
13 will up here.

14 As Mr. Schwarz said, I'm professor of law
15 at UCLA School of Law and I teach criminal law, legal
16 ethics in a class called Prison Law and Policy. My
17 main research interest is in the normative foundations
18 of American criminal justice policy, or what I think
19 of as how we justify what we do to convicted criminal
20 offenders in the name of punishment.

21 Now, I've been thinking about private
22 prisons in this light for some time, and the main
23 point I want to make to you today, one which it's
24 turned out Mr. Seiter and I agree on, is that the way
25 the debate has generally been framed, as a choice or

1 even a competition between public and private is the
2 wrong way to think about the issue. Now -- and it is
3 the main way that when you look in the debate, look in
4 the literature, the main way to debate is framed.

5 I have two reasons for suggesting that we
6 think about it differently. The first is that framing
7 the issue in this way, a situation between public and
8 private, actually obscures the fact that in terms of
9 day-to-day structure and functioning, private prisons
10 operate pretty much like public prisons. Now, I have
11 to be careful here as I learned last night at dinner,
12 I'm not saying that public prisons and private prisons
13 are the same, but where there are differences, they
14 are differences of degree and not kind.

15 That is, private prisons take many of the
16 problems and pathologies of the public system and they
17 take it to their logical extreme. You find the same
18 phenomena only in more extreme forms in the private
19 sector, so that's the first reason.

20 The second reason I think we need to think
21 about the debate differently is that framing the issue
22 in comparative terms actually leads us to lose sight
23 of the bigger picture. With the comparative approach,
24 we spend a lot of time debating whether private
25 prisons are as good as public prisons. In fact,

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1 Mr. Seiter's written testimony, he addresses this
2 issue trying to suggest to us that at the very least
3 private prisons are as good as public prisons. Now,
4 with all due respect, if this were an acceptable
5 standard, if what we were shooting for here was simply
6 to reproduce what we already have, we wouldn't be here
7 today and you folks wouldn't have the hard job you
8 have of trying to figure out how to fix a broken
9 system. It's not the standard I think we should be
10 shooting for.

11 So the real question isn't I think whether
12 the management structure of the prisons should be
13 public or private. I think the real question is why
14 all our prisons, public and private alike, fall so
15 short of satisfying our obligations to those who we
16 incarcerate. This doesn't mean that it's not
17 refocusing on or thinking about private prisons, not
18 at all. The point is there's actually a lot to learn
19 from private prisons about what's going wrong with our
20 penal system in general. That is if we approach the
21 issue in the right way.

22 So what I think we should be doing is
23 looking at private prisons themselves to try to
24 understand the dangers that are posed by this penal
25 form, and I believe there are dangers posed by this

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1 penal form, and once we do so, we will see that a
2 number of practices that are problematic in the
3 private sector are also problematic in the public
4 sector.

5 So I'm just going to mention, there are
6 three lessons that I think we learn when we focus on
7 private prisons in this way. I'm just going to
8 address them very briefly, and I welcome any questions
9 you have on any of them.

10 First, we find that there's a danger to
11 health, safety, and the well-being of prisoners
12 whenever corrections officials are accorded extensive
13 discretion and power over prisoners absent effective
14 accountability mechanisms to check any possible
15 abuses. Now, many COs will use their discretion
16 responsibly, but unfortunately that is not true of
17 everyone. So we need effective oversight and
18 accountability mechanisms to protect prisoners from
19 the abusive discretion where it occurs.

20 Now, the problem is with all due respect
21 now to Mr. Seiter, none of the oversight mechanisms
22 that he mentioned, including the ACA monitoring or
23 competition and the threat of replacement -- I would
24 also add the courts, which is another one that that's
25 often raised as providing some accountability, none of

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1 these mechanisms are actually effective as meaningful
2 checks to the private sector, and I would argue the
3 same is true of those mechanisms as they operate in
4 the public sector. So that's the first point.

5 The second point is -- that we learn is
6 that there's a danger to prisoners' health, safety,
7 and well-being whenever states contract out to
8 for-profit entities for the provision of the essential
9 prison services when the state is in it to save money
10 on the cost of corrections. The incentives to cut
11 corners in these cases are just too powerful,
12 especially absent effective accountability mechanisms,
13 and if the states are in it just to -- the states are
14 in this to save money, they not going to want to spend
15 what it takes to make these mechanisms effective.

16 And I don't just say this sort of off the
17 top of my head. If you look at the experiences of the
18 last decade, you will see that that's actually true
19 certainly in the private sector and I think in the
20 public sector too. And the important thing to note
21 here is I'm not just talking about whole private
22 prison contracts.

23 The same is also true in the subcontracting
24 out of discrete prison services like medical care,
25 psychiatric care, food service, transportation, inmate

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1 classification, and the list goes on. The danger is
2 present in each of these cases whether or not the
3 managerial structure of the prison itself is private
4 or public.

5 Now, finally and perhaps most
6 controversially, since I've run out of time, I'll give
7 you two sentences on this. We create serious problems
8 for our prison system and not to mention the
9 legitimacy of our criminal justice system itself when
10 we allow sentencing policy to shape your advocacy by
11 interest groups that have a financial interest in
12 increased incarceration or longer prison sentences.

13 When we do this we create political
14 conditions for policies that are increasingly tough on
15 crime, regardless of whether it actually serves the
16 public interest to put more people away for longer.
17 And the result, of course, is the overcrowding and
18 mass incarceration that we currently have. So I'll
19 stop there, and I'm happy to take any questions that
20 you may have.

21 MR. SCHWARZ: You know, what I'd like to
22 start with is you -- you framed the issue differently
23 than your two colleagues, and therefore I think it
24 would be useful if Mr. Seiter and then Mr. Smith just
25 reacted to how Professor Dolovich framed the issue.

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1 And then we're going to have other questions about
2 true comparisons between the public and the private.
3 So whichever one of you wants to go first. Go ahead.

4 MR. SEITER: Well, I guess I have a couple
5 reactions. One, as much as it's important to discuss
6 these issues, I'm not a believer that the system is
7 broken, and if you frame it with that's the beginning,
8 that the system is broken, the system can be improved,
9 the system can improve in many ways, but I guess after
10 three decades of work in it I've seen a lot of
11 improvements and a number of dedicated public servants
12 who do a tremendous job with little recognition and
13 little remuneration. I don't believe the system is
14 broken.

15 Second, I guess I can't disagree that --
16 and I do agree that it really isn't an issue of public
17 and private. I made that point. And I strongly think
18 that's the case, that the operations are very similar.
19 But I would disagree that there are not appropriate
20 monitoring systems to avoid any abuse and discretion.
21 In the private sector there are very sensitive
22 contracts that are required to be met.

23 There is extensive monitoring of that and
24 there are even liquidated damages for failure to
25 comply. So in many ways there are many more specified

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1 and distinct standards and expectations that must be
2 met in the day-to-day operations than even I faced
3 when I was in the public sector.

4 MR. SCHWARZ: Mr. Smith.

5 MR. SMITH: Yeah, thank you. You know,
6 I -- on the contrary to my two colleagues here, I
7 believe the private system's inherently flawed.
8 Everything pursues the profit motive. Everything.
9 I've never seen a single case -- and I've been looking
10 at these folks intensively full-time, even though I
11 was a volunteer for the last six or seven years. I
12 have never seen a case where professionalism took
13 precedence over profits. Not one single case.

14 And I've seen instance after instance
15 through companies throughout the entire industry from
16 one prison to the another. Occasionally, I see a
17 really good warden like former secretary -- Kansas
18 Secretary McManus talked about, where somebody is so
19 professional, like started out with somebody in
20 Minnesota. Went out there and met people and talked
21 with them and made his presence known.

22 There are people in the public sector like
23 that have graduated up like Professor Seiter has.
24 Marine brig commanders, ex-BOP wardens, people like
25 that that have integrity and they have knowledge and

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1 they have an understanding and they did their damndest
2 to make the prison work despite the fact that they
3 might have to stand there with people stepping all
4 over, and if I had a picture I'd hand it out, seven
5 dollars and 61 cents at home.

6 It's almost impossible to run a place like
7 that, but these guys prevailed and they were able to

8 do it. I don't know any women or I would have
9 included that. Not a lot of guys, but they prevailed
10 and they were all kashered. They were thrown out
11 because they simply didn't agree with management's
12 cost cutting issues that compromised health, safety --
13 the safety of not only the staff that we talked a lot
14 about today, but the safety of the inmates, and the
15 public safety.

16 Mr. Seiter has talked about monitoring, and
17 I've already spoken to it. I don't think monitoring
18 has any functional -- I have stacks of monitoring
19 reports and I think, in Brush, Colorado where there
20 was this flagrant sexual abuse of woman after woman
21 after woman from Hawaii and Wyoming, Colorado, there
22 was no action taken. There was no action taken at
23 all, and the news of this was concealed from a
24 legislator who's working on a bill to effect the
25 import of out-of-state prisoners, which has caused

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1 enormous problems in so many states, and you know,
2 it's just -- it staggers the imagination.

3 Problems that arise there, the warden just
4 plead guilty last week to covering up the offense at
5 Brush, and two of his former -- former guards are
6 awaiting trial on that.

7 MR. SCHWARZ: I suppose Professor Dolovich
8 might think, well, you could -- one could cite
9 examples of that in the regular government prison
10 system also.

11 Also, Mr. Seiter, could I ask you two
12 comparative questions? And then I think my colleagues
13 are all going to jump in. These both arise out of
14 testimony we've gotten over the course of this full
15 hearing and the prior two hearings.

16 A large part of testimony has said
17 correction officers in the state-run system are paid
18 less than they should be and less than they might be
19 if one were going to attract more people into the
20 correction profession. So if the private prisons, in
21 order to make a profit, have to pay less, which at
22 least is a premise that would seem is logical, isn't
23 that going to exacerbate questions about who comes in
24 to work in the prison system?

25 And the second question for you and then we

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1 can ask comparative questions on the other side, but
2 the second question for you is isn't it a fair point
3 to make that the private prison industry has an
4 incentive to persuade legislatures to increase the
5 number of people who go to prison and the length of
6 time people who go to prison stay in prison?

7 And we certainly, through all our three
8 hearings have gotten a lot of evidence that there's a
9 phenomenon of over-incarceration in this country that
10 is bad for the environment in prisons. So those are
11 two comparative questions to -- sort of addressed to
12 you, and then others or I can address questions on the
13 other side.

14 MR. SEITER: Mr. Schwarz, I think both are
15 very fair questions, challenging questions, but fair
16 questions, so let me try to address both of them.

17 First of all, on pay, there certainly is
18 the perception that private sector pay is less than
19 public sector pay, and in some cases that's true, but
20 let me say that in some cases it is not. At one of
21 our facilities correctional officers start at 52,000
22 dollars, higher than any public sector facility in --
23 within a hundred miles. In some of our contracts we
24 are required to pay prevailing wages even by the
25 Department of Labor, and with whatever formulas they

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1 come up, that is what the wages are paid.

2 But again, let me try to dispel some myths
3 that the private sector tries to make profits out of
4 paying people less than they should. First of all,
5 most of our contracts are very outcome-based, and we
6 try to manage a quality correctional system. Again,
7 let me kind of link the profit motive in a little
8 different way. There's nothing that undermines the
9 safe and secure operation of a facility more than
10 inexperienced line staff, in my opinion.

11 It's -- some of the discussions this
12 morning on culture are critical, but there's so many
13 things that go on in a prison day-to-day that a line
14 staff member who has very little time on the job and
15 little training or mentoring can make a mistake in
16 terms of a minor incident into a major incident.

17 You don't want vacancies in terms of
18 correctional officers because there's a certain number
19 of posts that just have to be staffed. You cannot
20 operate a prison day-to-day without staffing. So if
21 you don't have trained, experienced correctional
22 officers to do the job, you're going to pay somebody
23 overtime, time and a half. So it makes much more
24 sense, again, with the profit motive to pay somebody
25 100 percent rather than 150 percent. And that's not

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1 just good corrections. Go back to the monitoring and
2 contract and the accountability requirements. Most of
3 our contracts require that all mandatory posts be
4 filled every eight-hour shift.

5 Your second point on the motivation of the
6 private sector and the profit motive in terms of
7 impact on criminal sentencing, I'll admit that even in
8 some of my earlier thoughts and writings I alluded
9 that that was -- what would seem rational, but I can
10 say after almost a year in the private sector, I've
11 not seen that. I've not heard it. Nobody seems to
12 motivate that.

13 I would agree that correctional policy on
14 how many people go to prison, but more importantly how
15 long they stay, really needs to be looked at. But I
16 have never seen in my years in state government or
17 federal government the impetus for those enhanced
18 sentences coming from the private sector. They always
19 come from legislators or elected officials that want
20 to make a reputation on being tough on crime, and I
21 don't think you can put that at the hands of private
22 sector.

23 MR. SCHWARZ: Do either of the other two
24 have comments on his two answers?

25 MR. SMITH: Lots. You first.

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1 MS. DOLOVICH: So a few things. I just
2 want to -- Mr. Schwarz suggested that I would state
3 there are also many instances in the public sector. I
4 would want to be clear I would say that, but I don't
5 want to leave you with the impression that I think
6 that private prisons and public prisons function in an
7 identical way. I really mean what I said. It's a
8 question of degree and not kind. So I actually think
9 that Mr. Smith is right to call attention to the many
10 incidents.

11 From the research that I've done, it seems
12 clear to me that private prisons are less safe still
13 than public prisons. The point I'm just trying to
14 make is that the baseline is too low. So that we need
15 to fix both contexts.

16 A couple things, just one on monitoring and
17 one on what Mr. Seiter just said. The research I've
18 done, if you look at the numbers actually I think Alex
19 Busansky circulated to you a draft of an article I'm
20 going to be publishing. If you actually break down
21 the numbers of the research that was done by an
22 independent public policy institute that was
23 commissioned by Congress to look into the profession
24 of private prisons, if you look at their numbers on
25 monitoring, it's actually surprisingly limited. I

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1 can't tell you what all the contracts said in those
2 cases, but if you -- if you break down how many
3 monitors spent how much time in the monitored
4 facilities, it seems to me the numbers are woefully
5 inadequate.

6 Just to give you an example of the 91
7 prisons and jails that were involved in the study,
8 less than half had a daily monitor, meaning that only
9 I guess -- let me think. Maybe it was fifty percent,
10 46 of 91 had a daily monitor. There was one person in
11 the facility for 37 hours a week. And that was the
12 most monitoring that any facility had. If you then go
13 up to some of the prisons I've seen, for example, in
14 California, which have many thousands of inmates, if
15 you're actually looking for meaningful oversight of a
16 contract, that just doesn't seem to be -- to me to be
17 sufficient.

18 On the point Mr. Seiter made about whether
19 or not he has seen people at CCA promoting policies
20 increasing with respect to increased incarceration,
21 there are connections that we could make. Again, I
22 talk about them in my paper. CCA is a member of an
23 organization called ALEC, the American Legislative
24 Exchange Council. And ALEC has got members that are
25 both from the private sector and from public

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1 legislatures. They claim I think about 25 percent of
2 legislators across the country, state and federal, as
3 part of their membership, and the way ALEC works is
4 that it drafts model legislations to be taken back to
5 legislators, and then the legislators take back to
6 their legislatures to try to pass.

7 Now, I don't mean this to sound like a
8 conspiracy theory. I just think it's understanding
9 that ALEC has been behind three strikes and truth in
10 sentencing, both pieces of legislations -- could be
11 the legislations have the effect of increased
12 populations in the prisons. CCA is a member of ALEC,
13 and actually I believe is involved in drafting some of
14 that legislation.

15 Now, I don't mean to be accusatory here and
16 say that all of the increase in incarceration that we
17 have seen in the last two decades is due to CCA. I
18 don't mean that at all. And I also don't think that
19 if it's true that CCA is involved in any way, I don't
20 think it makes CCA or anyone in the private sector
21 unique.

22 The point I'm trying to make is we have
23 this phenomenon in our criminal justice policy process
24 which allows organizations and entities that have a
25 financial interest in increased incarceration to

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1 influence sentencing policy. And I'm merely trying to
2 suggest that to the extent that this is the case --
3 and I think it's true if you look at the operation of
4 a CCPOA in California and even if you look at
5 communities --

6 I was saying this last night at dinner. If
7 you look at some communities that are looking to the
8 building of prisons in their communities to increase
9 employment and funding in their communities, it's very
10 hard to separate out the extent to which support for
11 increased crime legislation comes from a firm belief
12 that this is good for the public interest and a belief
13 that if you increase incarceration, you'll have more
14 funding for your community. And again, I know this is
15 a very -- it sounds like a conspiracy theory. I'm
16 just trying to raise the point that it could be
17 problematic in terms of the legitimacy of our prisons.

18 MR. SCHWARZ: Mr. Smith, do you have any
19 brief statements on --

20 MR. SMITH: Yeah. I'll try. It's
21 difficult for me. CCPOA, Lance Corcoran was here.
22 There's another CCPOA representative here today. And
23 I really was upset to miss Lance because I like to
24 give him a hard time because of the policies that
25 Professor Dolovich just mentioned. The reason being

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1 is that they are most like the private sector when it
2 comes to advocating for tough on crime and three
3 strikes and all that. They're terrible about it.
4 They've been very professional in many ways.

5 But that -- I think it's bad public policy
6 and I think like the private sector indulges in this
7 sort of thing, it's bad because state budgeting is a
8 zero sum game, and as they look for more and more
9 correctional collars, they start by the services which
10 will have a reaction.

11 Eventually it will backfire in corrections.
12 It's not helpful. They even opposed a needle exchange
13 program, and they're worried about the health of their
14 officers. So they're going to have more prisoners
15 coming in with hepatitis C or HIV or whatever because
16 I thought it was a very boneheaded for them to do
17 that, to get Gray Davis to veto a law, and they did
18 it.

19 However, if you look at some of the
20 handouts I gave you, the escapes handouts. Professor
21 Seiter talked about safety, and the numbers that
22 you're looking at there, like thirty times as many
23 from private facilities. I first became drawn to this
24 when, I don't know, about nine or eleven prisoners ran
25 off from a CCA van in Minneapolis. One was a

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1 murderer. He wound up getting caught at a bus station
2 in Chicago after taking a family hostage. I called
3 Freddie up and said how is this happening? She said
4 there's no controls over it. She's right.

5 You've raised over-incarceration. I
6 appreciate that. GEO Group is very involved in that.
7 I think they chaired the Criminal Justice Committee.
8 Mr. Schwarz, you suggest they have -- because they
9 make a profit they have to pay less. They don't have
10 to pay less. They choose to pay less. All these
11 things are done by choice.

12 They pay -- in the handout I gave you --
13 7.61 an hour in Kentucky, and they compensate
14 Mr. Seiter extraordinarily generously. I think he
15 gets -- he can correct me if I'm wrong -- 270,000
16 dollars a year, and he got a stock award of about
17 two-thirds of a million dollars this year. That's
18 coming out of the -- that's not a living wage when
19 you're paying \$7.61.

20 What you have is turnover. You have people
21 working two jobs. They're exhausted when they come to
22 work. They lose that alertness you need to be -- a
23 correctional officer, a guard. You've got to be on
24 the ball on that stuff, and you can't get it when
25 people have to work two jobs.

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1 And when they have 52 percent turnover a
2 year, they go through a training, that's right, much
3 less than the public, substantially less than the
4 public sector, but the training to make 52 percent a
5 year, it's like everybody is in the first grade, and
6 the sergeants are the ones that last until the second
7 grade. And we have what do you call it, mandatory
8 promotions, whatever you call it, in educational
9 systems. You know, it's absolutely -- there's no
10 professionalism in that system and professionalism,
11 the little that exist, is not rewarded.

12 MR. SCHWARZ: Gary Maynard.

13 MR. MAYNARD: Yes. Thank you.

14 Ms. Dolovich, you're not impressed with either
15 privates or the public, but do you see something
16 in-between, some kind of standard, or what would you
17 propose for each of the -- you think there's a common
18 set of standards that would apply to both that would
19 make them more effective?

20 MS. DOLOVICH: I guess what I'm struck by,
21 and as I sit here I know you have a hard job in terms
22 of what you can recommend and what is viable and
23 possible, but what I'm struck by in looking at private
24 prisons and the way that the phenomena in the private
25 sector and also present in the public sector is it

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1 does seem to come down to money in a lot of cases. So
2 I'm troubled as much, like I said, by subcontracting
3 for healthcare in order to save the states money on
4 the costs of healthcare as I am just the contracting
5 of the whole prison.

6 So I'm not sure that the right approach is
7 to look for a middle ground between public and
8 private. I think the right approach is to ask what is
9 it that we can do to improve the structures that we
10 have, and when I said that the structure and
11 functioning of public and private prisons is similar,
12 what I meant is if you look at the organization of the
13 prisons, if you look at how prisoners are housed, if
14 you look at the programming, etc., it looks pretty
15 much the same.

16 In fact, the ADT study on private prisons
17 published by Congress that I mentioned said that the
18 structure of contracting out suggests that the public
19 sector is really just trying to get more of what they
20 have on the cheap and, you know, that's pretty much
21 what they get.

22 So just to reiterate, I'm not sure the
23 right approach is to look for middle ground as much as
24 it is to think about the role that financing plays in
25 the construction of the prisons, and the way that

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1 inadequate funding can undermine safe -- safety in the
2 prisons. I'm not sure if that's -- if that answers
3 your question.

4 MR. MAYNARD: I was wondering more what
5 would make the public or the private better.

6 MS. DOLOVICH: I see. Well, I actually
7 think a good place to start would be strengthening
8 each of the accountability mechanisms that I
9 mentioned. So I think the monitoring is inadequate in
10 the private sector. The work that I've started to do
11 looking into the oversight of public prisons suggests
12 to me that it's also inadequate.

13 Either you have a situation like in
14 Tennessee where the statutes seem to require quite
15 strict and frequent inspections, but in practice they
16 don't happen at all. Or you have the situation in
17 California where the new regime is really quite strict
18 and very comprehensive, but given how many prisons
19 there are, the legislation only requires an inspection
20 once every four years.

21 So it seems to me that we want both strict
22 requirements and frequent inspections and oversight,
23 right? We want both of those things, and that's
24 monitoring. I think that the way the courts have
25 constructed standards for liability for prisoners'

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1 Constitutional rights are too strained and
2 restrictive.

3 I'm not sure what scope the commission has
4 to recommend more expansive interpretations. Maybe
5 the answer is the creation of a statutory cause of
6 action that would be able to sort of provide an
7 alternative to Constitutional claims, but certainly I
8 think the courts don't function the way they're
9 supposed to.

10 And I think the conversation that was had
11 earlier by ACA accreditation and the way accreditation
12 could be strengthened is actually really crucial here.
13 If you had an accreditation process that was mandatory
14 and meaningful with more than just requirements of
15 demonstrated policies, but actually demonstrate
16 compliance and, as Mr. Dawe suggested, inspections
17 that were unannounced so that the implication would be
18 that the prisons would be in compliance all the time
19 and not just around the time of the inspection, I
20 think all of those things would go really far to make
21 a difference.

22 MR. SCHWARZ: Commissioner Schlanger and
23 then --

24 MR. NOLAN: Nolan.

25 MR. SCHWARZ: Commissioner Schlanger first.

1 MS. SCHLANGER: So this is I think really a
2 question for Mr. Seiter. So we've been hearing about
3 the risks of privatization, the risk especially of the
4 cost shaving and almost antiprofessionalism if I'm
5 characterizing what Mr. Smith is saying. So I guess I
6 have two questions really.

7 One is what's the benefit? I mean, if
8 that's the risk, we don't know if that risk is
9 actually coming to fruition, but what's the benefit
10 that compensates or that balances out that risk?

11 And then second, because I assume you're
12 going to say there is a benefit and you're going to go
13 through what it is, what kind of -- I've read some of
14 these studies. They seem to me categorically
15 inconclusive. What kind of performance measurement or
16 evaluation or something could be done to know, to
17 reassure the policy that we are not privatizing this
18 really serious state function and incurring these very
19 serious problems.

20 MR. SEITER: I think the benefits are many,
21 and it's kind of the crux of the partnership issue
22 that I talked about in my opening comments and I
23 talked about in my written testimony, that it depends
24 on what challenges are being faced by the public
25 sector. That they cannot meet either today,

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1 immediately, or perhaps -- in some cases that's
2 capacity. Their system is expanding for whatever
3 reason and for whatever cause, and they either do not
4 have the dollars to expand, or they can't do it fast
5 enough. So the private sector can come in and no
6 question can build capacity quicker than the public
7 sector and can expand using capital, using loans,
8 whatever that the public sector may not be able to
9 create in a very short time frame. That can be long
10 term or in some cases it's temporary.

11 We need additional beds for the next six
12 months, for the next year, for the next two years
13 until we add capacity. Instead of having overcrowded
14 conditions in current facilities, it allows states
15 flexibility to deal with overcrowding in a very short
16 time frame and one that allows them to do whatever
17 planning and approaches they want to take.

18 Second is, as I said in my written
19 testimony, there have been challenges in budgets by
20 the public sector. And if you look at any of the
21 numbers, the number of inmates in programs has not
22 kept up with the growth in the number of inmates in
23 the institutions. So there are fewer percentage-wise
24 overall participating in programs. Quite frankly,
25 this is not something that states or government

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1 agencies then will accept.

2 When they put out an RFP, they can very
3 clearly say we expect this percent of inmates to be in
4 education, we expect you to provide substance abuse
5 programs, we expect you whatever. So even if they're
6 not getting that as a line item in terms of we need
7 growth in these kind of programs, they can include it
8 in an RFP they put out for competitive bid.

9 There are cases where states are facing how
10 to deal with special offender groups. Special
11 offender groups that need particular kind of handling
12 separate from the rest of the population, and they may
13 have small numbers that make it terribly cost
14 inefficient to do. By contracting with the private
15 sector, who may take three or four populations from
16 different government customers and allow them then to
17 provide that special offender kind of programming and
18 housing at a cost that makes it reasonable to do.

19 So I think, one, it can deal with
20 overcrowding in a timely fashion that I think this
21 commission and all the witnesses that have testified
22 is a serious threat to safety. It can enhance both
23 the number and quality of inmate programming that is
24 in my opinion extremely important to the safety and
25 secure -- safe and secure operation of any prisons,

1 and it can provide any kind of special services that
2 are necessary that a state just can't provide on their
3 own.

4 Your second question, I agree. The studies
5 really are inconclusive and I think anyone, this
6 commission, anyone in the public sector, anyone in the
7 private sector would love to have a measure of quality
8 that could be said, if you do this, we all accept that
9 you're operating a humane, a constitutional, an
10 active, a positive prison setting so that we all know
11 we are meeting what we expect as correctional
12 professionals and what the public expects from our
13 correctional facilities.

14 Unfortunately, probably the best we have
15 are some of the process-oriented measures that you're
16 talking about today in ACA accreditation, and some of
17 the things that were talked about in terms of
18 leadership and building the right culture. Those are
19 hard to measure. They're hard to study, they're hard
20 to look at in terms of outcomes.

21 I don't know what those would be beyond
22 those that we've been using, and they are not
23 satisfactory for any of us to say this is an
24 acceptable measure that we all agree on. This
25 shows this facility is an excellent facility that's

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1 providing the kind of environment that we want to put
2 incarcerated offenders into that helps better prepare
3 them to return as law-abiding citizens.

4 MR. NOLAN: A couple of thoughts and ask
5 you to -- all of you to respond to them. First of
6 all, cost shaving occurs all the time in government
7 facilities. The lack of programs, eighty to 85
8 percent of inmates need drug treatment, less than
9 twenty percent leave with any treatment, which Dr. Joe
10 Callafano [phonetic] has said is a fraud on the public
11 to lock somebody up with an addiction for five, ten,
12 fifteen years and do nothing about it and release them
13 on the public is a fraud.

14 Secondly, Will Grant said what makes Ford a
15 good car? His answer was Chevrolet. Competition.
16 Having an alternative, and as a former legislator,
17 having an alternative to compare results with bottom
18 lines with. The bottom line of our criminal justice
19 system is that two out of three offenders are
20 rearrested within three years. If we had hospitals
21 that two out of three patients that left were still
22 sick, we'd find new hospitals. We'd find a new way to
23 do it.

24 My experience in talking in the prisoner
25 fellowships field is -- and this puzzled me when I

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1 first heard it. I've asked and it continues to be
2 that as a whole, not entirely but as a whole, the
3 private prisons are more open to programming of
4 volunteers coming in, they facilitate it more, they
5 accommodate it more, they encourage it more, they seek
6 out those programs, and somebody that I've known for a
7 number of years did some work for a private prison
8 company. I said why is that? That's puzzling to me.
9 Why would they in contrast to government facilities
10 seek this out?

11 And he said, "Well, it's simple. We have a
12 bottom line and we know that prisoners whose lives are
13 occupied with productive activities are less likely to
14 get abusive with each other, abusive with officers.
15 That means lower workers' comp costs. That means
16 fewer grievances and lawsuits. That means happier
17 lives within."

18 Now, everybody I know inside a private
19 prison complains about the food. Everybody inside a
20 public prison complains about the food. Everybody
21 I've known in the military complains about the food.
22 Every college student in a dorm complains about the
23 food. So I think institutional food is the problem
24 here. That is a common complaint I hear, but I've
25 seen cost shaving occur in public institutions,

1 consistently the low staff ratios.

2 So my question to you is sort of the flip
3 side of what Margo asked. Why would we take something
4 that's as important as public safety and the
5 correcting of that behavior and put it in the hands of
6 a system that runs the post office?

7 MR. SMITH: That answers your question
8 generally I think, and some of the prior questions
9 more specifically. I'll give you an example. In the
10 State of Alaska, I just talked about it a little bit.
11 All that, tried to build a prison for two years to get
12 a free Army base and get the local town to bond forty
13 million dollars in conversion. They failed.

14 They continued to pursue this. For nine
15 years they contributed -- they made campaign
16 contributions of 200,000 dollars a year. The public
17 sector employees made, correctional officers, maybe a
18 thousand dollars a year. Not more than two thousand
19 certainly. Tiny contributions exceeded a hundred
20 times by the private sector.

21 What they did there, they're talking about
22 building quickly. Well, they didn't lay a brick for
23 nine years. But what they did do is they bought off
24 enough legislatures to stop the public sector from
25 laying a single brick. Well, they did for seven

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1 years, and they finally were able to build a small
2 prison, but that's what you're buying into when you --

3 MR. NOLAN: What prevented them from
4 building the prison for those nine years?

5 MR. SMITH: They're kept legislators, guys
6 that were bought off.

7 MR. NOLAN: So the legislature wasn't
8 allowing them to build it?

9 MR. SMITH: Yes, but the contributions
10 flowed directly from the private prison industries and
11 their associates, contractors and all to the
12 legislatures, to the senate house floor when they said
13 this won't go any further. I don't care what the
14 governor wants, the director of corrections wants, the
15 other house wants, it's not going anywhere because we
16 want our court, the 985 million dollar wired bid that
17 they were looking for that I discovered on a Freedom
18 of Records Act request. That's serious safety
19 problems.

20 So what's happened is you had 825 Alaskan
21 prisoners in CCA Florence, Arizona that rioted about a
22 month after I visited the place in 2000 and had been
23 preceded by a riot in 1998. I mean, you have these
24 terrible problems of those 825 people, and I just
25 talked about recidivism. Four got regular visits.

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1 You're talking about programs, that's the worst
2 program imaginable if you're cutting off people from
3 their families, their support systems, their
4 employers, their churches, what --

5 MR. NOLAN: I totally agree.

6 MR. SMITH: These prisons are typically
7 built in the area where the company -- now, Professor
8 Seiter talked about some places where they have to pay
9 out -- Florence, Arizona is one because they have
10 federal prisoners, Hawaiian and Alaskan prisoners that
11 are high-ticket prisons, but they like to pay that and
12 that's what's causing these problems. They're
13 locating them in the areas typically of the lowest
14 wages where you get this fast food worker with a set
15 of keys and a badge.

16 MR. NOLAN: But upstate New York, building
17 a prison there isn't the same thing.

18 MR. SMITH: Bad mistake. Terrible mistake.

19 MR. NOLAN: Frank, the same system that
20 brings us the post office is putting public prisons
21 there as well as private.

22 MR. SMITH: But like Professor Dolovich
23 said, this has magnified the public problems
24 exponentially.

25 MR. NOLAN: But by what index is it

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1 magnifying them?

2 MR. SMITH: I can say the numbers. I'd be
3 happy to state numbers. Study after study after
4 study.

5 MR. NOLAN: But again, I think we heard
6 those studies are equivocal.

7 MR. SMITH: No, they're not. Professor
8 Seiter maintains they're equivocal. One of the
9 studies -- well, he calls it a study. The Harvard Law
10 Review "study." It's not a study. It's not a review
11 of the literature. It's a note. It's an
12 unpeer-reviewed journal, it means nothing, it's full
13 of sound and fury. And that's why you say is
14 equivocal.

15 You got crap on one side, Charlie Thomas,
16 the guy who got three million dollars in one crack
17 from CCA. You got Charlie Thomas who got a free trip
18 to Hawaii in the middle of the study that he quotes
19 from the Miranda Institution, from MBT. This instant
20 research on the other side is unfortunately largely
21 bogus, or there's a misreading of legitimate research
22 like the stuff that, you know, they ignore site
23 preparation, and they say it costs much more to build
24 a public than -- you know, when a public institution
25 is built on a huge piece of land with an extensive

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1 site preparation.

2 And they ignore facts like the public
3 sectored workers have 21 percent retirement benefits
4 and the private sector benefits, the GEO Group in this
5 case, have two and a half percent only if it's matched
6 with a five percent contribution by employees, and
7 only ten percent of the employees contributed.
8 That's -- this is an enormous difference.

9 MR. NOLAN: Wouldn't that indicate we could
10 deliver more protection for the public for less money?

11 MR. SMITH: Absolutely not.

12 MR. NOLAN: Okay. What am I missing here?

13 MR. SMITH: Well, they're not delivering
14 protection. Look at those escape numbers I showed
15 you. That's hardly protection. When they get out
16 with hepatitis C or drug-resistant tuberculosis or
17 whatever, you had -- your last panel was on the health
18 risks of this. You've got inmate vectors going into
19 these communities, impoverished communities.

20 MR. NOLAN: But what are the publics doing?

21 MR. SMITH: They're doing much better
22 across the board. They're doing better.

23 MS. DOLOVICH: Can I just jump in here? I
24 think this is part of the -- the part where I see the
25 problem with this kind of debate because I agree with

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1 you on two things that you said. One is there's cost
2 shaving in the public sector, and two is to the
3 extent -- to the extent that the private sector is
4 allowing more volunteers into their prisons, it is
5 likely because they see that this will keep the
6 prisoners occupied and reduce their overall cost. I
7 agree with both those things.

8 Now, what I don't understand is why the
9 argument then becomes public versus private if the
10 public sector is looking to shave money and it does it
11 by not providing drug treatment, you as the commission
12 and we as citizens can say if you actually want to, A,
13 help the community, and B, save money, you will invest
14 in drug treatment.

15 You will let volunteer organizations into
16 the prison. You want to provide more programs. You
17 want to make it possible for prisoners to have more
18 visits by not siting prisons in upstate New York when
19 most of your prisoners are from New York City.

20 So I guess I'm puzzled by why this becomes
21 a back and forth and not a question of what are the
22 prisons doing that are compromising the possibility
23 for safety and, you know, rehabilitation, and what are
24 they doing that is enhancing those possibilities and
25 how can we reduce the percent.

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1 MR. NOLAN: I totally agree with you. To
2 me it's an artificial debate. The bottom line is
3 public safety, and we need to look at both and hold
4 them both accountable to do all they can to provide
5 drug treatment, to provide other programs and
6 volunteers that enrich their lives and prepare them
7 for reentry and hold them accountable for the bottom
8 line, which is fewer people harming somebody else and
9 going back to prison. And so to me, I'm puzzled by
10 the debate why there's people so angry that there are
11 private or public. I say hold them both accountable.

12 MR. SMITH: I'm for that.

13 MR. SCHWARZ: The chair and then
14 Commissioner Ryan.

15 MR. KATZENBACH: I just have some questions
16 really out of ignorance, Mr. Seiter. I want to know a
17 little bit more about the contracts that you make. I
18 want to know what's the length of those contracts,
19 what are the provisions that allow the government to
20 examine? Do they have access to all the documents,
21 all the files? Do they have -- can they visit any
22 time they want to? Can they send anybody they want to
23 wherever they want, that sort of thing?

24 You speak about liquidated damages. I have
25 no idea whether they're large or small. I'm curious

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1 about that, and I'm curious as to whether they are to
2 be achieved after litigation, or is there any other
3 standard by which they're to be -- that kind of
4 question.

5 MR. SEITER: Some states and some
6 government agencies do this very well. Other ones
7 probably don't do it as well in terms of how well they
8 draft an RFP and how well they then create a contract.
9 However, by now many states, many government agencies
10 have been in this business for over a decade and they
11 are doing very well. Let me just answer your question
12 in general. And I'd be happy to give you any
13 specifics that you'd like to know.

14 In terms of the length, it varies anywhere
15 from a year renewable to three years or four years
16 max. to ten or twelve years, and oftentimes that will
17 depend on how much risk the private company is taking
18 in terms of commitment and capital. If you ask us to
19 build an eighty million dollar facility for you, it's
20 going to take a longer term contract.

21 However, every contract that we have that
22 I'm aware of that I looked at can be terminated for
23 cause defined by the customer within usually ninety
24 days. So if there is a reason that they feel the
25 government -- the contractor is not performing, they

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1 can end that contract.

2 MR. KATZENBACH: It must be difficult to
3 terminate a prison for cause. I mean, you leave, what
4 am I going to do?

5 MR. SEITER: Well, you know, if there is
6 the kind of abusive discretion and kind of incidents
7 that Frank has described, I can assure you customers
8 would say we're not going to continue to pay you money
9 to do that if you're not providing safety for the
10 citizens of this state.

11 In terms of the monitoring and
12 examinations, all the contracts require are allow
13 monitors to be -- have total access to the institution
14 24 hours a day, seven days a week with or without
15 notice. They can walk in at any time unannounced and
16 do any kind of examination that they want to do. The
17 contract requirements will often say you must have at
18 least these levels -- this number of staff.

19 They will require how many staff you have,
20 this percent of inmates, this many inmates must
21 participate in a certain kind of programs, whether
22 it's education, substance abuse, or whatever. Must be
23 ACA accredited within two years, three years, or
24 whatever, and most of our contracts do require that.

25 How often they visit, we have institutions

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1 where there are four full-time monitors for every
2 facility, and I think any of you who have operated a
3 facility or hospital, if you can imagine four people
4 looking over your shoulders every day or at least five
5 days a week, that could be very extensive monitoring.
6 There is not much that could be done to not fulfill
7 the requirements of the contract with that.

8 Some have probably as statistics said less
9 than a full-time person, and I don't think we have
10 anyplace where it is less than one person cover two
11 facilities, so they are there at least half of the
12 time. But it's hard in a prison setting to say we're
13 going to hide something from someone. And as I think
14 you said earlier, you're not going to -- when talking
15 about accreditation, you're not going to change that
16 facility totally in a few days when it comes to
17 someone coming in to look at.

18 In terms of liquidated damages, again, I
19 think the government customers have gotten very
20 sophisticated in terms of if the private sector is
21 interested in a profit motive, we will take that away
22 from you if you do not perform to the point where it
23 is a level that gets the private sector attention. I
24 can tell you in some of our contracts some of the
25 liquidated damages include if a position is not filled

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1 for an eight-hour shift, you give up pay and a half
2 for that position.

3 So you lose money if you do not fill it,
4 and if you do not have a number of -- a certain number
5 of inmates in these kind of educational programs or
6 whatever, you will pay these kinds of damages. So
7 they are certainly sufficient that they -- for a
8 profit-making company get their attention, and many of
9 them do that quite well.

10 MR. SCHWARZ: We should make the assumption
11 the contracts are public documents.

12 MR. SEITER: Yes.

13 MS. DOLOVICH: Can I just add something? I
14 just want to say one quick thing. I think --
15 Mr. Chairman, I think you're asking exactly the right
16 questions. I would add another question, which is not
17 just what do the contracts say, but to what extent are
18 they -- actually are the provisions acted upon by the
19 state.

20 So for example, Mr. Seiter says that the
21 state has the opportunity to go in at any time to
22 oversee what the prisons are doing. I think the
23 question to ask is how often is that power exercised?
24 The states have the opportunity to terminate for cause
25 in ninety days. I think the question to be asked is

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1 how often do they in fact do that?

2 MR. SMITH: I'd like to speak to that,
3 yeah. In his written testimony, Professor Seiter
4 talked about CCA never losing a contract for quality
5 issues. I think CCA has done. Tulsa, they rebid the
6 contract and lost -- the city took it back over, the
7 Tulsa jail. It seemed like they were turning so many
8 people loose that more people were getting loose by
9 accident than by on purpose. They had rapes there.
10 They had all sorts of problems in that contract.

11 In Youngstown, Ohio it's notorious.
12 Escapes -- at one time there was five or six escaping
13 -- or four or five escapees out of six escapees that
14 went to the fence were murdered. One was picked up in
15 Buffalo, New York. Place was closed down for what,
16 two and a half years. Maybe you have a better memory
17 than I since you have the Ohio experience. Terrified
18 the community. It was shut down for two and a half
19 years.

20 New Morgan Academy in Pennsylvania, it's a
21 kid's joint. There was signal after signal that there
22 were terrible problems there, and the ACA accredited
23 that place just a couple weeks before they shut it
24 down, before the states shut it down. They had
25 fifteen cases of substantiated physical assault

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1 against these kids and sixteen cases of sexual assault
2 against these kids, and they're still walking through
3 the courts with all these cases, all these plaintiffs,
4 these children that have been abused. Nobody was
5 watching the store in this place. They have lost the
6 contracts. New Morgan Academy's closing up, thank
7 goodness. It will be three years this month.

8 Alexander Academy in Arkansas had all the
9 same problems, and they should have been closed three
10 years ago. So you have these problems without
11 repercussions. There is not that accountability that
12 we all desire in the public or the private sector, but
13 particularly in the private sector when you have these
14 other mechanisms involved.

15 When somebody is getting taken care of,
16 where somebody like in a state where we had
17 representatives from today they were supposed to have
18 monitors at a CCA prison, I was told -- I usually get
19 two sources on my stories that the monitor showed up
20 maybe one day a month and was drunk.

21 I have a bunch of reports from Wyoming to
22 Hawaii that show at the worst time, at the time these
23 women would be horribly exploited, that the monitors
24 probably spent a total of about sixteen hours over two
25 months in this Brush, Colorado prison. It's

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1 disgraceful, what we allow to happen. They're out of
2 sight and out of mind. I can't write to GRW, which
3 ran the prison in Brush and say I want to see all your
4 records. I'm going to go there next week.

5 I got money to go to the West Coast, and
6 I'm going to stop on the way to examine all the city's
7 record, and I'm going to go to Cheyenne, Wyoming to
8 look at all their records, including on Crowley, and
9 I'm going to look at Denver's records, the Colorado
10 state records because I can't afford these FOIA's even
11 for two bits a page. It runs to a buck and a quarter
12 they want to charge me at Rush.

13 They're horrible. They weren't monitored.
14 Nobody is taking responsibility for that. The
15 legislature just issued I think an 89-page report on
16 the failures of the monitoring where you have eleven
17 monitors in the unit and they spend virtually no time
18 in the prisons. Virtually none.

19 They were detailed on other tasks that had
20 nothing to do with monitoring, and yet the literature
21 we see say they had two monitors for every 500
22 prisoners. That would have been five at Crowley, for
23 instance, and these guys are scared tenants. Thank
24 you.

25 MR. RYAN: I grew up in the business when

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1 there was no privatization, from everything to
2 commissary to food and so forth, and about halfway
3 through it began to see some privatization in the way
4 of medical service I think was the first one I ran
5 across. And at first I was very uncomfortable with
6 that and over time I became more comfortable with
7 that.

8 Then went to food service, commissary, I
9 suppose looking at maintenance, looking at all kinds
10 of different areas except for the security edge of
11 corrections, and I've never been comfortable on a
12 personal level saying that I wanted to exchange the
13 security level, the government/public side of the
14 enterprise for private. That I always felt more
15 comfortable with the officers that I trained under the
16 public academy through the oath of the office, through
17 the accountability process, through that.

18 And so can you help me understand how I
19 become comfortable with the private concept of
20 strictly security element of it, and especially given
21 what Mr. Smith says about -- unfortunately, my
22 experience has been a riot in southern California and
23 a private area that I think it was an INS housing
24 where the officers there simply left. They walked out
25 and ran, and I don't know whether that's the truth or

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1 not.

2 MR. SMITH: Was that Eagle Mountain or
3 Baker? They had officers do the same thing at both
4 places.

5 MR. RYAN: Okay. But, you know, that
6 concept -- and I guess I can't talk very well after
7 having seen what went on at New Orleans recently, but
8 my concept being the concept of the officers had been
9 trained under the public environment, and is there a
10 comfort level in the private environment that I would
11 feel better about that?

12 MR. SEITER: As I hear your question, it's
13 really personally how you could feel more comfortable
14 about it, and I would say come and tour our CCA
15 prison.

16 MR. RYAN: Okay. Let me follow up then
17 with kind of -- you said you had sixty private prisons
18 out there. How many of those are ones in which there
19 was a public government agency running it and they
20 simply said, all right, tomorrow CCA is going to run
21 it of the sixty that are out there?

22 MR. SEITER: That's a good question. I'm
23 not sure I know the answer, but a small number of them
24 probably. In most cases CCA's facilities opened to
25 meet an expanded need, and I'm sure there are some,

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1 probably many of the jails and some of the Florida
2 jails that had a facility and decided to privatize it.
3 In terms of state prisons there's probably, I'm going
4 to say, maybe five or six.

5 MR. RYAN: Is it to fair to say that what
6 CCA has done has simply added another facility of some
7 sort and taken over that and there's been an expansion
8 of that? And as a follow-up of that, my experience
9 has been that the private security concept tends to
10 take the minimum security inmates, the folks that are
11 the best of the worst that are out there, and so that
12 what's left -- and my concern is what's left at the
13 public jail or prison are the bad guys.

14 And I was talking at lunch about the fact
15 that if there was a private entity that came in and
16 took all the best of who I had, those are my people
17 that are in my kitchen service, my lawn service, my
18 maintenance service. They take all of those folks and
19 leave me with the people left over, and if there's a
20 bad guy in that group of some fashion, they will no,
21 I'm sorry, we don't accept him and send him back. I
22 have the same problem in the mental health group.
23 They only want the good mental health people, not the
24 bad mental health people. Is there some truth to
25 that? Do you only take the good guys?

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1 MR. SEITER: That would be desirable. Do
2 you have any good guys? I think historically that was
3 the beginning of the private enterprise in corrections
4 as I recall, and I was like you. I kind of was in
5 that era, and I looked at privatization as why can
6 they -- why do they say they can do this better? Why
7 do they say they can do this less expensively?

8 I think I was director of corrections in
9 Ohio when the first private prison opened, and I was
10 very questionable about whether it could be
11 successful, but of our facilities only a handful are
12 minimum security. We operate many full-service jails
13 where, you know, you're getting everybody just the
14 same as your facility. Three counties in Florida we
15 operate the full service, the only facility. So we
16 get everybody that comes into that jail. Most of our
17 institutions are our state institutions, operate for
18 the states, are medium security.

19 We meet needs of the customers. Some of
20 the customers are now coming to us and say we don't
21 need any more medium security beds. We need close
22 security beds. Can you convert this facility into a
23 close security institution? So basically we don't say
24 what we want and say we want the cream of the crop.
25 Why would a government agency give us something that

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1 they already can do well and do probably very
2 cost-efficiently? They ask us to do what they are not
3 able to do for what their needs are.

4 MR. BRIGHT: But of course if there were
5 two owners, a private company wouldn't do it for the
6 money that it was being paid I guess too, right? I
7 mean, there's got to be a meeting of the minds in
8 there somewhere.

9 MR. SEITER: Absolutely. In most cases,
10 again, it's RFP. It's competitively bid. If someone
11 came to us and said can you do this and can you do it
12 for this amount of money and we said no, we cannot not
13 do it. And one of my main roles is to question can we
14 do something in a safe and secure manner, and if we
15 can't, to tell the company we should not do it for
16 whatever amount of dollars we get.

17 MR. BRIGHT: Can I just ask you a couple?
18 Is it really true that in Kentucky you pay seven
19 dollars and 61 cents an hour to your employees at one
20 of the facilities there, and if so, what kind of
21 people do you get for seven dollars and 61 cents, and
22 if you toured -- if one of the commissioners or all
23 the commissioners toured that facility, do you have a
24 lot of turnover? Do you have some problems, or --

25 MR. SEITER: Well, let me say I'm not sure

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1 what facility in Kentucky you're referencing, but we
2 have some areas where correctional officer pay is
3 extremely low, probably not unusual for what the state
4 pays at the same -- at the same locations, whatever
5 states we contract with.

6 Our target is to pay market wage, and when
7 we go in for a new contract we have human resource
8 professionals go in, and their challenge is what
9 should the pay be for an correctional officer, for a
10 nurse, for a social worker, for grievance counselor,
11 whatever so that we can get and keep quality staff.

12 MR. BRIGHT: Market rate for what, for that
13 community?

14 MR. SEITER: Yes.

15 MR. BRIGHT: This is an economically
16 depressed community, there are no jobs here, therefore
17 we can pay people the minimum wage, right? That's
18 market wage based on the community, I guess, right?

19 MR. SEITER: In the location where we are
20 at, yes. And again, it would not serve us in terms of
21 quality or in terms of being cost-efficient to pay too
22 low a rate. There have been instances where recently
23 I have approved and said we're going to pay more at
24 this institution because the turnover rate is too
25 high, the inexperience -- the level of experience is

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1 not enough, and we need to increase the pay. And when
2 that is the smart decision both for correctional
3 reasons and of course for business reasons, if you
4 want to talk about the profit motive, then you pay
5 what you need to pay to get and keep good quality
6 staff.

7 MR. BRIGHT: Of course, there's also the
8 benefits. You pay as little in benefits as you
9 possibly can, right? I mean, that's a good business
10 practice. Not very good for the employee, but it's
11 good for CCA, right?

12 MR. SEITER: Let me correct that myth.
13 I've been with two federal agencies -- two agencies,
14 and the percent we calculate for benefits is greater
15 than one and less than the other, but not much less.

16 MR. SCHWARZ: So Commissioner Dudley has a
17 question. I've got one more question, and I think
18 then we're going to be done except for some closing
19 comments. Rick.

20 MR. DUDLEY: Actually, my question is
21 directed towards you, I think. Based on all of this
22 discussion and in prior lives of my contracting for
23 services as commissioner in New York and looking at
24 other systems has always been at issue. I guess it
25 always seemed to me that you actually do get what you

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1 pay for.

2 So at some level I'm agreeing with you that
3 the discussion is whether, you know, governments are
4 willing to pay either private or public providers for
5 the types of services that they require. It seems to
6 me too that, you know, one of the advantages of public
7 contracting is that at least the state is forced to
8 actually articulate what it is that they think they
9 want and they're willing to pay for in the form of a
10 contract where that's not necessarily so much the case
11 maybe in the public sector where there's funding, but
12 may be less clear articulation of what it is that we
13 think that we actually should be getting for the money
14 that we're paying.

15 The downside, of course, is who's writing
16 this contract, and do they have any sort of sense of
17 what's really required that we should be demanding in
18 order to provide the kinds of services that we need?
19 I'm wondering if you have any thoughts about that. I
20 want to hear from anybody.

21 MS. DOLOVICH: On your first point I quite
22 agree with you. I think one of the lessons I take
23 away from this is you get what you pay for. And also
24 incarceration is expensive. So if the state wants to
25 incarcerate, and what we've seen over the last two

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1 decades, the state, for whatever reasons, seems to
2 want to incarcerate. The state has to pay. And
3 that's why I'm as troubled by the idea of
4 subcontracting out for, for example, healthcare as I
5 am by the idea of contracting out the entire prison
6 when the goal is to save the state money on the cost
7 of corrections.

8 You know, common sense suggests that if you
9 are going to set a contract place at lower than the
10 state is paying because that way the state saves money
11 and then you set up a system where the provider can
12 only profit by spending still less than the contract
13 price, it seems to me it's clear that you are creating
14 an incentive system that is counter to the goals of
15 public safety, safety in prisons, etc.

16 And I think the same danger exists in the
17 public sector would be a subcontractor, especially
18 healthcare. I hope you take a look at least at the
19 testimony that I gave you. I just have one paragraph
20 describing some of the experiences with correctional
21 medical services, which is just one you probably know,
22 one of a number of for-profit prison health providers,
23 and the track record of the ones that I've looked at
24 is just terrible.

25 And it stands to reason that the state --

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1 for example, in New York State as you may know they
2 contract out with prison health services, why, because
3 the cost of medical care for the prisoners is soaring.
4 Why, because the number of inmates is soaring. And
5 health care is expensive. But, of course, if the
6 state can't do it, it's likely that prison can't --
7 outsources can't do it either. So I agree with you on
8 that point.

9 I think it is a nice point to suggest that
10 there's a value in the state articulating, state
11 officials articulating what it is that is wanted. I
12 think that actually takes us back to a conversation of
13 the earlier panel and some earlier things that we've
14 said. It would be valuable for corrections officials,
15 people who are committed to safe and secure prisons,
16 to craft stand -- you can call it contract, call it
17 standards, call it whatever you will. Requirements
18 that prisons need to satisfy.

19 I think the exercise is as effective when
20 you are an accreditation organization trying to set
21 standards for prisons or when you were a state
22 official trying to contract out to the private sector.
23 To my mind the benefit that you're describing is not
24 exclusive to the privatization process. It may be
25 something we've learned through this experiment of

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1 privatization that would benefit us even if we, you
2 know, step away from privatization and stick with the
3 public.

4 MR. DUDLEY: For example, when you look at
5 the health services, you look at those contracts and
6 you say, well, you know, this is really actually all
7 they're saying they're trying to buy. You know, and
8 so that with these other things that are happening,
9 you know, that are not really in fact covered in the
10 contract, I mean, it's pretty clear that they've
11 articulated that that's all they're willing to pay for
12 it, which creates --

13 And at least it kind of documents what
14 we're saying we're willing to do, that one can then be
15 concerned. I'm not saying that's a good idea. I'm
16 just saying that seems to be a by-product of this and
17 gives you a handle to address maybe a larger question,
18 which is what is our commitment to providing health
19 services in prisons.

20 MS. DOLOVICH: Right. Although I will just
21 draw attention to one danger in the contracting
22 context, and that is there's a concept in economics
23 that I've recently learned called incomplete
24 contracts, right? The idea is there are some things
25 you can't specify in a contract because you can never

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1 know in advance.

2 So in the healthcare context you can
3 specify, you know, appropriate treatment in the moment
4 or, you know, appropriate treatment understood at the
5 time of the illness, but that doesn't tell you exactly
6 what protocols should be followed. It doesn't tell
7 you what medications should be prescribed. It doesn't
8 tell you if you -- it leaves a lot of discretion in
9 the hands of the provider, and that creates a danger
10 when the provider has another incentive.

11 MR. SCHWARZ: I'd like to ask a question
12 that stems from Pat Nolan's observation at the
13 beginning of his dialogue with you that competition is
14 good. I think most people would say in general
15 competition is good. The main worry -- and this is
16 directed to you, Mr. Seiter, but the other two might
17 comment about the potential incentives that the
18 private sector has to exacerbate the overincarceration
19 that everybody thinks is a problem in prisons.

20 And I wonder if you would agree that it
21 would be appropriate for people in your industry to be
22 barred from or to agree not to make campaign
23 contributions because the corrections directors of the
24 state are not making campaign contributions. They
25 would like to reduce the prison populations.

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1 And second, whether you would agree that it
2 would be fair -- you said you didn't do any lobbying,
3 and then Professor Dolovich said but you belong to a
4 group that does do lobbying and writes laws. Don't
5 you think it would be appropriate for groups like
6 yours in this special situation to agree, as a
7 condition of bidding, that they are not going to do
8 any lobbying that's going to effect the issue of
9 overincarceration?

10 MR. SEITER: Let me correct what I said.
11 CCA and every private sector industry does lobby, no
12 question about it. But not to -- what I said was I've
13 not known that the company does that to encourage
14 enhancement of any sentencing, and --

15 MR. SCHWARZ: So you would agree it would
16 be appropriate for your industry to agree that it's
17 not going to lobby at all either directly or
18 indirectly to encourage increased length of sentence
19 or increased number of people being sent to prison?

20 MR. SEITER: Again, what I would say is
21 that's not in my mind what the public and private
22 sector does.

23 MR. SCHWARZ: Then you would agree that you
24 shouldn't do it and you wouldn't mind being barred
25 from doing it?

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1 have any comments on that?

2 MR. SMITH: Yeah.

3 MR. SCHWARZ: We have to make it brief.

4 MR. SMITH: Your question wasn't parsed to
5 get the answer you wanted. When they go to -- when a
6 GEO Group and CCA go to ALEC and craft this model
7 legislation and wine and dine legislators or whatever,
8 they are not lobbying. It is not lobbying. When I
9 go -- I went to the state of Kansas this year.

10 I found myself on the same side of CCA and
11 GEO Group, which I find very amusing. But when I went
12 there I spent over a hundred dollars on postage, so I
13 had to register as a lobbyist. Is that lobbying? It
14 triggers the Kansas statute. I went to about 114
15 dollars and had to spent another fifty bucks to
16 register. Yes.

17 I would like to say a couple very, very
18 quick things if you'd indulge me in answer to
19 Dr. Dudley's questions. I have two things here. I
20 gave you one, I think. I'll give it to Ms. Dolovich
21 about fraudulent records, about bogus records. It's
22 from a wonderful series in Wilmington. This is
23 Sunday's article, but it is about the nonprovision of
24 medical care. There has been lots of cases about
25 this, about -- just like HMOs, the determination to

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1 lower cost at the expense of the patients. It's very
2 important.

3 As far as the ACA is concerned, my biggest
4 problem with them is they take so much money from the
5 private industry. You can take the -- I get
6 Corrections magazine. You can take and shake it, and
7 it's like getting AARP magazine on state of insurance
8 things falling out of the magazine. It's, you know,
9 sponsorships and GEO Group and CSC and Cornell.

10 It's packed with not only advertising, but
11 the conferences are all sponsored by these groups. So
12 the ACA -- PCI thinks that it's wrong to the private
13 industry, and it has to separate itself from that
14 industry if it's going to maintain some integrity.
15 That's just my opinion.

16 MR. DUDLEY: I'm not saying I don't think
17 there's been problems with private medical care.
18 That's very clear, but I guess what I'm saying is what
19 it seems equally clear to me is that the services that
20 they are being provided were the services that were
21 being requested and paid for.

22 MS. DOLOVICH: I would just say,
23 Mr. Schwarz, to your comment, I would agree with you
24 this is a really troubling issue. I would just
25 emphasize that I think it is a larger phenomenon. I

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1 think the worry extends beyond just the private
2 sector. The truth is I don't know what to do with
3 that worry, but I think it exists.

4 MR. SCHWARZ: Okay. So thank you all very
5 much, you three. Our wonderful executive director,
6 Alex Busansky, asked me to make some general comments
7 in closing, which are first, on behalf of all of us,
8 all the commissioners to thank everybody who's
9 testified here in St. Louis. All who have spoken
10 helped us understand the men and women who work in the
11 system, the real challenges of the job, and what's at
12 stake for everyone.

13 All who testified described serious
14 problems, and helped think of solutions. And as the
15 co-chair, Mr. Katzenbach, said yesterday, in many ways
16 the combined testimony helped point out things in
17 which we all agree.

18 Our wonderful staff will capture highlights
19 from this hearing in a brief summary document next
20 week, and later in the month they'll publish a
21 transcript of the entire proceedings. Anybody who
22 signed up to receive updates, and we hope you have,
23 the staff will E-mail that summary to you and alert
24 you when the transcript is ready. Otherwise, you
25 people can find the materials on the website, which is

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1 www.prisoncommission.org.

2 This is our third public hearing. We're
3 now more than halfway through our inquiry. We will be
4 gathering in Los Angeles for a fourth and final
5 hearing in February. At that hearing we'll explore
6 in-depth any issue that arose this time and many other
7 issues. We're going to explore the issue of
8 oversight. We'd love to see people in L.A.

9 So thanks again for coming, and this
10 concludes the hearing. And in just 25 minutes or so
11 the Honorable Commissioner, Mr. Bright, is going to be
12 presenting a discussion on the death penalty and
13 poverty and so forth and so on.

14 (The proceedings were concluded at 3:22 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 CITY OF ST. LOUIS)

5 I, William L. DeVries, a Certified Court
6 Reporter (MO), Certified Shorthand Reporter (IL),
7 Registered Diplomate Reporter, Certified Realtime
8 Reporter, and a Notary Public within and for the State
9 of Missouri, do hereby certify that the meeting
10 aforementioned was held on the time and in the place
11 previously described.

12
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and seal.

15

16

17

18

19

20

21 Notary Public within and for
22 the State of Missouri

23

24

25 My commission expires May 30, 2006.