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

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

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

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

Secretary Livers is also responsible for department programs pertaining to staff training and professional development, victim services, emergency
preparedness, and community reentry services.

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

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

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

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

For every instance where a procedure was not followed, where instructions weren't clear or ignored, where decisions of poor character were made,
where people got hurt, there are thousands of instances daily where good decisions were made, policy was followed, and no one was hurt. These positive events far outweigh the incidents of court decisions and hurtful results.

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

It is indeed humbling to be here before you representing the many bright principled, ethical, and courageous leaders who are part of our national corrections field. Out of respect for them, I'll do my best to represent what I consider to be the state of leadership in this field. Those of us who have made corrections our life's work are in this business because we care about people, and we believe that we make a positive difference in the lives of those we serve. We are not in this for the money. We are certainly not in this for the fame.

Most leaders in corrections will not go on
and have a political career or be revered as a hero. They do this work for the satisfaction of knowing that somehow, despite all of the difficulties in managing large and complex systems, they make a difference. This, of course, is the antithesis of what is portrayed in the popular culture, but it's the truth. Respected leaders in corrections that I have known throughout my career are well meaning. They're competent. They're highly educated and ethical people. They are change agents. They are champions for doing the right thing. These leaders serve as the conscience of their organizations.

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

I think it may be useful to you if you have somewhat of a profile as to who these leaders are and what they represent in terms of experience and
According to the Association of State Correctional Administrators, commonly known as ASCA, today's profile of the membership reveals about forty percent of the top positions in correctional agencies are held by those who started their careers at entry-level positions. Sixty-five percent of the members were promoted from within their agency. Five individuals have led more than one correctional agency. Ten members have worked in more than one correctional system.

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

Most leaders actively seek to expand their knowledge. ASCA began offering all directors training in 1985, and since then twenty programs have been offered for an average attendance of 37 directors each year. Seeing a need to assist new directors in successfully moving to the role of chief executive
officer, ASCA initiated new directors' training. Both of these programs have been very successful. It is apparent that there is an underlying value for continued improvement in professional development among directors of correctional agencies. Inherent in professionalism is the maintenance of professional competence, continuous learning. At the center of professional development for correctional leaders is the National Institute of Corrections, known as NIC.

No single agency has done more to develop the core leadership of correctional agencies than the NIC. They began training with two small classes in 1972. Just one year later, NIC formed an academy division and 2100 people were trained. In its tenured history, NIC has expanded capacity in most states by training state's trainers and providing developmental opportunities to approximately 55,000 participants. The range of these programs included Executive Excellence, programs for high level administrators. Also offered are courses in Correctional Leadership Development, Management Development of the Future, National Sheriff's Institute, Deputy Director's Training, and Warden's Training.
NIC also very astutely recognizes the need for curriculum designed to assist women in correctional leadership positions. I can personally attest that this program has been very important in developing and supporting the professional growth of women and as executives in corrections. NIC also offers a number of programs in specialized topic areas such as Women Offenders in Prison Security, Managing the Violent and High Risk Offender, Staff Sexual Misconduct, Defender Work Force Development.

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

But none have been more helpful to the professionalism of the field over time as the American Correctional Association, commonly known as ACA. ACA has approximately 20,000 members, made up of all kinds of staff all over the corrections agencies with over
eighty chapter affiliates. Their summer and winter
Congresses are well attended and are the source of
valuable networking and advanced certification
opportunities. ACA also offers certification programs
that certifies people after they've completed study in
exams in one of four categories: Correctional
Executives, Correctional Managers, Correctional
Supervisors, and Correctional Officers.
Since that program's inception they have
certified 555 staff in the field since the program
started in 2000. This association as well as other
professional associations, most of which are
affiliates of ACA, do an incredible job of supporting
professionals in this work and in bringing important
discussions to the forefront that will benefit the
field. I've been doing this work for 28 years, and I
have found that most correctional leaders are
extremely committed to the profession and are very
aware of the importance of the role they play.
Good leadership at the very top of the
organization is of paramount importance in promoting
safe and abuse-free prison culture. It is clear that
given the right set of circumstances that individuals
can engage in unspeakable acts. This can be avoided
or at the very least minimized by leaders who
demonstrate the values of respect, dignity, and accountability in their everyday actions. Leaders must define the institutional culture, not only by what they communicate verbally, but more importantly, what they communicate by their behavior.

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

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

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

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

I must mention here that while the dialogue regarding staffing almost always revolves around uniformed staff, it is equally important that we have
the appropriate numbers of nonuniform staff, case
managers, maintenance, addictions counselors,
chaplains, medical staff, and many others must all
work as a team to promote a safe and healthy work
environment. Today many agencies are facing severe
staff shortages in all categories of staff due to the
improving economy and the relatively low pay for
prison staff.

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

There are examples of studies regarding
this issue which clearly demonstrate that levels of
higher education correspond to lower incidences of
disciplinary actions. Obviously there would have to
be public support and public will -- and this is not
the first time that you've heard that in these
sessions -- to effect the type of changes needed to
overall educational requirements and pay skills for
Another challenge that leaders face is regarding the need for program space, provide inmates with opportunity for treatment, education, and job skill classes, and the obstacles are many. There are still many states that operate prisons built in the late 1800s. We have three such facilities in Maryland. These facilities are often crowded, not properly heated or ventilated, they have more maintenance problems than you can shake a stick at, and are extremely staff-intensive due to the inefficient design.

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

Another obstacle that leaders face is tenure. One of the facts of life for a CO of a correctional agency is that the average tenure for the top correction administrator in a state system is
approximately 3.2 years. As my supervisor, Secretary Mary Ann Saar, reminds me on a fairly regular basis, time is not on our side. So we have -- we often discard the advice of contemporary change-management theories who say take change slow, and we introduce change more rapidly than they recommend in an effort to beat the clock.

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

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

We're moving away from having that feeling of being safe when offenders are all locked up, to one where we're actually safer because we have inmates out
of their cells, involved in something hopeful and productive, such as work, education, and other programmatic activities.

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

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

It should be of no surprise that after each time he returned to work, it became more difficult to obtain accurate reports from the officers on duty. The captain must seem like he has more control over them than top leadership. I think that's how correctional officers might have seen that situation. Then finally, on the third incident, the captain was
successfully terminated. It's certainly difficult to
make positive changes in a culture when a leader takes
a stands of no tolerance to excessive use of force and
the perpetrator of abusive acts is sent back to work.
This is very similar situation you heard
Superintendent Lord talk about yesterday.

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

While it would be helpful to disclose facts
regarding accusations of neglect and abuse, we're
often advised by our attorneys for the legal reasons
we cannot release such information. But the other
side is when we closely guard information, we give the
impression that we are secretive and uncooperative.
Damned if you do and damned if you don't. Regardless,
we need to strive for more transparency.
In the interest of time I will close, but I would like to leave you with a few additional thoughts. Previous testimony may have led you to believe that the way to improve conditions in American prisons was to create more oversight boards over correctional operations. I respectfully disagree. I'm not convinced that we need more of what I consider strictly oversight. I don't think what we need is more people telling us where we have breakdowns or what we need and what we need to do to fix those breakdowns. I think we have a good sense of that already.

As was stated earlier, this is not just a corrections issue. This is a public safety and community issue. Do we really want offenders returning to the community more dysfunctional than when they were sentenced, or do we want to give them a chance for success? I think what we do need is more advocacy for our issues. We need more collaborative partnerships that will work with correctional leaders, our professional organizations, and our political systems to change the landscape of American prisons. We need partnerships that will help us look for ways to get public support without demonizing
people that do this work. We need partnerships that will help us get old institutions replaced with modern, efficient physical plants. We need partnerships that will help us move -- help us to obtain the kind of staff and programs we need to do the science of changing criminal behavior.

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

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

MR. RIPPE: Thank you very much. You know, one can argue that leadership is both a science and then the artful application of that science. The day before I assumed command of an infantry battalion, I
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
6 So as you move on, as you look toward
7 developing leaders in the state of Maryland that are
8 going to set the proper tone and environment within a
9 system, what are the practical challenges that you
10 face?
11
12 MS. LIVERS: Well, I think that's one of
13 the most important things that top leaders do, the COs
14 and the executive -- the top levels, is to choose --
15 put the right leaders in place, the right wardens in
16 place. That's a very, very important aspect is to
17 find the right people. Because they're the ones
18 who -- with 27 facilities around the state of
19 Maryland, we have to trust that those leaders are the
20 kind of leaders that we want to have in place.
21
22 So we have to do a good job selecting those
23 people, making sure that they have the right kind of
24 values, that they care about people, they care about
25 doing the right thing, that they're fair. They
26 understand the mission, and that they will do
27 everything they can to engage their staff in meeting
28 that mission on a daily basis.
So it's critical that we identify people with talent, people with great attitude, people that are positive and who can take a challenge and convince people that you can overcome that challenge. And you can be a really great organization in spite of all the problems that you might face or challenges you might face.

MR. RIPPE: Thank you, Gary.

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

MS. LIVERS: Well, if I could, I'd like to back up to -- it's been mentioned several times, the importance of starting people off in training academies with the right kind of training. And I think that's a very important step in making change. What happens, I think, is if we start with academy, you got top leaders that are lined with a vision and a mission. And you start teaching them in your training academies the way that you want it taught, and teaching the important things of how to be successful in correctional environment. Then the challenge becomes, what about all those folks that
have been on the job, and what about all those
supervisors that have been doing a job a certain way
all these years? How do you impact them? Because no
matter what you do at the top or what you teach in the
academy, the success is going to be borne out by how
well you get the whole organization aligned.

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

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

MR. RIPPE: Margo.

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

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

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

MS. LIVERS: Well, as I mentioned, change usually means there's some fear associated with change, doing things differently. Particularly in a prison environment. And I think sometimes we forget how adults learn, and I think we are looking at redoing our academies and redoing our training so that telling people -- we heard testimony yesterday,
probably the least effective thing is to talk at people, or tell people.

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

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

And of course egregious -- the most egregious act has to be dealt with very stringently. Those folks that overtly abuse inmates in those incidents have to be terminated. You have to rid those folks of your organization. The other folks
need to see that there's consequences for that, and there are better ways to handle those situations. So how can you learn from those situations, and how can they learn from those situations to be effective.

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

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

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

MR. LIVERS: Well, I think my experience has been that I think some advocacy groups have taken sort of an adversarial approach to raising issues. And nobody -- in my view, I'm not sure anybody wins from that. To me, it seems much better if we cannot be in adversarial positions, but find the agreement, find the areas that we do agree on, and then work together.
And there's no doubt in my mind that management and unions want the same things. They want -- management wants the best thing for their staff. They want benefits that help their staff, support their staff. They want fair systems in place. Unions want good benefits for staff and for the betterment of the field. They want fair systems in place.

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

MR. RIPPE: Dr. Livers, on behalf of the commission and really everyone present here today, thank you very much for your most helpful testimony. We're going to take a five-minute stretch break. We're going to start promptly in five minutes, and then we'll get the next panel up.

(WHEREIN, a recess was taken.)

MR. RYAN: Let's go ahead and try and get started now. As the Commission on Safety and Abuse, this particular topic is of unique interest to all of us. It is my pleasure to welcome the three witnesses
for the next panel: Sergeant Michael Van Patten, Mr. Randall Berg, and Mr. Patrick McManus.

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

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

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

Patrick McManus is the -- is a former secretary of corrections in Kansas, and an expert in management strategies for controlling use of force in corrections institutions. I would like to thank each
of the witnesses for their time and testimony today and their willingness to share their expertise. Let's start with Sergeant Van Patten.

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

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

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

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

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

Use of force. Within different states, the use of force laws are different based on the laws written by the legislatures. There are definite differences between state laws which deal with both correctional officers, sheriff deputies, and police officers. In any case, state laws involving the use of force should be the same across the board in dealing with corrections, sheriff's deputies, or police officers. The law itself in training in the State of Oregon DPSST, or Department of Public Safety Standards and Training, train each agency the same.
Each agency creates their own rules and that law that covers their agency during the use of force incidents in training and applicability of the law within each agency. Consistent and frequent training helps to avoid officers from falling in the traps of excessive force. Excessive force is when the type or amount of force is beyond what is reasonably necessary to control the situation or achieve a legitimate correctional objective, or when continued force is used after it is no longer reasonably necessary.

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

The definition of an order by inmates is any direction given by -- given to an inmate which directs or forbids the doing some act over which the inmate has control. Inmates are responsible for their
action, as are the officers, and should be held accountable for their actions over which they have control.

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

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

All violations and situations should be assessed by officers and are at the officer's discretion. Officers need to ensure that they are directly and consistently dealing with each violation in the situation every time to ensure that silent approval is not given to inmates. If there are other mitigating factors such as the conduct of the inmate,
his attitude, his actions, the nature surrounding the violation, this will determine the level of discipline and the officer's actions in the matter of the judgment of the officer.

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

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

Force should not -- force should be terminated as soon as possible, consistent with resuming or maintaining control of the inmate. Officers should start with nonforce alternatives, like talking an inmate into compliance, giving verbal warnings, issuing verbal commands, demonstrating a show of force before actual force is used. If timely circumstances permit, legitimate correctional judgments include the following for self-defense.
MR. RYAN: Michael, try to finish up as quickly as you can.

MR. VAN PATTEN: Okay. We're already done.

All right. Well, I've got a whole lot of others, as you can see.

MR. RYAN: I see.

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

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

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

I was asked to speak to you today about the latest method to physically abuse inmates, and that is chemical acts. Prior to the 1999 murder of death row inmate Frank Valdes at Florida State Prison, the method de jure for punishing inmates who misbehave was to do a brutal cell extraction. The extraction of our client, David Skrtich, in 1998 at Florida State Prison, by six correctional officers is a perfect example.
Upon entering his cell, one officer used an electronic shield to shock Mr. Skrtich, knocking him to the floor. He was then punched and kicked numerous times on his ribs, ankles, and knees. Two senior officers who was present acquiesced in and took no action to stop their subordinates from punching and kicking the inmate. The result of what the department characterized as a successful cell extraction made it necessary to life flight Mr. Skrtich 75 miles away to a hospital in Jacksonville.

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

What did the Florida Department of Corrections do? Absolutely nothing. How did this all occur? It appears that the officers were intent on punishing Mr. Skrtich because of an insulting letter he wrote to a female correctional officer. A year and a half later Mr. Valdes was murdered by nine
correctional officers at the same prison. Two of the
officers who killed Mr. Valdes were on the very cell
extraction team that used excessive force on
Mr. Skrtich.

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

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

The increased use of chemical agents is
staggering in Florida. It now constitutes about fifty
percent of all reported use of force incidents. It
occurred 6,045 times in a three and a half year period
Governor Jeb Bush's appointment as secretary, the very warden at Florida State Prison who was on watch when Mr. Valdes was murdered and the investigation that was done of the Skrtich beating, sent a clear message to the field that inmate abuse would not only be tolerated, but it would be rewarded. The huge increase in the use of chemical agents during the past five years on his watch is a prime example. And the results of being sprayed with chemicals can be devastating. It causes severe burns, asthma attacks, seizures, vision problems, not to mention the long lasting effect it has on the mentally ill or mentally challenged.

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

Mr. Sylvester Butler has a history of psychiatric problems and is a borderline
developmentally disabled. The use of chemical agents on Mr. Butler is, at least in part, attributable to his psychiatric and developmental problems.

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

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

MR. RYAN: Thank you, Mr. Berg.

Mr. McManus.

MR. McMANUS: Thank you. I'd like to repeat my own pleasure of being here and confess to a dual dilemma. One is that you've had such good witnesses and such good discussions in the past, to try to add more seems almost impossible or redundant. The other is the flip side of that, and that is there are so many topics to cover that one doesn't know where to start. I'll try to discipline myself by simply highlighting a couple points and allow the
dialogue between the commissioners and the witnesses to probably bear more fruit than that.

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

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

I'll just comment briefly, not because it's unimportant but because you've heard about it already this morning and in previous days, the issue of leadership. I think leadership at the top levels, not just in departments, but particularly within institutions, the warden, the chief administrator of the jail -- you're right, General, take on -- the
staff will take on that personality and that value system in that we are treating both staff and the inmates very quickly. And I wish I had a quick magic bullet for how you get the right people in there so that that kind of development can occur. I simply mention it again because it is so critically important.

The one point that I'd like to pursue a little bit, and very briefly, is somewhat related to the two, and that is the issue of how do we reframe the question of how we manage prisons? And how we train staff in a way that backs us away a bit from some of the history that we carry with us, unfortunately, in prison and jail discussions?

And it occurs to me that human rights, as a shorthand, might be a way of approaching this in a somewhat different way, even though human rights has become a polarized issue. We talk about victim rights as opposed to prisoner rights, as if somehow you can't be in favor of one without being opposed to the other. But we talk about the rights of staff as opposed to the rights of inmates. It's as if somehow there's an opposition there. But we're really talking about human rights in all those cases.

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

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

There's dozens of them. They've thought through many of these issues. They've written down and articulated very strong positions. And it's not that we are not aware of human rights in our prisons, but we don't talk about them very much, and we rarely
talk about them in terms of international standards. So again, there's no magic bullet there. But perhaps in the course of our discussion today, or at some later point, there might be some value in trying to think about some of these issues in a little different way, hoping that the rethinking of it can eventually lead to some changed behavior.

MR. RYAN: Thank you, Mr. McManus. Let me start with kind of an overriding question. Technology being what it is, we have things from tasers to pepper balls, to mace, to OC spray, to stun belts, to all of those types of things in the way of technology. We have types of things in training from IPC skills, personal communication, to the ability to create certain teams that can go in and have cell extractions and all those types of range of things. And each officer is trained in all that, and supervisors are trained in all that. I presume we can say that we have policies and procedures that are out there in most agencies. What are the best practices to put all of that together to perform the duties and responsibilities of keeping the -- the facility safe and secure, and the community safe and secure, and getting the job done of corrections officers and the mission that they have.
Is there any way to kind of capture all of that and put it forward in some fashion? Mike, how do you do that? You're a trainer in all of this.

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

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

We've actually had lieutenants and sergeants fired that wouldn't come under the new policy and the change in the rule of force and the way we were training it. And that sends a message. Plus, you've got the new culture of officers coming in, and
you're training those officers to this message. And once that culture starts to change, the attrition and retirement, that older generation or culture of officers is slowly moving out and into the new era of how we're treating the inmates.

MR. RYAN: Mr. Berg.

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

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

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

MR. RYAN: Mr. McManus.

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

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

What I tried doing in a small jail in
Georgia is working with middle managers, the sergeants and the lieutenants, in the role of trainer. You try to get away from this notion that training is something you got over here from these people, these specialized people, and instead insisted that that was part of the job responsibility of the lieutenants and sergeants.

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

Because often they don't understand. They see it as imposed from management, who is as much the enemy as the inmate often, and don't really feel any sense of being part of that management. Part of it simply is we've never taken the time to sit down and say, this is why it's important. This is why it's an issue. And to allow them to disagree and, in fact, end up changing policies because sometimes they were right and the policy was wrong.
It's that level of interaction, particularly with middle management staff, that I found really, really helps to reduce the likelihood that abuse is going to occur further down the line. It's not a magic bullet, again, but it's one technique that might be worth exploring as a way of trying to get away from the dichotomy between inmates and staff, and also the dichotomy between staff and management, to bring in that middle management group, which I really think is -- next to leadership is the most critical bunch of people running a prison or jail.

MR. RYAN: Thank you, Mr. McManus. Saul. MR. GREEN: I have a question about use-of-force reporting. It seems to me that an essential part of this is that in use-of-force incidents they are probably investigated and reported, and the results bring confidence to staff, the inmates, the public about when use of force is used and that the level is appropriate.

Are there stand -- are there standards for how use of force should be investigated or reported? Who conducts the investigation? What people are interviewed? And how a final decision on the appropriateness of the force is arrived at? Particularly interested in light of Mr. Berg's
testimony about serious use of force that were never responded to. Can you all talk about how they are investigated and reported?

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

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

So for Florida, I don't know about -- this deputy secretary from Maryland was testifying earlier about they don't need any more oversight. Well, Florida needs some more oversight, but it needs to be outside the Florida Department of Corrections in an
ombudsman capacity or inspector general capacity that would have some accountability and some public credibility.

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

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

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

So there's a four process in the state of Oregon. And one of the things that we've dealt with is back when I started in '85, you get together and do a report and most of the reports looked the same. But we all know my perception on something that I view is
going to be different than another officer that was standing there and seeing it or even a noncorrectional officer, if they viewed a rule of force. Anyone who witnessed it has to do documentation on it in their own perception and hand it in with the paperwork, so that when you do the review, you can see if there's any inconsistencies.

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

It starts at that level. And if it's a critical incident, I mean serious critical incident just like if you were involved in a car wreck, even DMVs give you 72 hours to do the paperwork because it takes that long through critical stress amnesia to remember everything. That's why when the officers do
reports sometimes it doesn't look correct, because that sometimes 35 percent will come back the next day, 75 probably the day after that. So they give them time.

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

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

But like they were saying, you have to have clear direction from the director -- and the buck does
stop there -- that he holds the superintendents
accountable for what's going on in their institutions,
and the superintendents hold their mid-management and
their line staff, their sergeant and lieutenants. I
agree with what he says, just like the military.
Sergeants are the backbone. Lieutenants are the
backbones of the correction system. They're the ones
that if you go training -- when I started, it was not
-- forget about what you got here.
You can learn more on the job than what
you're going to learn there. But as you train those
mid-managers to what the same thing you're training
those staff, they know what is going to be expected of
those staff, and they can hold them accountable for it
also.
MR. RYAN: Mr. McManus.
MR. MCMANUS: Just as a quick comment. The
issue of internal versus external review is a much
bigger issue than we're going to resolve here,
although I expect the commission is going to have to
grapple with that. One of the problems with external
review, one of the reasons it's so feared is that
there's an assumption -- perhaps an accurate one --
that people on the outside don't understand the
stress.
I love the -- now that we can name that
Survival Stress Reaction, I never knew what to call it
before. It helps to name things. That they don't
appreciate that. And then so therefore they won't
give the officer a fair shake.

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

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

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

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

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

But what we've seen is that the correlation
on parallel investigations, in terms of the outcome,
is about 95 percent. And as a result, the police
department has calmed down a great deal, and it does
provide an extent of confidence to the community, who
large segments of which were up in arms about the
policing there.

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

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

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

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

(Mr. Sessions leaves.)

MR. RYAN: I know there's a couple folks on
the front row that have a question. I'm going to defer to the co-chair just to ask the next question right over here.

MR. KATZENBACH: I'm just curious. We talked about the use of force, and it's easy to see when there's a grossly excessive use of force. It seems to me it's not so easy for your -- for the people using it in some situations quickly where they have to make decisions. And they may well use somewhat excessive force, but they see, in retrospect, somebody looking at it after the fact. What I'm curious about is, what is the proper -- how do you deal -- I can see how you deal with really excessive use of force, the bad actors, but how do you deal with the more marginal situations? What's the proper discipline? How does that -- how is that dealt with by management.

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

I mean, one thing, you don't lie about it,
right? You document what happened. Admit when you're wrong, and you go on. You correct it. Either through training or back through use-of-force training or defensive tactic training or whatever, and you deal with it on a one-on-one, and of course, one-on-one, and you hold them accountable for that.

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

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

One thing my grandfather told me, and I relate this to my officers and students that I teach, is I have not created -- or I have not made a lot of mistakes in my life, or any in fact. What I've done is created a lot of learning experiences for myself.
You learn from those mistakes and you go on. And managers will hold you accountable for that if it doesn't go beyond that recoverable error, past that line.

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

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

So it's taken that bit of that code of silence as you've heard out of that into a different area of officers' conscience. And they're trained to help each other. If you see an officer getting red zone or SSR, which sometimes they do, I mean tunnel-vision-lighthouse effect, deer-in-the-headlight look, hearing goes, right? Talk them -- talk to them.
Deal with it. Hey, stop. And we train that, especially with the new officers and even seasoned staff to let them know you have to be able to watch it and help each other in that incidence.

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

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

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

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

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

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

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

As far as reactive use of force for officers carrying OC on the yard, we have the small canisters, and they're trained to do small bursts. Of
course, the inmate is forewarned, "If you don't stop, I'm going to spray." So that helps cut down on that. As far as the mental health, you have to train the officers to look at it, because officers that are working the front line deal with most of these inmates that are having mental issues. So you've got to give training to them to recognize the signs, whether they're not taking their meds or it's just a behavioral issue that he's doing.

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

MR. MCMANUS: If I could just respond to what you're asking. I've been dealing in recent years a lot with smaller jails, jails in general which have much more -- much higher turnover rate and not as stable a population as prisons tend to have. I think the issue of mentally ill people in jails have become an enormous problem, particularly as it relates to the use of force.
Those behaviors are typically the ones that are going to create that kind of reaction in staff, particularly if they don't recognize it as a result of mental health problems. Because the jails are smaller and because they're spread out, they don't -- they're not as visible as issues that occur in state prisons. State prisons typically have mental health professionals. They have access to it. Many small jails do not, and they're just in the very early stages of dealing with that. To the point that I truly believe that training in recognizing symptoms of mental health -- mental disorders should be an absolutely fundamental part of any preservice training for jailers.

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

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

MR. BERG: Well, I'm just troubled by the fact that we are locking people -- we're locking up lots of people now who are mentally ill because we've closed down a lot of our mental institutions around this country. And we're seeing today in our prison system and jails large numbers of mentally ill people
who, but for their mental illness, wouldn't be harmed
in the way these gentlemen have been harmed by being
gassed. This is the non spontaneous use of pepper
spray OC and CS on people who are mentally ill. And
corrections needs to take that type of punishment out
of corrections.

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

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

And the sad thing is, these guys were
released directly to the street. Think of what that
does to our public. What -- we're putting our public
at risk when we do that type of harm to people, lock
them up 24/7 for years on end and release them
directly to the street. That frightens me. It should
frighten the public and hopefully you.

MR. RYAN: Thank you. Mr. Krone.

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

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

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

MR. KRONE: I want to kind of back up a
page from the actual application of use of force to
what root causes lead to the need for use of force. I
know I've seen in your opening about -- you talk about
the changing of prison culture. You talk about the need to try to lessen the use of excessive force, the use of cell extraction.

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

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

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

You can't control all of them because as
you know, they're going to do what they're going to do. And most of those groups, fifteen percent, is usually what the average across the nation is for security threat groups are the ones that actually causing most of the incidences inside our institution. And you'll have a sporadic uprising of extortion from other groups.

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

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

But to control it, as you know, they're going to do what they're going to do. You have 24/7 to do it. Reactive use of force on the yard dealing with gang fights and stuff, the officers during the training realize and are trained that, you know, you've got other inmates responsible.
And excessive uses of force don't necessarily happen on a reactive use of force because other inmates are watching, and as you know, if you do that on the yard, you know what's going to happen, all right?

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

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

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

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

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

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

So there's an inmate and he's, no, I'm not
going to give you the lunch tray back. Then you get
quite brutal consequences that come from that. What
I'm wondering is what is the right thing to do when an
inmate says, well, I'm not giving you the lunch tray
back. What can you do apart from the go in there with
a team to -- not even to extract the inmate, to
extract the tray.
These are -- these were, as I say, with quite brutal consequences. There was some question whether the extraction of the lunch tray really covers for a beating, or whether it was sincere. Assuming it wasn't cover, what's the right way to run that need to maintain order? How might that be approached?

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

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

So I don't know what percentage that is. I don't have those numbers, but I think a fairly
significant number of reactions like that are, 
frankly, not necessary. You may disagree with me 
completely.

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

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

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

Whether it be that type of situation, if 
you let that inmate get away with it, what's the next 
two inmates going to do? So now you've got them
grouping together, all right? And you can't let that happen. Now, you go in as an excuse just to get the tray in? No. You try talking to them. You give them lawful commands.

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

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

And you're going to have some that aren't going to be able to follow that, some mental health issues that we've got also, but 75 percent of those
inmates you can deal with. The five percent of them
are going to be going back out into the public.

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

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

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

    What type of tools are you going to use?
Chemical acts, EID, hand-to-hand, it's got to be going through that process. And superintendent knows what's going on and authorizing that use of force. It's not just us making that decision.

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

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

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

The one line that I'm always very nervous about is when the reason for the use of force is the refusal to follow a direct order. That covers a multitude of sins. And there has to be some judgment,
and there has to be some control. And I think it's an issue of supervision and leadership from the top, that you don't -- because you can always create a situation where somebody is not following a direct order. If that alone will trigger a use of force response, then you're heading for a lot of trouble. But with the proper leadership and proper supervision -- it gets beyond training into real supervision, that people understand in this place we don't use force that way.

MR. SCHWARZ: I have a bunch of questions that come out of the videotapes. And apparently in Oregon if it's a planned use of force, there's videotape used. In Florida, if it's a nonspontaneous use of force videotapes. So a group of questions. First, how often is that done in other states? How often is that required in other states? Second, is it effective as a deterrent? Third, what's the standard in which one defines planned and nonspontaneous? Is it subjective or is it objective, and on the objective side, for example, does it include every removal from a cell which by definition is planned?

Does it include every time an officer has spoken to a superior about the use of force, and which I guess by definition is planned or not spontaneous?
And does it -- on the harder side, does it include any
time, to pick a phrase from the Bible, two or three
are gathered together to approach an inmate? That is
a stream of questions on the subject of the
videotaping.

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

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

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

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

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

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

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

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

MR. BERG: Yes.

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

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

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

MR. BERG: Pardon me?

MR. RYAN: Not in Orange County.

MR. BERG: Right.

MR. BRIGHT: Could I turn just on the facts here to be a little clear on them? Mr. Berg, you talked about these three people here who were chemical agents used. I wanted to ask, were all of these isolation cells, or were some of them and not others?
And then secondly, how much is this -- or was this at
Starke maximum security prison or was it different
prisons?

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

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

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

I'm sure a number of you have been on cell
wings where pepper spray, excessive use of pepper
spray and tear gas is being used, and it permeates the entire wing. We have actually had -- and you were going to have a psychiatrist testify in Tampa but he was unable to appear about medical people who are on the wing being pepper-sprayed as well, and how long and how it affected them.

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

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

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

MR. GREEN: I'm curious. In terms of use of force we're seeing -- again, I'm going back to the law enforcement setting where more and more the use of taser are being employed by law enforcement agencies, and of course the description is that they are momentarily immobilizing people, but impact and the effect is much less than other forms of use of force.
Are we seeing -- to what extent are we seeing the taser being used as an instrument to try to control situations in prisons and jails?

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

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

That's a show, of course. Just holding up a can of pepper spray, you're giving them orders. Any time we use of force in our institutions, every inmate that was involved is seen by medical staff and it's documented, all right. That should be happening everywhere, especially with pepper spray. Checked
every ten minutes and every fifteen minutes thereafter for the first hour because of the chemical reactions and stuff, whether it be inmate or staff because some staff have accidentally gone downwind and been sprayed. And if you're not going to give them the medical attention after that, that's what's going to happen. You have to give them that medical attention whenever it's being done, and not just the inmate. The staff also.

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

MR. MCMANUS: I'm sure staff would have access to whatever actual numbers there are on the use of taser. My sense is pepper spray and those kind of chemical agents seem to be the far preferable one because they're easy to use, they require less training, and -- but that's simply a hunch. I think the numbers are probably out there, but I just don't know what they are.
MR. DUDLEY: One of you mentioned, I can't remember actually which one, that external oversight and review might be more helpful and more meaningful if it was directed towards identifying positive changes in the system or at least pointing in the direction of change as opposed to simply being punitive and about punishment. And I'm trying to understand that in the context of the argument that most of these problems are really the result of, you know, some aberrant individuals as opposed to systemic problems. So I'm trying to --

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

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

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

I want to go back to this human rights
issue because I think that is essentially a human
rights issue as far as staff is concerned. That we
can't expect staff to treat prisoners as human beings,
fallible, who make mistakes who need to be -- to be
dealt with in an appropriate way if management of
prisons don't deal with staff that way.
I think whether it's merely a perception or whether it's a reality, I think the extent we change how we deal with staff is going to have an effect on how they deal with inmates. So in that context, that's when I talk about oversight and review of incidents in a nonpunitive sense, that's what I was trying to get at. Not that we should excuse behavior or misbehavior or that we should just assume that these are honest mistakes. There are some behaviors that are not honest mistakes. There are some that are.

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

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

MR. BERG: There's something else that's been going on in Florida which I'm sure Commissioner Ryan is aware of. A lot of the officers on the use-of-force teams and they do have teams particularly in Florida State Prison, there are about I think five
that have been arrested by the feds for importing and
distributing steroids, and we're beginning to think
that there's a correlation between these large
gentlemen who were on the cell extraction team being
on steroidal rages because some of those very guys had
been indicted by the United States of America for
importing steroids from Egypt.

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

MR. RYAN: Mr. Maynard.

MR. MAYNARD: Mr. McManus, you're talking
about the culture change and how important that is.

Could you be a little more specific about you how you
would approach that in a prison itself and how long it
might take and what's involved in that?

MR. MCMANUS: Probably the best way I can
describe it more than find it, and I mentioned in my
-- when I pointed out in my testimony the notion of a
warden -- and I really think this actually takes place more at the institutional level than frankly at the central office level. I think the central office can lead, they can encourage, they can hire, fire, put people in position, but prisons still operate pretty much as autonomous organizations. They're department systems, but they operate pretty much.

The warden is the key person. It has to be a warden who is, first of all, sensitive to the issue of human rights and not faking it. I don't know if we can train them. The real question is how do you find these people and how do you support them. A person you know, I'm sure, Frank Wood was a warden in Minnesota, started in the high security prison in Minnesota twenty years ago now. Had the luxury of hiring staff, hand-picked, and establishing a culture. He used to meet with every person that was hired in that institution, and sit down and talk about how he wanted them to treat every individual there like it was your father or your brother or your nephew because they were somebody's, and that attitude of respect was carried out with staff. He referred to inmates as mister.

The warden was around the prison every day, many times during the day. The staff got used to
seeing him. The inmates got used to seeing him. People who were uncomfortable with that style of operating a prison left, and they were able to attract other people who felt very comfortable in that setting. You don't find those circumstances or those people.

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

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

That's not a recipe for all places, but in
my experience after almost forty years, I guess I've come to the conclusion that training is important, policies are important, all of these things are important and critical, but the leadership that an individual gives is the one essential characteristic that sort of trumps all of them. They often go hand in hand. I don't know if that's responsive to your question.

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

MR. MCMANUS: Exactly.

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

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

MR. WOOL: You are correct.

MR. RYAN: One of the struggles I've had is the whole concept of using the concept of use of force, which tends to have the trainer going we're going to talk about use of force today. Is there a better way of putting the terminology? For example,
I'm going to train you in control techniques, adverse behavioral incidents. These are the types of matrixes that we come up with.

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

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

I mean, the word use of force in itself conjures memories of the movie Cell House D with James
Cagney. That's what it conjures, and if you can
change that word -- yeah, if I have to use force, I
have to use force. I mean, I wasn't hired to be a
punching bag by the inmates. Actually, to change the
form, I mean, there probably are a couple of words in
the vocabulary that we could use, but still when it
comes down to it, inherently in itself just that
thing, it is violent. No ifs, ands, or buts about it.
That's one of the reasons why we videotape.

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

MR. RYAN: Mr. Berg.

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

MR. MCMANUS: I don't know if it's a case
of sugarcoating or if it's a case of trying to reframe
the issue. Let me just -- let me just quickly
describe how the British, for example, one use of
force. This is the handbook for prison staff based on
human rights. Here's how they have their chapter on operating secure, safe, and orderly prisons. Here's how they break it down.

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

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

MR. VAN PATTEN: Training.

MR. RYAN: Okay. Mr. Berg.

MR. BERG: Get the mentally ill out of
prisons.

MR. RYAN: Mr. McManus.

MR. MCMANUS: Human rights.

MR. RYAN: Gentlemen --

MR. KATZENBACH: That's two words.

MR. RYAN: I thank you very much for this.

We really appreciate it. We'll take a break here and come back.

(WHEREIN, a recess was taken.)

MR. BRIGHT: Good morning again, everyone.

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

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

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

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

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

Brian Dawe worked as a correctional officer for sixteen years, and he's now the director of Corrections USA.
And finally, Michael Hamden is executive director of the North Carolina Prisoner Legal Services, and he has also been on the board of the American Correctional Association's Commission on Accreditation since 1998, I believe.

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

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

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

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

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

Within these two documents you'll see where ACA has taken public stands on certain aspects of corrections that will inform you and give you a picture of what we stand for and how we support our correctional members.
ACA's Standards Manual. This manual is the fourth edition of the adult correctional institution's standards. These are the standards that are used by adult prisons, state-operated facilities, facilities operated by the military, and facilities operated by the Federal Bureau of Prisons.

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

The other document that you have in front of you is a book called Measuring Excellence. And it's a history of corrections and standards and accreditation written by Paul W. Key. It was a book written a number of years ago, but it takes an outsider's look at the accreditation process, asks some of the questions you put forward here this morning, and answers some of those questions. It talks about the process not being a perfect process. It also talks about some improvements in the process to make the process more long lasting and more effective. Mr. Key took the opportunity to
review all the history of accreditation, accreditation
as administered by the American Correctional
Association began in 1974, with the first facilities
being accredited. He took a look at those facilities
that were accredited then. He took a look at those
standards that were in effect at that time also.

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

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

MR. BRIGHT: Ms. Ridley-Turner.
MS. RIDLEY-TURNER: Thank you. I want to thank the commission members for inviting me here today to talk about accreditation. Just one correction. I was commissioner in Indiana until January of this year. Left the office after 31 years in corrections.

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

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

I shared with the governor that I felt that while all our facilities had policies, we had procedures, we had operational standards for operating the facility, when you have 34 facilities in an
agency, that's quite large. Sometimes things get misconstrued in the interpretation. And I shared with him that I wanted to have a process so that we could look internally, and that's part of the process. You have mock audits. You look at what you're doing.

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

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

I was responsible for juvenile and adult facilities, and in looking at that it wasn't that we weren't doing a lot of the things that standards set out. As Jeff mentioned, there are life, health, safety. It covers all areas of the operations of a facility. But what was more important to me is that
you could go from facility to facility and everyone knew what everything meant. It was operational procedures. It was life, health, safety issues. We were all going by the same agenda.

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

What I wanted to do was to make this really part of our operation, and we got to the point that our policies were being prepared in compliance with the standards, and this was for the right reason. It was because it made sense to do it that way. Then everyone knew what the policy was. They knew what the ACA standard was, and we were moving to have all our internal audits that would be conducted in the off year of the three year accreditation and reaccreditation, we would go by those same standards because it made sense to go by those same standards. This wasn't a thing of make work. We didn't want people to feel that, as I said, this is
just a process you go through. You sit back and it's over. We wanted to live by the standards.

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

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

So you know, when you're working in a facility, when you're doing operations 24/7, sometimes it gets to the point that you can't see the forest for the trees, and that was what I was finding out with some of our facilities. They did have procedures in
place, but I think what this does, it gives you a peer review. It gives you the opportunity to work towards a common goal. And I believe that, for me, that was the purpose of accreditation and why I felt the value in the Indiana Department of Corrections. Thank you.

MR. BRIGHT: Mr. Dawe.

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

It's not a job you grow up aspiring to do. A lot of that has to do with the perception held by the public about corrections. My organization believes we can change that by bringing down the walls. We believe that by exposing corrections to the light of day, that we can change that perception and hopefully the future of corrections in a positive way. I believe that accreditation can play a vital role of promoting that transparency and changing that perception.
As corrections is constituted today, line staff are often put in situations where failure is almost a certainty, and then they're blamed for that failure. As an example, when I worked I was the only officer in a housing unit with sixty inmates. One of our common, which is a small eight by ten room, was converted to hold six inmates in three bunk beds.

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

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

The number of inmates are simply divided by the number of staff to establish that ratio. It's a
lie, and it's a dangerous one for all of us.
Accreditation can help to expose that. They can
expose those ratios, and they can also help us
establish mandatory staffing levels. Those are just
two examples of where accreditation can help.

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

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

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
meet to establish those standards.

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

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

MR. BRIGHT: Thank you. Mr. Hamden.

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

My name is Michael Hamden. For the last twenty years I've been employed by North Carolina Prisoner Legal Services first as a staff attorney, and for the last ten years as its director. I also have the privilege of co-chairing the American Bar Association's Corrections and Sentencing Committee and served as the ABA's liaison to the American Correctional Association. In the American
Correctional Association I have the honor to serve on the Standards Committee, the group that promulgates standards, and on the Commission For Accreditation For Corrections.

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

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

Finally, I'd just like to thank the commission for your work and for undertaking this very important project. I thank also the staff and especially the Vera Institute. Thanks very much and
be happy to address any questions you may have.

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

MR. WASHINGTON: Correct. It is, sir.

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

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

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

MR. WASHINGTON: Let's get the terminology
correct. The American Correctional Association accredits its correctional facilities. We are accrediting those facilities. So the way an audit takes place is that once an agency signs a contract or a program signs a contract with us, a staff person is assigned from our staff to be the liaison for that agency to help walk them through this process.

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

The other question that you ask, follow-up audits. If a facility is accredited by the Association, the accreditation is good for three years. During that three-year period, time period, we have the ability to go back to that facility and monitor if we feel that that is necessary. If there
are significant events that take place at that facility, or if we get information from outside sources or newspaper articles, we'll inquire as to what's going on at that facility.

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

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

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

MR. WASHINGTON: We do not do a press
release saying we've revoked the accreditation process
of any facility or any program.

MR. BRIGHT: Why not?

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

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

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

MR. BRIGHT: Well, it's sort of like the
bar association disbarring a lawyer and not telling
MR. DUDLEY: I mean, what you're describing seems to me an enormously important function in supporting the member organizations and helping them to improve their performance by meeting these agreed upon standards. I guess what I'm curious about is if at some point there was a requirement that correctional facilities be certified or accredited in order to exist in the same way that hospitals must be or whatever, would you see this -- and particularly in light of some of the other comments, would you see this, the process that you're doing, as appropriately assuming that function, or would that undermine your work in the sense of actually trying to help member organizations improve their function, and there should be some other organizations that would do that type of accreditation? You know what I'm saying?

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

MR. DUDLEY: I recognize that.

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

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

So one of the things you look at is states' rights in this. Are you going to have something mandated from the federal government and mandated with no money, or are you going to have something mandated from the federal government that comes with appropriate funds in order for you as a correctional
MR. DUDLEY: So you're saying that if such were the case, all they could do is simply close a correctional facility, and what would be the purpose of that?

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

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

MR. DUDLEY: I'm clear about that. I guess I was trying to get a sense as to in light of some of these other comments, were you feeling that -- and I think what you're describing seems to be enormously important. I guess what I was trying to understand is
whether or not you felt there was any role for a
different type of process that was controlling in a
different sort of way.

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

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

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

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

And Mr. Washington, maybe you could also be
more concrete by giving examples of where you believe
the practice shows that the cooperative, helpful
effort that you describe has, in fact, made a
significant difference in trying to be concrete on it.

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

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

When they went and did the mock audit, they
found that there were tools in places that tools
shouldn't have been. The superintendent was asked
about this. And we developed immediately at that
facility a different tool control process. The tool control was something that needed to be for the operation of the facility.

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

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

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

Throughout those manuals, both adult and juvenile, it has sort of opened correctional facilities up to other agencies to come in and give them a helping hand in improving fire protection at the facility. That's a positive. When in the past it
might have been more difficult to have the fire
marshal of a particular jurisdiction to have the time
to come into a correctional facility.

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

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

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

MR. SCHWARZ: Could you give an example, is
it -- like fire inspections, but actually affects how
the relationship between correction officers and
prisoners works, and how you -- specifically how your
audits have made something happen? I'm trying to help
you bring out a more concrete description of what's
happened.

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

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

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

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

MR. SCHWARZ: You don't have to tell me
about a state, but do it just sort of as a generic.
MR. WASHINGTON: I can't give you specific examples of states, but let's talk about a number of the standards. There's a standard that requires the square footage standard, for example. The old standard that we talked about talked about seventy square feet of space in a cell. After research, we took a look at that particular standard, and it was better to take a look at that standard asking for 35 square feet of unencumbered space. Space, that is, that you would need to be able to exist to move around in a cell or in a housing unit, and we felt that that was very important.

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

We have the standard that talks about meal preparation. Very important, the standard that talks about meals in the facility. That at least two of those meals have to be hot meals, and that between the first and the last meal they can't be more than fourteen hours. Very, very important to provide individuals with the appropriate nutrition and to
provide them with the appropriate meals they need to
be able to exist.

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

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

And we discussed, with the facility, the
legal implications of failing to provide adequate
exercise for prisoners, including those in segregated
status. They changed the policy.
Another facility that I can remember was feeding an incredible number of people. I'm not going to get this exactly right, but they had something like three shifts, and they were feeding and allowing something like ten to twelve minutes for each group to eat. Well, I mean, that doesn't comply with standards, if it's even physically possible.

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

MS. SCHLANGER: You all have a great deal more experience with this than I do, but I've been working or in and around prisons and issues to do with prisons for about ten years now. For ten years I've been hearing the same complaints from some folks about accreditation. And I don't know the truth of these complaints, but I would really like to hear you all address them because I've never heard them addressed. Those complaints about accreditation are that it's not tough enough, that the standards are too low. That's one set of complaints. I think you have
actually talked about some of that. But the bigger
complaint you hear about accreditation is that it's
about paper compliance, that it's not true, that it's
all about whether or not the folks at the facility can
talk a good game and have the right policy in place,
but not about whether they've complied with that
policy.

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

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

And I do remember one in my old hometown,
where the ACA came back to a facility months after it
had been accredited and revisited it. And I'm going
to get this terminology wrong, but lifted the
accreditation until it solved things when some
problems came to light after the site visit. So
that's the problem you hear about accreditation.

And there's one more problem you hear about
accreditation -- I think Mr. Dawe spoke to it also,
and that is that it's so opaque that if you're a
community member who has, you know, democratic reasons
to want to know what goes on in a governmental
facility in your hometown, that you can't find it out.

And that accreditation is so opaque that it -- all you
can find out is we're accredited. But you can't find
out sort of the inner workings of that in a way to
know how serious to take that.

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

MR. DAWE: Yes, if I may. As a line
officer, I went through several accreditations. And I
can tell you one of the biggest problems we had with
that was we knew well in advance who was coming, when
they were coming, and you could always tell the day
the accreditation team would be there because there
would be more staff. You'd be tripping all over them.
And the day after the accreditation team left, the
staff would then be gone.

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

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

Yes, I can understand Mr. Washington and
the ACA's feeling that they should work in concert
with the administration for progressive change, and
that's understandable and applaudable in many cases.
However, there is a failure to address the real
issues. The staffing issues, the inmate violence, the
recidivism rates, the issues that we deal with on the
line every day.
Sure, it's nice to have a policy that says
you must have protective vests. But if the department
goes out and buys ballistic vests that protect you in
the chance of a gunshot, and doesn't provide
stab-proof vests, which is really what we're in danger
of having happen to us, then that's a fallacy that
that policy in any way is helping the department of
corrections or the men and women who work there.

The final thing I'd like to say on this is
the economic link. As long as you are paying to be
accredited, that accreditation is going to be flawed
and lacks credibility in my mind. I think there
should be governmental oversight. I think
accreditation should be done by a governmental agency
not linked with the facilities, especially not
economically with the facilities they're accrediting.
It causes a tremendous conflict of interest.
The ACA, being a nonprofit association, I
understand that, but there's a lot of money involved
here. And there's a lot of money that changes hands for one accreditation. 12,000, 15,000 dollars an accreditation. Remember, this is a voluntary process. What superintendent in his right mind is going to spend 15,000 dollars to have the public know they failed.

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

MR. BRIGHT: Mr. Washington.

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

And I don't feel comfortable with that. I feel that
this panel has been stacked against accreditation,
against the association.

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

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

The amount of money that an agency spends
on accreditation, between seven and 10,000 dollars,
yes, we think it's very important that they spend that
money. We also understand that there is no other organization out that accredits correctional facilities that has government backing.

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

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

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

MR. BRIGHT: Anybody else? Yes, sir,

Mr. Hamden.

MR. HAMDEN: Yes. With respect to

Mr. Washington, who obviously feels very deeply about

this process, and rightfully so, in my opinion a lot

has been accomplished. A lot of good work goes on.

On the other hand, I think Mr. Dawe makes good points

and Commissioner Schlanger certainly addressed some

criticisms that I've heard. And I'll take a shot at

answering them.

The standards are not tough enough in some

respects. I agree there are standards that do not

come to the level I think we could accomplish, but I'm

a member of the Standards Committee, and one of twenty

or so members, all of whom are correctional

professionals with great experience and expertise.

And I would not represent to you that I know better

than they do.

These things are discussed and debated, and

sometimes hotly debated. A vote is taken, and then we

have a standard or then we have a revised standard.

That's the process by which this happens. It's a good

process. It's an open process, and it invites input

from the public and from people who have criticism.
And I think I speak for the commission, not formally but on a personal level, that we are concerned about the integrity of the process and welcome help to improve the process. So that's the standards question.

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

After the audit, the facility has an opportunity to respond in writing to the findings of the auditor, and then the facility sends representatives to the panel hearing to advocate its position to argue about whether they were in compliance or whether they should be allowed a waiver not having to comply. And due process is built into that. Again, I am really proud to be part of that. I
I think it's a wonderful thing, very supportive. I also agree there are ways in which it can be improved. And the commission is involved in continuously improving its operation, and open to criticism and happy to have any help we can get.

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

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

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

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

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

MS. RIDLEY-TURNER: I might add from my own
perspective, again, I think that your comment about
the paper compliance, I think it would be hard-pressed
for me to tell my superintendents when they were going
through this that this is just a paper compliance.
Because as I indicated to you, they got their life
blood into it. And they knew that this is how we were
going to be monitoring them for time to come.
And maybe that's just the management of the particular state agency or the facility taking it in too and believing that this is a process that works and not making it a paper process. I don't know. But I see more than just pushing papers and becoming compliant. Correctional agencies, we have policy, we have procedure. I mean, that's how we run.

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

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

And these committees began to function in a way they would come in at least quarterly, and they would find out what was going in the facility. And that was opening up what normally had not been an open
facility to the public to come in and see. So I think that's some transparency that comes about because of ACA. That we do have to do this if we want to be accredited, not just that's the right thing to do, but that's another thing that happens.

MR. BRIGHT: Mr. Maynard.

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

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

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

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

I think as was mentioned, you know, there are institutions where -- accredited institutions where people die. There are accredited hospitals where people die. It doesn't guarantee anything. But I think over time, I think that evidence will show that -- and having run accredited institutions, I think they're run better than institutions that are
I just think it's a management. It's simply good management standards that deal with administration segregation, how long people can be on administrative segregation, how often they have to be reviewed. There's lots and lots of standards that deal with better management within the organization. But still again, over here, the question is what would the system look like that would be better than what we've got? How would it be funded, and what would it look like?

MR. DAWE: Is that directed at me, sir?

First of all, let me make it perfectly clear, if I haven't done so already, that we are very much in favor of an accreditation process. We think that that is critical to progressive change within a correctional environment. Our problem is not with the ideology behind accreditation, nor the ideology behind the ACA.

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

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

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

Additionally, how can we make this system better? I think we have to try and take the money out in some manner. Now, we can't mandate certain things from the federal level, but we may be able to mandate from the state level that there is some type of outside accreditation process or some way to take the link between the ACA or whoever the accreditation body
is, and with fiscal -- their fiscal stability in a
pass/fail from their institutions, there has to be a
way to make those changes.

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

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

Those things can be changed relatively
easily without a monetary problem. And I think those
things should be changed. I think, yes, everybody
needs to know the standards by which they will be
accredited, but they don't need to know the date the
accreditors are coming. They don't -- they don't
need to be told a lot of the prerequisite things that
are happening now.

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

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

We all have the same objective here. We
want first and foremost in corrections is public
safety. That's our number one goal. The second from
an officer's standpoint is the safety of the staff
that we work with. Third is the safety of the
officers, my brother and sister officers. The fourth
is the safety of the inmates. Those are the four
categories by which we have to -- should be judged.

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

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

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

And since 1974 those standards have gotten increasingly tougher in areas that they need to get tougher in. This whole process, one forgets, is minimal standards. It does not stop a facility from going beyond those standards. When you're looking at dealing with correctional facilities across the country, you find a level at which you can operate and you can bring facilities up to that level. And you do
understand that there are facilities and programs that
will go beyond that level, and you applaud them and
you do all you can to help them.

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

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

In some instances, if you take a look at
litigators who deal with correctional litigation and
take a look at the commission and what we do in
accreditation, we're about doing things. The same
things. You want a result because of what you feel
has happened in a facility, and you do it by way of
litigation. The American Correctional Association and Commission has chosen to do it with accreditation, holding agencies to a standard.

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

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

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

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

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

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

MR. HAMDEN: Just one concluding thought. The question as to whether the commission can propagate some requirement that all correctional facilities follow some accreditation process. I think it's clear not. But I don't know that there's any
reason that Congress couldn't do so in connection with
the power they have over the purse. I think virtually
all correctional facilities receive federal funding in
some kind. So if that were the commission's
recommendation, then there probably is a way that it
can happen.

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

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

If I open up a restaurant and they tell me
I don't have to wash my hands, I know I'm going to
wash my hands because I'm pretty sure the rest of the
public might not want to eat at some of those places
that don't have to. If you've got these good rules in
place and the important things you're trying to
improve constantly -- I mean, I don't like the idea of
thinking after a hundred years you still haven't
figured out a way to get this implemented nationwide,
get this into use because they really do need it.

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

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

MR. DAWE: If I may, Mr. Krone, if you look
on what I presented in my written testimony, I set out
some standards that we've talked about at Corrections
USA. The first one is the standards by which a
facility would be evaluated must be known in advance.
That's done -- can be done and that's not a problem.
Number two, the accreditation should be conducted with correctional professionals. We're there. Most of that is being done now.

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

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

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

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

Number seven, the results of the accreditation process should be available to everybody, to the public. The public pays for our prisons. They're going to pay for the inmates when they come out. They pay for them when they're in there. There needs to be full accountability and full
disclosure. Again, of course with the caveat that you
can't disclose anything that would disrupt the safety
and security of the institution or violate state
statute.

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

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

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

MR. BRIGHT: General.

MR. RIPPE: I just want to follow on to
what Director Maynard and president-elect Maynard
I said, Mr. Hamden, and a little bit of what Ray said. I think this is a mountaintop kind of a question. Here's what I'm trying to come to grips with.

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

So what I'm trying to come to grips with and the commissioners and the many, many discussions we've had is, you know, what should we recommend? Should there be some set of mandatory standards that raise the common denominator, and if so how should we check to make sure that we've in fact done that?

That's really what we're trying to come to grips with today.

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

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

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

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

MS. RIDLEY-TURNER: Well, you know, that's the reality, but I think that as a former correctional administrator of an agency, I had felt that the importance was there and did not have any problem with agreeing to have standards for that agency, and I would think that a lot of my colleagues around the board have embraced the process as well and would not
back away from standards. Whether they be mandated,
that would be something that if it happened, I don't
know that there would be a lot of disagreement, but I
think you have to look at who's going to fund it, how
is it going to get funded, and who's going to pay for
the things that need to be done for that agency to
have them make compliance basically.

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

MR. RIPPE: Thank you.

MR. BRIGHT: Mr. Ryan.

MR. RYAN: Yeah. Let me just throw out I
have absolute bias in this. I'm a commissioner. I'm
on the Standards Committee. I have an accredited
facility. I'm going to become accredited under health
confinement and community corrections. That's my next
goal. So with that as a bias sitting here, I think
that standards are absolute.

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

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

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

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

MR. RYAN: I notice.

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

Now, that's not mandating it. That's telling folks what's out there. That's making it available and folks knowing that this process is there and talking a little bit about the process. And you
know, you can use anecdotal stories if you'd like
about facilities that have been involved in this
process and what has happened to them. Now, I'm not
telling you to make it mandatory, but I think that you
should in that report talk about this process and the
number of years it's been in existence, why it came to
be, and how it's helped the profession.

MR. RYAN: Thank you.

MR. BRIGHT: Mr. Schwarz.

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

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

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

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

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

MR. BRIGHT: Dr. Dudley.

MR. DUDLEY: Well, to show how up in the air we are about this, I don't really understand the announce, unannounced thing. Having been responsible for being on that side of the table, hospital accreditations as an accredditor and as an accditee, I guess, a person being accredited, I think it depends
on the -- I'm more focused on your other argument in
the sense of, you know, kind of what are you actually
doing when you're doing the accreditation, and if the
accreditation process actually makes sense.

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

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

My question is is that if you mandate this
for somebody who doesn't necessarily want to do it, or
for somebody who's faced with executives or a
legislature or whatever who's not interested in
funding to improve the system -- in other words, they
don't have all those sorts of reasons and capabilities
to voluntarily upgrade -- I guess I'm trying to
understand -- and maybe I didn't ask the question well
before.

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

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

I mean, that's my question. You know,
what's the point of mandating it?  What would be -- what would make anybody do anything if you mandate this program?  I'm just trying to understand what that would be to make it meaningful.

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

MR. BRIGHT:  Mr. Dawe.

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

MR. WASHINGTON:  Well, then the question is
who removes the official? Have you created a new body
that trumps the governor of a state or -- I'm trying
to follow you on this.

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

MR. BRIGHT: Mr. Hamden.

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

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

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

I know it's been alluded to that these are
perhaps financial considerations that drive the
decision whether or not to ask for accreditation and
to start that process, but part of it, I guess I'm
just trying to gauge the attitude of the profession.
How much of this in terms of what seems to be low
numbers -- I think for prisons I think it was less --
it was around twenty percent and for jails it's much, much lower. What is driving the lack of participation voluntarily in this process?

MR. WASHINGTON: I think that part of it is not being educated that the process is attainable. I think that is -- that is a huge part of it. When you say financial considerations, it's not the fee that's paid to us. It may be the financial considerations that a facility has to deal with in order to be brought to compliance with the standards, and it may mean improvements within the facility. It may mean additional staff to do one thing or the other. Not necessarily forced by the standards, but as a result of requirements within the standard. So those are the financial requirements that are sort of heaped upon agencies in some instances, and they can't make it.

And it may also be that we have to do a much better job of communicating the possibility of achieving this process out there to our corrections professionals. We may have a smaller number of facilities that are accredited, but I assure you that even in those facilities that aren't accredited, they have a copy of this book and are doing some sort of compliance with this -- with this standards manual.
If they don't have a copy of this book, they do have a copy of another book that we produce called Policy and Procedure Development Manual, a manual which guides them through the development of policies and procedures to help them operate their facilities. So there are a number of things that we have as an association that we provide to the profession that may bring them to this process, but it may not, but they are informed.

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

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

MR. SCHWARZ: Let's get started here. Is Dan Ellis still here, the former dean? Okay. Sitting in the back of the room, the former dean of the law school here and a graduate of a great New York law firm. And the person who built this building.
So the next panel may also spark some controversy as the last one did. It's going to consider the pros and cons of public and private prison facilities. And I'm going to introduce Richard Seiter, Frank Smith, and Sharon Dolovich.

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

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

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

And Professor Sharon Dolovich is spending this year as a fellow at the Radcliffe Institute For Advanced Study in Cambridge, the tiny vestige of what was once a huge institution which has now been swallowed by Harvard, on leave from the UCLA School of
Law. She's the author of a forthcoming article, "State Punishment and Private Prisons."

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

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

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

For too long only we in corrections talked to each other about our policies and approaches. We who worked in corrections were the invisible public
servant, asked to do a dangerous and difficult job, but really expected to keep the issues below the radar screen. It is critically important in my mind that those outside of corrections and outside government in the corporate, religious, not-for-profit, academic, and media world to together discuss our nation's correctional policies. I hope that the work of this commission spurs those discussions.

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

First, there's not a competition between the private and the public sector, and as a correctional administrator I see more similarities than differences in our operations. We view each other as partners, finding ways to meet the challenges
facing correctional agencies charged with holding
criminal offenders. This partnership may assist by
adding capacity, finding cost efficiencies, or
handling special groups of offenders.

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

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

At the Correctional Corporation of America,
54 of the 60 operating facilities are accredited.
This year, twenty accreditations or reaccreditations
occurred with an average score of 99.1.
Fourth, private prisons are committed to and offer extensive inmate programs. For example, during the month of August 2005 CCA's educational programs had an average daily enrollment of over 18,000 students. Between January and August 2005, more than 1,580 inmates earned GEDs or high school equivalency diplomas, and more than 4,600 completed vocational training certificates.

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

Finally, we have 29 faith-based residential unit programs in 26 facilities with over 2,600 inmates participating daily. Again, these are full-time assignments and inmates participate six to eight hours per day for six to eight months. There have been over 5,600 inmates that have graduated from these programs since their inception in 2004.
And finally, the profit motive does not undermine prison safety. There's nothing we value more than creating a safe and secure environment for staff and inmates.

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

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

MR. BRIGHT: Mr. Smith.

MR. SMITH: Hi. I'm Frank Smith with Private Corrections Institute, which sounds pretty fancy, but it's a name we stole from Charlie Thomas
MR. SCHWARZ: And how did you set it up with that name when your function is to question the appropriateness of private --

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

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

In fact, I live on about 1,200 bucks a month. I do this almost all out of my pocket. I was very fortunate to be able to come here today. I appreciate the commission inviting me and putting me
up in such a nice place. I'm usually under a bridge
or on a couch somewhere.

But anyhow, let me tell you what I do.

I've been involved in the provision of services in
prisons and federal services, substance abuse
treatment services, research for many, many years, in
fact going back to 1971. In the course of doing that,
about nine years ago I got intensely interested in
private prisons.

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

And they discovered that in a remote
prison -- it was Susanville. I'm sorry, it was Sonora
Correctional Center, that recidivism was measured by
-- against a number of visits in the last year of
incarceration where they look at people who got one,
two, three, or zero visits. They found out that
people who got visits from three or more people, not
When Alaska contemplated sending all these people off to a private pen in Texas, I said wait a minute here, and I passed out about 50,000 studies. In 1996 a couple of communities -- and I was still working for the state as a child protection investigator, case manager. A couple communities, Delta Junction and Anchorage, asked if I would assist with fighting siting in their towns. Anchorage is a big city. And I did and they -- Anchorage, which was done by Wackenhut, GEO Group these days, went down in about a year. And Delta Junction, the prospects of taking over Fort Greely and getting a forty million dollar conversion bond to make it a prison in the local town finally failed in 19 -- about 1990. And then they tried to site about six other towns. This is Cornell that bought out a local operator called Opus [phonetic]. And I got involved in fighting every single one of those sitings, and actually, we won them all. Good news this morning, the town of Lamar, Colorado against Cornell. Anyhow, I started working in Colorado.
People asked me around the country, Kentucky, South Carolina, California. In Colorado I got intensely involved in a couple of prisons -- prospective prisons. Lamar and Pueblo, and in the course of doing a radio show I got in touch with a couple of whistle-blowers who called me up. I gave out a bogus E-mail address that they would get me -- remember and could get me with, and I developed this vast network, it's become a vast network of whistle-blowers, no money at all, from every major corporation, from CiviGenics and MTC, the smaller ones, two, three, four percent, up to CCA and Wackerly.

They include an ex-executive vice president, ex-vice presidents, wardens, directors of training, line workers, nurses, unit managers, everybody. They were telling me horrible things about the accreditation process, about pay scales, about turnover, about treatment of workers, about atmospheres of sexual harassment, about all sorts of things that were very scary to me, and I started doing -- I have been doing this for a lot of years in different venues -- Freedom of Information Act requests to open records at the request of the states. Got an enormous amount of material. In Alaska I found one company which will remain nameless
was trying to wire -- clearly wiring a 985 million
dollar bid. I sought -- the monitors, particularly in
Colorado, completely ignored their duties because of
their symbiotic relationship, the Colorado DOC and the
privates, because it's tapered. They couldn't build
new prisons, so they depended desperately on these
prisons, and overlooked things that were just
unbelievable.

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

So here I am in the situation where nobody
cares, and finally the joint explodes and they burn
down a couple of pods. That's the situation that I
have seen. That's the situation I've seen
consistently around the country. I've visited CCA
prisons inside and on the outside. Went by Crowley
while it was still smoking. And I'd like to talk
about -- I hope you ask me questions too about ACA
accreditation and how it affects all this. Thank you
very much.

MR. SCHWARZ: Okay. Professor Dolovich.

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

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

Now, I've been thinking about private
prisons in this light for some time, and the main
point I want to make to you today, one which it's
turned out Mr. Seiter and I agree on, is that the way
the debate has generally been framed, as a choice or
even a competition between public and private is the wrong way to think about the issue. Now -- and it is the main way that when you look in the debate, look in the literature, the main way to debate is framed.

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

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

The second reason I think we need to think about the debate differently is that framing the issue in comparative terms actually leads us to lose sight of the bigger picture. With the comparative approach, we spend a lot of time debating whether private prisons are as good as public prisons. In fact,
Mr. Seiter's written testimony, he addresses this issue trying to suggest to us that at the very least private prisons are as good as public prisons. Now, with all due respect, if this were an acceptable standard, if what we were shooting for here was simply to reproduce what we already have, we wouldn't be here today and you folks wouldn't have the hard job you have of trying to figure out how to fix a broken system. It's not the standard I think we should be shooting for.

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

So what I think we should be doing is looking at private prisons themselves to try to understand the dangers that are posed by this penal form, and I believe there are dangers posed by this
penal form, and once we do so, we will see that a
number of practices that are problematic in the
private sector are also problematic in the public
sector.

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

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

Now, the problem is with all due respect
now to Mr. Seiter, none of the oversight mechanisms
that he mentioned, including the ACA monitoring or
competition and the threat of replacement -- I would
also add the courts, which is another one that that's
often raised as providing some accountability, none of
these mechanisms are actually effective as meaningful
checks to the private sector, and I would argue the
same is true of those mechanisms as they operate in
the public sector. So that's the first point.

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

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

The same is also true in the subcontracting
out of discrete prison services like medical care,
psychiatric care, food service, transportation, inmate
classification, and the list goes on. The danger is present in each of these cases whether or not the managerial structure of the prison itself is private or public.

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

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

MR. SCHWARZ: You know, what I'd like to start with is you -- you framed the issue differently than your two colleagues, and therefore I think it would be useful if Mr. Seiter and then Mr. Smith just reacted to how Professor Dolovich framed the issue.
And then we're going to have other questions about true comparisons between the public and the private. So whichever one of you wants to go first. Go ahead.

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

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

There is extensive monitoring of that and there are even liquidated damages for failure to comply. So in many ways there are many more specified
and distinct standards and expectations that must be met in the day-to-day operations than even I faced when I was in the public sector.

MR. SCHWARZ: Mr. Smith.

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

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

There are people in the public sector like that have graduated up like Professor Seiter has. Marine brig commanders, ex-BOP wardens, people like that that have integrity and they have knowledge and
they have an understanding and they did their damndest
to make the prison work despite the fact that they
might have to stand there with people stepping all
over, and if I had a picture I'd hand it out, seven
dollars and 61 cents at home.

It's almost impossible to run a place like
that, but these guys prevailed and they were able to
do it. I don't know any women or I would have
included that. Not a lot of guys, but they prevailed
and they were all kashed. They were thrown out
because they simply didn't agree with management's
cost cutting issues that compromised health, safety --
the safety of not only the staff that we talked a lot
about today, but the safety of the inmates, and the
public safety.

Mr. Seiter has talked about monitoring, and
I've already spoken to it. I don't think monitoring
has any functional -- I have stacks of monitoring
reports and I think, in Brush, Colorado where there
was this flagrant sexual abuse of woman after woman
after woman from Hawaii and Wyoming, Colorado, there
was no action taken. There was no action taken at
all, and the news of this was concealed from a
legislator who's working on a bill to effect the
import of out-of-state prisoners, which has caused
enormous problems in so many states, and you know, it's just -- it staggers the imagination. Problems that arise there, the warden just plead guilty last week to covering up the offense at Brush, and two of his former -- former guards are awaiting trial on that.

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

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

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

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

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

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

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

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

It's -- some of the discussions this morning on culture are critical, but there's so many things that go on in a prison day-to-day that a line staff member who has very little time on the job and little training or mentoring can make a mistake in terms of a minor incident into a major incident. You don't want vacancies in terms of correctional officers because there's a certain number of posts that just have to be staffed. You cannot operate a prison day-to-day without staffing. So if you don't have trained, experienced correctional officers to do the job, you're going to pay somebody overtime, time and a half. So it makes much more sense, again, with the profit motive to pay somebody 100 percent rather than 150 percent. And that's not
just good corrections. Go back to the monitoring and
contract and the accountability requirements. Most of
our contracts require that all mandatory posts be
filled every eight-hour shift.

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

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

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

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

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

A couple things, just one on monitoring and one on what Mr. Seiter just said. The research I've done, if you look at the numbers actually I think Alex Busansky circulated to you a draft of an article I'm going to be publishing. If you actually break down the numbers of the research that was done by an independent public policy institute that was commissioned by Congress to look into the profession of private prisons, if you look at their numbers on monitoring, it's actually surprisingly limited. I
can't tell you what all the contracts said in those cases, but if you -- if you break down how many monitors spent how much time in the monitored facilities, it seems to me the numbers are woefully inadequate.

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

On the point Mr. Seiter made about whether or not he has seen people at CCA promoting policies increasing with respect to increased incarceration, there are connections that we could make. Again, I talk about them in my paper. CCA is a member of an organization called ALEC, the American Legislative Exchange Council. And ALEC has got members that are both from the private sector and from public
legislatures. They claim I think about 25 percent of
legislators across the country, state and federal, as
part of their membership, and the way ALEC works is
that it drafts model legislations to be taken back to
legislators, and then the legislators take back to
their legislatures to try to pass.

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

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

The point I'm trying to make is we have
this phenomenon in our criminal justice policy process
which allows organizations and entities that have a
financial interest in increased incarceration to
influence sentencing policy. And I'm merely trying to suggest that to the extent that this is the case -- and I think it's true if you look at the operation of a CCPOA in California and even if you look at communities --

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

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

MR. SMITH: Yeah. I'll try. It's difficult for me. CCPOA, Lance Corcoran was here. There's another CCPOA representative here today. And I really was upset to miss Lance because I like to give him a hard time because of the policies that Professor Dolovich just mentioned. The reason being
is that they are most like the private sector when it
comes to advocating for tough on crime and three
strikes and all that. They're terrible about it.
They've been very professional in many ways.

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

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

However, if you look at some of the
handouts I gave you, the escapes handouts. Professor
Seiter talked about safety, and the numbers that
you're looking at there, like thirty times as many
from private facilities. I first became drawn to this
when, I don't know, about nine or eleven prisoners ran
off from a CCA van in Minneapolis. One was a
murderer. He wound up getting caught at a bus station in Chicago after taking a family hostage. I called Freddie up and said how is this happening? She said there's no controls over it. She's right.

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

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

What you have is turnover. You have people working two jobs. They're exhausted when they come to work. They lose that alertness you need to be -- a correctional officer, a guard. You've got to be on the ball on that stuff, and you can't get it when people have to work two jobs.
And when they have 52 percent turnover a year, they go through a training, that's right, much less than the public, substantially less than the public sector, but the training to make 52 percent a year, it's like everybody is in the first grade, and the sergeants are the ones that last until the second grade. And we have what do you call it, mandatory promotions, whatever you call it, in educational systems. You know, it's absolutely -- there's no professionalism in that system and professionalism, the little that exist, is not rewarded.

MR. SCHWARZ: Gary Maynard.

MR. MAYNARD: Yes. Thank you.

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

MS. DOLOVICH: I guess what I'm struck by, and as I sit here I know you have a hard job in terms of what you can recommend and what is viable and possible, but what I'm struck by in looking at private prisons and the way that the phenomena in the private sector and also present in the public sector is it
does seem to come down to money in a lot of cases. So
I'm troubled as much, like I said, by subcontracting
for healthcare in order to save the states money on
the costs of healthcare as I am just the contracting
of the whole prison.

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

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

So just to reiterate, I'm not sure the
right approach is to look for middle ground as much as
it is to think about the role that financing plays in
the construction of the prisons, and the way that
inadequate funding can undermine safe -- safety in the
prisons. I'm not sure if that's -- if that answers
your question.

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

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

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

So it seems to me that we want both strict
requirements and frequent inspections and oversight,
right? We want both of those things, and that's
monitoring. I think that the way the courts have
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.
MS. SCHLANGER: So this is I think really a question for Mr. Seiter. So we've been hearing about the risks of privatization, the risk especially of the cost shaving and almost antiprofessionalism if I'm characterizing what Mr. Smith is saying. So I guess I have two questions really.

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

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

MR. SEITER: I think the benefits are many, and it's kind of the crux of the partnership issue that I talked about in my opening comments and I talked about in my written testimony, that it depends on what challenges are being faced by the public sector. That they cannot meet either today,
immediately, or perhaps -- in some cases that's capacity. Their system is expanding for whatever reason and for whatever cause, and they either do not have the dollars to expand, or they can't do it fast enough. So the private sector can come in and no question can build capacity quicker than the public sector and can expand using capital, using loans, whatever that the public sector may not be able to create in a very short time frame. That can be long term or in some cases it's temporary.

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

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

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

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

So I think, one, it can deal with overcrowding in a timely fashion that I think this commission and all the witnesses that have testified is a serious threat to safety. It can enhance both the number and quality of inmate programming that is in my opinion extremely important to the safety and secure -- safe and secure operation of any prisons,
and it can provide any kind of special services that
are necessary that a state just can't provide on their
own.

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

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

I don't know what those would be beyond
those that we've been using, and they are not
satisfactory for any of us to say this is an
acceptable measure that we all agree on. This
shows this facility is an excellent facility that's
providing the kind of environment that we want to put incarcerated offenders into that helps better prepare them to return as law-abiding citizens.

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

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

My experience in talking in the prisoner fellowships field is -- and this puzzled me when I
first heard it. I've asked and it continues to be that as a whole, not entirely but as a whole, the private prisons are more open to programming of volunteers coming in, they facilitate it more, they accommodate it more, they encourage it more, they seek out those programs, and somebody that I've known for a number of years did some work for a private prison company. I said why is that? That's puzzling to me. Why would they in contrast to government facilities seek this out?

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

Now, everybody I know inside a private prison complains about the food. Everybody inside a public prison complains about the food. Everybody I've known in the military complains about the food. Every college student in a dorm complains about the food. So I think institutional food is the problem here. That is a common complaint I hear, but I've seen cost shaving occur in public institutions,
consistently the low staff ratios.
So my question to you is sort of the flip side of what Margo asked. Why would we take something that's as important as public safety and the correcting of that behavior and put it in the hands of a system that runs the post office?

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

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

What they did there, they're talking about building quickly. Well, they didn't lay a brick for nine years. But what they did do is they bought off enough legislatures to stop the public sector from laying a single brick. Well, they did for seven
years, and they finally were able to build a small
prison, but that's what you're buying into when you --
MR. NOLAN: What prevented them from
building the prison for those nine years?
MR. SMITH: They're kept legislators, guys
that were bought off.
MR. NOLAN: So the legislature wasn't
allowing them to build it?
MR. SMITH: Yes, but the contributions
flowed directly from the private prison industries and
their associates, contractors and all to the
legislatures, to the senate house floor when they said
this won't go any further. I don't care what the
governor wants, the director of corrections wants, the
other house wants, it's not going anywhere because we
want our court, the 985 million dollar wired bid that
they were looking for that I discovered on a Freedom
of Records Act request. That's serious safety
problems.
So what's happened is you had 825 Alaskan
prisoners in CCA Florence, Arizona that rioted about a
month after I visited the place in 2000 and had been
preceded by a riot in 1998. I mean, you have these
terrible problems of those 825 people, and I just
talked about recidivism. Four got regular visits.
You're talking about programs, that's the worst program imaginable if you're cutting off people from their families, their support systems, their employers, their churches, what --

MR. NOLAN: I totally agree.

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

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

MR. SMITH: Bad mistake. Terrible mistake.

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

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

MR. NOLAN: But by what index is it
magnifying them?

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

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

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

You got crap on one side, Charlie Thomas, the guy who got three million dollars in one crack from CCA. You got Charlie Thomas who got a free trip to Hawaii in the middle of the study that he quotes from the Miranda Institution, from MBT. This instant research on the other side is unfortunately largely bogus, or there's a misreading of legitimate research like the stuff that, you know, they ignore site preparation, and they say it costs much more to build a public than -- you know, when a public institution is built on a huge piece of land with an extensive
site preparation.

And they ignore facts like the public sectored workers have 21 percent retirement benefits and the private sector benefits, the GEO Group in this case, have two and a half percent only if it's matched with a five percent contribution by employees, and only ten percent of the employees contributed. That's -- this is an enormous difference.

MR. NOLAN: Wouldn't that indicate we could deliver more protection for the public for less money?

MR. SMITH: Absolutely not.

MR. NOLAN: Okay. What am I missing here?

MR. SMITH: Well, they're not delivering protection. Look at those escape numbers I showed you. That's hardly protection. When they get out with hepatitis C or drug-resistant tuberculosis or whatever, you had -- your last panel was on the health risks of this. You've got inmate vectors going into these communities, impoverished communities.

MR. NOLAN: But what are the publics doing?

MR. SMITH: They're doing much better across the board. They're doing better.

MS. DOLOVICH: Can I just jump in here? I think this is part of the -- the part where I see the problem with this kind of debate because I agree with
you on two things that you said. One is there's cost
shaving in the public sector, and two is to the
extent -- to the extent that the private sector is
allowing more volunteers into their prisons, it is
likely because they see that this will keep the
prisoners occupied and reduce their overall cost. I
agree with both those things.

Now, what I don't understand is why the
argument then becomes public versus private if the
public sector is looking to shave money and it does it
by not providing drug treatment, you as the commission
and we as citizens can say if you actually want to, A,
help the community, and B, save money, you will invest
in drug treatment.

You will let volunteer organizations into
the prison. You want to provide more programs. You
want to make it possible for prisoners to have more
visits by not siting prisons in upstate New York when
most of your prisoners are from New York City.

So I guess I'm puzzled by why this becomes
a back and forth and not a question of what are the
prisons doing that are compromising the possibility
for safety and, you know, rehabilitation, and what are
they doing that is enhancing those possibilities and
how can we reduce the percent.
MR. NOLAN: I totally agree with you. To me it's an artificial debate. The bottom line is public safety, and we need to look at both and hold them both accountable to do all they can to provide drug treatment, to provide other programs and volunteers that enrich their lives and prepare them for reentry and hold them accountable for the bottom line, which is fewer people harming somebody else and going back to prison. And so to me, I'm puzzled by the debate why there's people so angry that there are private or publics. I say hold them both accountable.

MR. SMITH: I'm for that.

MR. SCHWARZ: The chair and then Commissioner Ryan.

MR. KATZENBACH: I just have some questions really out of ignorance, Mr. Seiter. I want to know a little bit more about the contracts that you make. I want to know what's the length of those contracts, what are the provisions that allow the government to examine? Do they have access to all the documents, all the files? Do they have -- can they visit any time they want to? Can they send anybody they want to wherever they want, that sort of thing?

You speak about liquidated damages. I have no idea whether they're large or small. I'm curious
about that, and I'm curious as to whether they are to be achieved after litigation, or is there any other standard by which they're to be -- that kind of question.

MR. SEITER: Some states and some government agencies do this very well. Other ones probably don't do it as well in terms of how well they draft an RFP and how well they then create a contract. However, by now many states, many government agencies have been in this business for over a decade and they are doing very well. Let me just answer your question in general. And I'd be happy to give you any specifics that you'd like to know.

In terms of the length, it varies anywhere from a year renewable to three years or four years max. to ten or twelve years, and oftentimes that will depend on how much risk the private company is taking in terms of commitment and capital. If you ask us to build an eighty million dollar facility for you, it's going to take a longer term contract.

However, every contract that we have that I'm aware of that I looked at can be terminated for cause defined by the customer within usually ninety days. So if there is a reason that they feel the government -- the contractor is not performing, they
MR. KATZENBACH: It must be difficult to terminate a prison for cause. I mean, you leave, what am I going to do?

MR. SEITER: Well, you know, if there is the kind of abusive discretion and kind of incidents that Frank has described, I can assure you customers would say we're not going to continue to pay you money to do that if you're not providing safety for the citizens of this state.

In terms of the monitoring and examinations, all the contracts require are allow monitors to be -- have total access to the institution 24 hours a day, seven days a week with or without notice. They can walk in at any time unannounced and do any kind of examination that they want to do. The contract requirements will often say you must have at least these levels -- this number of staff.

They will require how many staff you have, this percent of inmates, this many inmates must participate in a certain kind of programs, whether it's education, substance abuse, or whatever. Must be ACA accredited within two years, three years, or whatever, and most of our contracts do require that.

How often they visit, we have institutions
where there are four full-time monitors for every facility, and I think any of you who have operated a facility or hospital, if you can imagine four people looking over your shoulders every day or at least five days a week, that could be very extensive monitoring. There is not much that could be done to not fulfill the requirements of the contract with that. Some have probably as statistics said less than a full-time person, and I don't think we have anywhere where it is less than one person cover two facilities, so they are there at least half of the time. But it's hard in a prison setting to say we're going to hide something from someone. And as I think you said earlier, you're not going to -- when talking about accreditation, you're not going to change that facility totally in a few days when it comes to someone coming in to look at.

In terms of liquidated damages, again, I think the government customers have gotten very sophisticated in terms of if the private sector is interested in a profit motive, we will take that away from you if you do not perform to the point where it is a level that gets the private sector attention. I can tell you in some of our contracts some of the liquidated damages include if a position is not filled
for an eight-hour shift, you give up pay and a half for that position. So you lose money if you do not fill it, and if you do not have a number of -- a certain number of inmates in these kind of educational programs or whatever, you will pay these kinds of damages. So they are certainly sufficient that they -- for a profit-making company get their attention, and many of them do that quite well.

MR. SCHWARZ: We should make the assumption the contracts are public documents.

MR. SEITER: Yes.

MS. DOLOVICH: Can I just add something? I just want to say one quick thing. I think -- Mr. Chairman, I think you're asking exactly the right questions. I would add another question, which is not just what do the contracts say, but to what extent are they -- actually are the provisions acted upon by the state.

So for example, Mr. Seiter says that the state has the opportunity to go in at any time to oversee what the prisons are doing. I think the question to ask is how often is that power exercised? The states have the opportunity to terminate for cause in ninety days. I think the question to be asked is
how often do they in fact do that?

MR. SMITH: I'd like to speak to that, yeah. In his written testimony, Professor Seiter talked about CCA never losing a contract for quality issues. I think CCA has done. Tulsa, they rebid the contract and lost -- the city took it back over, the Tulsa jail. It seemed like they were turning so many people loose that more people were getting loose by accident than by on purpose. They had rapes there. They had all sorts of problems in that contract.

In Youngstown, Ohio it's notorious. Escapes -- at one time there was five or six escaping -- or four or five escapees out of six escapees that went to the fence were murdered. One was picked up in Buffalo, New York. Place was closed down for what, two and a half years. Maybe you have a better memory than I since you have the Ohio experience. Terrified the community. It was shut down for two and a half years.

New Morgan Academy in Pennsylvania, it's a kid's joint. There was signal after signal that there were terrible problems there, and the ACA accredited that place just a couple weeks before they shut it down, before the states shut it down. They had fifteen cases of substantiated physical assault
against these kids and sixteen cases of sexual assault
against these kids, and they're still walking through
the courts with all these cases, all these plaintiffs,
these children that have been abused. Nobody was
watching the store in this place. They have lost the
contracts. New Morgan Academy's closing up, thank
goodness. It will be three years this month.
Alexander Academy in Arkansas had all the
same problems, and they should have been closed three
years ago. So you have these problems without
repercussions. There is not that accountability that
we all desire in the public or the private sector, but
particularly in the private sector when you have these
other mechanisms involved.

When somebody is getting taken care of,
where somebody like in a state where we had
representatives from today they were supposed to have
monitors at a CCA prison, I was told -- I usually get
two sources on my stories that the monitor showed up
maybe one day a month and was drunk.

I have a bunch of reports from Wyoming to
Hawaii that show at the worst time, at the time these
women would be horribly exploited, that the monitors
probably spent a total of about sixteen hours over two
months in this Brush, Colorado prison. It's
disgraceful, what we allow to happen. They're out of
sight and out of mind. I can't write to GRW, which
ran the prison in Brush and say I want to see all your
records. I'm going to go there next week.

I got money to go to the West Coast, and
I'm going to stop on the way to examine all the city's
record, and I'm going to go to Cheyenne, Wyoming to
look at all their records, including on Crowley, and
I'm going to look at Denver's records, the Colorado
state records because I can't afford these FOIA's even
for two bits a page. It runs to a buck and a quarter
they want to charge me at Rush.

They're horrible. They weren't monitored.

Nobody is taking responsibility for that. The
legislature just issued I think an 89-page report on
the failures of the monitoring where you have eleven
monitors in the unit and they spend virtually no time
in the prisons. Virtually none.

They were detailed on other tasks that had
nothing to do with monitoring, and yet the literature
we see say they had two monitors for every 500
prisoners. That would have been five at Crowley, for
instance, and these guys are scared tenants. Thank
you.

MR. RYAN: I grew up in the business when
there was no privatization, from everything to
commissary to food and so forth, and about halfway
through it began to see some privatization in the way
of medical service I think was the first one I ran
across. And at first I was very uncomfortable with
that and over time I became more comfortable with
that.

Then went to food service, commissary, I
suppose looking at maintenance, looking at all kinds
of different areas except for the security edge of
corrections, and I've never been comfortable on a
personal level saying that I wanted to exchange the
security level, the government/public side of the
enterprise for private. That I always felt more
comfortable with the officers that I trained under the
public academy through the oath of the office, through
the accountability process, through that.

And so can you help me understand how I
become comfortable with the private concept of
strictly security element of it, and especially given
what Mr. Smith says about -- unfortunately, my
experience has been a riot in southern California and
a private area that I think it was an INS housing
where the officers there simply left. They walked out
and ran, and I don't know whether that's the truth or
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,
probably many of the jails and some of the Florida jails that had a facility and decided to privatize it. In terms of state prisons there's probably, I'm going to say, maybe five or six.

MR. RYAN: Is it to fair to say that what CCA has done has simply added another facility of some sort and taken over that and there's been an expansion of that? And as a follow-up of that, my experience has been that the private security concept tends to take the minimum security inmates, the folks that are the best of the worst that are out there, and so that what's left -- and my concern is what's left at the public jail or prison are the bad guys.

And I was talking at lunch about the fact that if there was a private entity that came in and took all the best of who I had, those are my people that are in my kitchen service, my lawn service, my maintenance service. They take all of those folks and leave me with the people left over, and if there's a bad guy in that group of some fashion, they will no, I'm sorry, we don't accept him and send him back. I have the same problem in the mental health group. They only want the good mental health people, not the bad mental health people. Is there some truth to that? Do you only take the good guys?
MR. SEITER: That would be desirable. Do you have any good guys? I think historically that was the beginning of the private enterprise in corrections as I recall, and I was like you. I kind of was in that era, and I looked at privatization as why can they -- why do they say they can do this better? Why do they say they can do this less expensively? I think I was director of corrections in Ohio when the first private prison opened, and I was very questionable about whether it could be successful, but of our facilities only a handful are minimum security. We operate many full-service jails where, you know, you're getting everybody just the same as your facility. Three counties in Florida we operate the full service, the only facility. So we get everybody that comes into that jail. Most of our institutions are our state institutions, operate for the states, are medium security.

We meet needs of the customers. Some of the customers are now coming to us and say we don't need any more medium security beds. We need close security beds. Can you convert this facility into a close security institution? So basically we don't say what we want and say we want the cream of the crop. Why would a government agency give us something that
they already can do well and do probably very
cost-efficiently? They ask us to do what they are not
able to do for what their needs are.

MR. BRIGHT: But of course if there were
two owners, a private company wouldn't do it for the
money that it was being paid I guess too, right? I
mean, there's got to be a meeting of the minds in
there somewhere.

MR. SEITER: Absolutely. In most cases,
again, it's RFP. It's competitively bid. If someone
came to us and said can you do this and can you do it
for this amount of money and we said no, we cannot not
do it. And one of my main roles is to question can we
do something in a safe and secure manner, and if we
can't, to tell the company we should not do it for
whatever amount of dollars we get.

MR. BRIGHT: Can I just ask you a couple?
Is it really true that in Kentucky you pay seven
dollars and 61 cents an hour to your employees at one
of the facilities there, and if so, what kind of
people do you get for seven dollars and 61 cents, and
if you toured -- if one of the commissioners or all
the commissioners toured that facility, do you have a
lot of turnover? Do you have some problems, or --

MR. SEITER: Well, let me say I'm not sure
what facility in Kentucky you're referencing, but we have some areas where correctional officer pay is extremely low, probably not unusual for what the state pays at the same -- at the same locations, whatever states we contract with.

Our target is to pay market wage, and when we go in for a new contract we have human resource professionals go in, and their challenge is what should the pay be for an correctional officer, for a nurse, for a social worker, for grievance counselor, whatever so that we can get and keep quality staff.

MR. BRIGHT: Market rate for what, for that community?

MR. SEITER: Yes.

MR. BRIGHT: This is an economically depressed community, there are no jobs here, therefore we can pay people the minimum wage, right? That's market wage based on the community, I guess, right?

MR. SEITER: In the location where we are at, yes. And again, it would not serve us in terms of quality or in terms of being cost-efficient to pay too low a rate. There have been instances where recently I have approved and said we're going to pay more at this institution because the turnover rate is too high, the inexperience -- the level of experience is
not enough, and we need to increase the pay. And when
that is the smart decision both for correctional
reasons and of course for business reasons, if you
want to talk about the profit motive, then you pay
what you need to pay to get and keep good quality
staff.

MR. BRIGHT: Of course, there's also the
benefits. You pay as little in benefits as you
possibly can, right? I mean, that's a good business
practice. Not very good for the employee, but it's
good for CCA, right?

MR. SEITER: Let me correct that myth.
I've been with two federal agencies -- two agencies,
and the percent we calculate for benefits is greater
than one and less than the other, but not much less.

MR. SCHWARZ: So Commissioner Dudley has a
question. I've got one more question, and I think
then we're going to be done except for some closing
comments. Rick.

MR. DUDLEY: Actually, my question is
directed towards you, I think. Based on all of this
discussion and in prior lives of my contracting for
services as commissioner in New York and looking at
other systems has always been at issue. I guess it
always seemed to me that you actually do get what you
So at some level I'm agreeing with you that the discussion is whether, you know, governments are willing to pay either private or public providers for the types of services that they require. It seems to me too that, you know, one of the advantages of public contracting is that at least the state is forced to actually articulate what it is that they think they want and they're willing to pay for in the form of a contract where that's not necessarily so much the case maybe in the public sector where there's funding, but may be less clear articulation of what it is that we think that we actually should be getting for the money that we're paying.

The downside, of course, is who's writing this contract, and do they have any sort of sense of what's really required that we should be demanding in order to provide the kinds of services that we need? I'm wondering if you have any thoughts about that. I want to hear from anybody.

MS. DOLOVICH: On your first point I quite agree with you. I think one of the lessons I take away from this is you get what you pay for. And also incarceration is expensive. So if the state wants to incarcerate, and what we've seen over the last two
decades, the state, for whatever reasons, seems to want to incarcerate. The state has to pay. And that's why I'm as troubled by the idea of subcontracting out for, for example, healthcare as I am by the idea of contracting out the entire prison when the goal is to save the state money on the cost of corrections.

You know, common sense suggests that if you are going to set a contract place at lower than the state is paying because that way the state saves money and then you set up a system where the provider can only profit by spending still less than the contract price, it seems to me it's clear that you are creating an incentive system that is counter to the goals of public safety, safety in prisons, etc.

And I think the same danger exists in the public sector would be a subcontractor, especially healthcare. I hope you take a look at least at the testimony that I gave you. I just have one paragraph describing some of the experiences with correctional medical services, which is just one you probably know, one of a number of for-profit prison health providers, and the track record of the ones that I've looked at is just terrible.

And it stands to reason that the state --
for example, in New York State as you may know they contract out with prison health services, why, because the cost of medical care for the prisoners is soaring. Why, because the number of inmates is soaring. And health care is expensive. But, of course, if the state can't do it, it's likely that prison can't -- outsources can't do it either. So I agree with you on that point.

I think it is a nice point to suggest that there's a value in the state articulating, state officials articulating what it is that is wanted. I think that actually takes us back to a conversation of the earlier panel and some earlier things that we've said. It would be valuable for corrections officials, people who are committed to safe and secure prisons, to craft stand -- you can call it contract, call it standards, call it whatever you will. Requirements that prisons need to satisfy.

I think the exercise is as effective when you are an accreditation organization trying to set standards for prisons or when you were a state official trying to contract out to the private sector. To my mind the benefit that you're describing is not exclusive to the privatization process. It may be something we've learned through this experiment of
privatization that would benefit us even if we, you
know, step away from privatization and stick with the
public.

MR. DUDLEY: For example, when you look at
the health services, you look at those contracts and
you say, well, you know, this is really actually all
they're saying they're trying to buy. You know, and
so that with these other things that are happening,
you know, that are not really in fact covered in the
contract, I mean, it's pretty clear that they've
articulated that that's all they're willing to pay for
it, which creates --

And at least it kind of documents what
we're saying we're willing to do, that one can then be
concerned. I'm not saying that's a good idea. I'm
just saying that seems to be a by-product of this and
gives you a handle to address maybe a larger question,
which is what is our commitment to providing health
services in prisons.

MS. DOLOVICH: Right. Although I will just
draw attention to one danger in the contracting
context, and that is there's a concept in economics
that I've recently learned called incomplete
contracts, right? The idea is there are some things
you can't specify in a contract because you can never
know in advance.

So in the healthcare context you can specify, you know, appropriate treatment in the moment or, you know, appropriate treatment understood at the time of the illness, but that doesn't tell you exactly what protocols should be followed. It doesn't tell you what medications should be prescribed. It doesn't tell you if you -- it leaves a lot of discretion in the hands of the provider, and that creates a danger when the provider has another incentive.

MR. SCHWARZ: I'd like to ask a question that stems from Pat Nolan's observation at the beginning of his dialogue with you that competition is good. I think most people would say in general competition is good. The main worry -- and this is directed to you, Mr. Seiter, but the other two might comment about the potential incentives that the private sector has to exacerbate the overincarceration that everybody thinks is a problem in prisons.

And I wonder if you would agree that it would be appropriate for people in your industry to be barred from or to agree not to make campaign contributions because the corrections directors of the state are not making campaign contributions. They would like to reduce the prison populations.
And second, whether you would agree that it would be fair -- you said you didn't do any lobbying, and then Professor Dolovich said but you belong to a group that does do lobbying and writes laws. Don't you think it would be appropriate for groups like yours in this special situation to agree, as a condition of bidding, that they are not going to do any lobbying that's going to effect the issue of overincarceration?

MR. SEITER: Let me correct what I said. CCA and every private sector industry does lobby, no question about it. But not to -- what I said was I've not known that the company does that to encourage enhancement of any sentencing, and --

MR. SCHWARZ: So you would agree it would be appropriate for your industry to agree that it's not going to lobby at all either directly or indirectly to encourage increased length of sentence or increased number of people being sent to prison?

MR. SEITER: Again, what I would say is that's not in my mind what the public and private sector does.

MR. SCHWARZ: Then you would agree that you shouldn't do it and you wouldn't mind being barred from doing it?
MR. SEITER: I think you -- you know, rationally it would be hard to argue against that, but that's not an area that I am very knowledgeable in, in the sense of CCA and all private sector companies and every company anywhere and government agencies do lobby. When I was a government official I didn't lobby, but I educated. You educate people on why you're doing certain things and what you think is the advantage of what you're doing, and that I think should be separated from the issue of trying to increase the number of people in prisons.

You know, let me just answer it this way. The private sector has a very, very small percent of the number of inmates incarcerated. So they don't necessarily need to say increase that number of inmates in terms of having opportunities to do business.

There are agencies that come to us all the time with new challenges in terms of increased population pressures or border controls for immigration or drug abuse laws that are expanding the Bureau of Prisons population or anything else, and say we need help in terms of dealing with these population.

MR. SCHWARZ: Do either of the two of you
have any comments on that?

MR. SMITH: Yeah.

MR. SCHWARZ: We have to make it brief.

MR. SMITH: Your question wasn't parsed to get the answer you wanted. When they go to -- when a GEO Group and CCA go to ALEC and craft this model legislation and wine and dine legislators or whatever, they are not lobbying. It is not lobbying. When I go -- I went to the state of Kansas this year.

I found myself on the same side of CCA and GEO Group, which I find very amusing. But when I went there I spent over a hundred dollars on postage, so I had to register as a lobbyist. Is that lobbying? It triggers the Kansas statute. I went to about 114 dollars and had to spent another fifty bucks to register. Yes.

I would like to say a couple very, very quick things if you'd indulge me in answer to Dr. Dudley's questions. I have two things here. I gave you one, I think. I'll give it to Ms. Dolovich about fraudulent records, about bogus records. It's from a wonderful series in Wilmington. This is Sunday's article, but it is about the nonprovision of medical care. There has been lots of cases about this, about -- just like HMOs, the determination to
lower cost at the expense of the patients. It's very important.

As far as the ACA is concerned, my biggest problem with them is they take so much money from the private industry. You can take the -- I get Corrections magazine. You can take and shake it, and it's like getting AARP magazine on state of insurance things falling out of the magazine. It's, you know, sponsorships and GEO Group and CSC and Cornell. It's packed with not only advertising, but the conferences are all sponsored by these groups. So the ACA -- PCI thinks that it's wrong to the private industry, and it has to separate itself from that industry if it's going to maintain some integrity. That's just my opinion.

MR. DUDLEY: I'm not saying I don't think there's been problems with private medical care. That's very clear, but I guess what I'm saying is what it seems equally clear to me is that the services that they are being provided were the services that were being requested and paid for.

MS. DOLOVICH: I would just say, Mr. Schwarz, to your comment, I would agree with you this is a really troubling issue. I would just emphasize that I think it is a larger phenomenon. I
think the worry extends beyond just the private sector. The truth is I don't know what to do with that worry, but I think it exists.

MR. SCHWARZ: Okay. So thank you all very much, you three. Our wonderful executive director, Alex Busansky, asked me to make some general comments in closing, which are first, on behalf of all of us, all the commissioners to thank everybody who's testified here in St. Louis. All who have spoken helped us understand the men and women who work in the system, the real challenges of the job, and what's at stake for everyone.

All who testified described serious problems, and helped think of solutions. And as the co-chair, Mr. Katzenbach, said yesterday, in many ways the combined testimony helped point out things in which we all agree.

Our wonderful staff will capture highlights from this hearing in a brief summary document next week, and later in the month they'll publish a transcript of the entire proceedings. Anybody who signed up to receive updates, and we hope you have, the staff will E-mail that summary to you and alert you when the transcript is ready. Otherwise, you people can find the materials on the website, which is
www.prisoncommission.org.

This is our third public hearing. We're now more than halfway through our inquiry. We will be gathering in Los Angeles for a fourth and final hearing in February. At that hearing we'll explore in-depth any issue that arose this time and many other issues. We're going to explore the issue of oversight. We'd love to see people in L.A.

So thanks again for coming, and this concludes the hearing. And in just 25 minutes or so the Honorable Commissioner, Mr. Bright, is going to be presenting a discussion on the death penalty and poverty and so forth and so on.

(The proceedings were concluded at 3:22 p.m.)
CERTIFICATE OF REPORTER

STATE OF MISSOURI )
       ) ss.
CITY OF ST. LOUIS )

I, William L. DeVries, a Certified Court
Reporter (MO), Certified Shorthand Reporter (IL),
Registered Diplomate Reporter, Certified Realtime
Reporter, and a Notary Public within and for the State
of Missouri, do hereby certify that the meeting
aforementioned was held on the time and in the place
previously described.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal.

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Notary Public within and for
the State of Missouri