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

DATE: February 8, 2006
TIME: 9:00 a.m. to 4:19 p.m.
PLACE: St. Robert's Auditorium
Loyola Marymount University
Los Angeles, California
BEFORE: Susan A. Sullivan
California CSR No. 3522

Volume I
Pages 1 - 245

1 COMMISSION MEMBERS:
 2 The Honorable John J. Gibbons (Co-Chair)
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1 Los Angeles, California: Wednesday, February 8, 2006
 2 9:00 a.m.
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4
 5 JUDGE GIBBONS: Good morning.
 6 Professor Levenson.

7 MS. LEVENSON: Thank you, your Honor.
 8 Good morning, Commissioners, ladies and
 9 gentlemen. My name is Laurie Levenson. I'm a
 10 Professor of Law and the Director for the Center of
 11 Ethical Advocacy at Loyola Law School, and it is my
 12 privilege to welcome the commission on behalf of the
 13 entire Loyola Marymount University community. We are
 14 indeed proud to host you for the important work you
 15 do.

16 This is a university that is committed to
 17 social justice and we share your concerns about the
 18 conditions of our prison system. In fact, these
 19 hearings could not be timelier; this past week 2,000
 20 inmates in our California jails here in Los Angeles
 21 County rioting, leaving one man dead and scores
 22 injured. Our sheriff has called an emergency
 23 situation and segregated the inmates, something the
 24 Supreme Court decided last year should not be done
 25 except for an emergency circumstances. Well, indeed

1 it seems like almost every day it is an emergency
 2 circumstance given the condition of our prisons.
 3 These riots and the abuses are only the tip of the
 4 iceberg for prisons throughout the nation.
 5 Loyola Marymount University firmly believes
 6 in a commitment to all our fellow human beings.
 7 Before these hearings I had an opportunity to talk to
 8 Commissioner Green and as he so aptly put it, all
 9 people have value, including those who are sitting in
 10 our prison institutions. This is especially
 11 important when we recognize that one out of every
 12 three young African-American men in our country is in
 13 our criminal justice system. This issue takes on new
 14 importance. We indeed recognize the enormity of the
 15 task, your task.

16 There are 2.2 million people incarcerated
 17 in American prisons, 13.5 million spend some time in
 18 jail, the financial investment is 60 billion,
 19 although that's probably not nearly enough.
 20 California alone has 33 state prisons and 40 camps.
 21 We are the third largest penal system in the country.
 22 Our budget is 7.4 billion, with a B, and our prison
 23 population is approaching 200,000, yet some of our
 24 institutions, San Quentin and Folsom, opened in the
 25 1800s. San Quentin opened in 1852 and Folsom in

1 1880. And, of course, it is not just the condition
2 of the physical facilities that poses a challenge, it
3 is the hiring, training and policies for those who
4 work in the institutions and those who make policies
5 regarding them. It is critical that we have the type
6 of examination you are providing; oversight and, most
7 importantly, reform.

8 Last year our governor declared our prison
9 system as, quote, "dysfunctional" and called for a
10 major rehaul in our criminal justice system. Through
11 the work of your commission, we hope that our state
12 will be able to do that, as well as prisons
13 throughout the country.

14 I know that you have assembled the best of
15 the best for the task. It has been my honor to work
16 with Commissioner Judge John Gibbons when I was a
17 clerk for the Third Circuit. I experienced firsthand
18 his dedication and expertise in everything that he
19 touches, and I know that the other commissioners also
20 bring those types of qualifications.

21 While we work here we will lend you some of
22 our best and brightest, including Merrick Bobb, our
23 court-appointed monitor for the L.A. County Sheriff's
24 Department, and they, of course, will be joined by
25 experts from around the world.

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1 I want to simply thank you for honoring us
2 by allowing us to host this commission and your work.
3 With all the people incarcerated in America, who do
4 not have a voice but have a stake, we all have a
5 stake through our community in what happens in our
6 institution, in the human dignity, in the lives, and
7 the safety and the future.

8 On behalf of President Robert Lawton and
9 the entire university, we thank you for your work and
10 we welcome you, welcome to Loyola University.

11 JUDGE GIBBONS: Thank you, Professor
12 Levenson.

13 And good morning, everyone. I'm John
14 Gibbons, the co-chair of the Commission on Safety and
15 Abuse in America's Prisons, and I welcome you to the
16 commission's hearing and express our thanks to Loyola
17 Marymount University for hosting us and to Professor
18 Levenson for welcoming us.

19 We're a national commission looking across
20 the country at both problems and potential solutions,
21 and it is fortunate that we are here in the enormous
22 State of California where people managing penal
23 institutions are grappling with enormous, tough
24 problems. This is the commission's fourth and final
25 hearing and the focus of our work over the next two

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1 days is on oversight and accountability.

2 As my friend and co-chair of the
3 commission, former Attorney General Nicholas
4 Katzenbach, said recently, "The questions 'Who is
5 watching' and 'Who is responsible' underlie
6 everything else this commission has discussed since
7 we began our work last March." They are the
8 beginning and end of dealing with all of the problems
9 we have examined. Nick would tell you that himself
10 if he were here, but an illness in his family at the
11 last minute prevented him from making the trip to Los
12 Angeles.

13 Let me tell you just a little bit about
14 what we're going to hear today and tomorrow. There
15 will be a great deal of conversation about what
16 correctional systems are doing to overcome or to,
17 rather, to oversee their own institutions beginning
18 in just a few minutes with testimony by Roderick
19 Hickman, Secretary of the California Department of
20 Corrections and Rehabilitation. Over the course of
21 the hearing you will hear from several other senior
22 corrections administrators. You will also hear from
23 individuals who are overseeing corrections from the
24 outside, from California's Inspector General Matthew
25 Cate to Judge Myron Thompson, who serves on the

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1 United States District Court for the Middle District
2 of Alabama, and there will be moments over the next
3 two days when "ultimately at stake" will become
4 crystal clear.

5 I'm thinking particularly of Victoria
6 Wright who later this morning will tell you about her
7 husband of 33 years, Jay, who was convicted of a
8 white collar crime and died last August in a
9 California state prison just three months into his
10 sentence, perhaps because he did not receive the
11 medication he needed. I'm also thinking of the
12 troubling events of this past weekend in two jails
13 here in Los Angeles of which Professor Levenson spoke
14 about.

15 We should all remember that prison walls
16 don't separate the incarcerated from society. Every
17 corrections officer goes home at the end of the
18 shift, nearly all prisoners are released at some
19 point, and we hear this morning that even prison
20 gangs are not just a prison problem. Gang activity
21 inside the jails and prisons both feeds off and fuels
22 gang violence in the community.

23 This should be a fascinating hearing, and
24 now we will hear from Secretary Hickman.

25 MR. HICKMAN: Good morning and welcome

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1 to California. I hope this meeting will be
2 productive and informative for the commission.

3 I'm very grateful to have the opportunity
4 to address this group today. Quite frankly, no one
5 denies that violence occurs in prisons and jails in
6 this country. As you alluded to earlier, just
7 looking at this past week in newspapers here in Los
8 Angeles, you can see there is a very serious issue in
9 this country. In an ideal world we can eliminate
10 violence in prisons and jails but just as we
11 acknowledge that it is not possible to eliminate
12 crime in society, it is not possible to completely
13 eliminate violence in prisons. By the very nature of
14 prisons, many of the environments and circumstances
15 and offenders that are sent to prison have a greater
16 tendency to be violent than most of the general
17 public. Therefore, it is the responsibility of the
18 people like myself and those of us who run the
19 prisons and detention facilities to ensure violence
20 is kept at a minimum.

21 What allows us to minimize violence is an
22 understanding of how often violate acts occur, where
23 they occur, and why. It is important to acknowledge
24 that stories about isolated incidents have limited
25 value when it comes to managing the entire facility

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1 or the entire correctional system. The California
2 Department of Corrections and Rehabilitation has had
3 some difficulties relating to staff to offender
4 violence in the past.

5 Take the Madrid case out of Pelican Bay
6 State Prison. In January of 1995 the federal court
7 concluded that, among other things, the use of force
8 against prisoners of Pelican Bay violated the
9 prisoners' constitutional rights. The courts ordered
10 California to remedy the problem and appointed a
11 special master, John Hegar, to monitor the
12 implementation and compliance with a remedial plan.

13 In 2001 the court concluded that the use of
14 force policy in California, the application of that
15 policy, the training and evaluation and executive
16 monitoring of that policy, was constitutionally
17 sufficient.

18 It is important to acknowledge that Pelican
19 Bay is not representative of a typical state prison.
20 In the classification process of prisoners in
21 California, Pelican Bay is a security housing
22 unit is essentially, as defined in other parts of
23 country, a super maximum-security prison. Its prison
24 population is comprised of some of the most difficult
25 to manage prisoners that we have in the California

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1 penal system.

2 However, as a result of the systemic
3 problems with investigations in California and
4 employee discipline identified by the Madrid special
5 master in April of 2005, the California Department of
6 Corrections and Rehabilitation implemented statewide
7 employee disciplinary measures and revised our
8 discipline procedures and investigative processes
9 which I imagine Matt Cate will talk about when he is
10 here in his oversight role.

11 Also in 2005 we implemented ethics and code
12 of silence training for all employees in California.
13 The training outlines our expectations regarding
14 employee behavior, performance standards, and a
15 requirement that in the culture of corrections staff
16 come forward and report.

17 The Bureau of Independent Review which is
18 in the Office the Inspector General was created to
19 provide an external process and realtime oversight of
20 investigations in employee discipline in California.
21 The court recognized our efforts to the point where
22 Judge Henderson has acknowledged the cooperation and
23 support of this administration and very well, very
24 soon, I believe, and this is one of the dangerous
25 things you do as secretary, predict the future, I

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1 believe that he is going to report very positively
2 about the Department of Corrections role in that and
3 move towards eliminating all oversight from the
4 federal court and move into the oversight of the
5 process that rests now with the Inspector General's
6 Office.

7 So despite our history in California, I
8 urge the commission not to generalize that past and
9 to presume that it is the same everywhere else. We
10 have significant challenges in California. As
11 Michael Jacobson, the Director of the Vera Institute,
12 has observed, California somewhat skews its
13 statistics. Despite the numerous challenges facing
14 us in Pelican Bay and elsewhere, as well as the
15 complexity of reorganizing the largest correctional
16 system and the largest organization in California, we
17 have made progress in cutting violence in our
18 prisons. Violence in the state prisons in California
19 is an ongoing issue. In 2004 there were 7,170
20 incidents of offender-on-offender violence in
21 California in the adult system. While there's no
22 hard data available concerning the causes of that
23 violence, the following are some of the most commonly
24 recognized, contributing factors to that.

25 Overcrowding in California is a significant
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1 contributing factor. In our juvenile justice arena,
2 even though our population is not as significant, the
3 staff-offender ward ratio and patterns do not allow
4 the staff the time that we believe is necessary to
5 interact with youth and to provide direct
6 supervision, instructional activities which we
7 believe would reduce violence and cut down on
8 provocative and potentially volatile situations.

9 As you alluded to earlier in your opening
10 comments, prison gangs, street gangs and security
11 threat groups are an issue; the introduction of
12 alcohol and substance abuse. And, of course, as you
13 talked about in Los Angeles, you can't ignore and we
14 have to be able to be big enough to talk about race
15 and the issue of race in prisons in this country.
16 Those are some of the contributing factors that lead
17 to institutional violence.

18 There's a cultural issue and a code of
19 ethics that we have to talk about within the systems
20 of California. As you alluded to, one of the things
21 that I do as a secretary on an ongoing basis is work
22 very, very diligently with my staff so that they
23 understand that their culture, their ethics, their
24 values are one of the most important things they
25 bring with them each and every day that they walk in

1 the prisons of California and supervise offenders,
2 and that we have a responsibility to provide
3 direction and model social behavior to the offender
4 in our charge and not to move into another code of
5 ethics as a result of your environment that you work
6 in. Mental illness is a significant issue in
7 California, as is sexual misconduct.

8 We recognize that inmate and staff safety
9 is a top priority to us and we are working towards
10 developing evidence-based mechanisms and programs
11 that can address that. Some of the things that we
12 have done in our department to reduce, and we hope to
13 see the results soon, is we have started changing our
14 classification system to classify people differently
15 to improve upon safety. We have looked at pilot
16 programs that can allow for step-down and
17 programmatic changes in the areas of security housing
18 units where people are coming out of lockup
19 environments and moving into the general population.
20 We're working towards racially integrating and moving
21 toward a policy that will have us racially integrated
22 in our reception centers as people come in.

23 I had a chance to talk to Sheriff Baca this
24 weekend about the significant number of prisoners
25 that come from Los Angeles County into the California

1 system and how one of the most important things I
2 think we can do across the country and within the
3 state is to have better communication and better
4 understanding from a programmatic standpoint in
5 California on what we're doing when people come into
6 the system and what we're doing with communities when
7 people go out of the system. We have pilot programs
8 in San Diego to do just that, to talk about that
9 process upon receipt into the institution and talk
10 about that process and the community's responsibility
11 upon return. So there are numerous things that we're
12 doing in California that I think are systemic and can
13 be used as a model. The model that we currently have
14 in California is not the model that we want to leave;
15 the situation that we currently have in California is
16 not the situation that we want to maintain. I think
17 that Governor Schwarzenegger has made it very clear
18 in his direction to me that corrections are supposed
19 to correct and we have a responsibility to improve
20 upon the services that we provide here in California.

21 So with that I welcome you here, I thank
22 you for taking the time to look into a very sensitive
23 issue, I ask you for objectivity, and I ask you for
24 an opportunity to continue to participate in the
25 process as you go forward. So thank you very much

1 and welcome to California.

2 JUDGE GIBBONS: Thank you.

3 MR. HICKMAN: Any questions?

4 JUDGE GIBBONS: Do members of the
5 commission have any questions of Mr. Hickman?

6 MR. HICKMAN: Good. Thank you very much.

7 JUDGE GIBBONS: Our first panel of this
8 hearing will offer three personal accounts. On
9 behalf of the commission, I'm pleased to introduce
10 our witnesses.

11 Mr. Pernell Brown is a reentry and gang
12 specialist in Portland, Oregon. As a former member
13 of the Bloods and having served seven years in
14 prison, Mr. Brown will provide his personal
15 observations on the link between gangs, drugs and
16 violence in the prisons and what assistance
17 intervention from both corrections and community can
18 help to break this link.

19 Mr. Gary Johnson was the Executive Director
20 of the Texas Department of Criminal Justice until his
21 retirement in 2004. Mr. Johnson will discuss how
22 federal oversight of the state's prison system over a
23 30-year period affected his work as he rose through
24 the ranks from corrections officer, to warden, to
25 executive director, and what impact it had on the

1 department's practices.
2 Mrs. Victoria Wright, who was married for
3 33 years to Jay Wright who was convicted in 2005 of a
4 white collar crime and sentenced to three years in
5 California's prison system. Mrs. Wright will
6 describe what led to the death in just three months
7 into his sentence and the efforts she had to
8 undertake to bring his full story to light.

9 These personal accounts will set the stage
10 for the panels which will follow today and tomorrow
11 giving context to the issues of oversight,
12 transparency, accountability and understanding
13 violence that we hope to address during this hearing.
14 I would like to extend my very sincere thanks and
15 appreciation to the members of our panel for their
16 willingness to take time out from their lives to
17 share their personal stories with us.

18 We would like to begin with Mr. Brown.

19 MR. BROWN: Hi. My name is Pernell
20 Brown and I'm a former member of the Bloods as
21 Honorable John Gibbons was saying.

22 I was convicted of assault with a deadly
23 weapon in 1989; 10 years with a five-year minimum. I
24 did seven years out of that 10-year sentence. I was
25 convicted of assaulting a Crips gang member. And

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1 there's a guy that killed a friend of mine that was a
2 Crip from the Rolling Thirties out here in L.A. and I
3 got retaliation behind that.

4 During my early stay in prison I had a
5 gangster mentality whereas there was no need for
6 school, there was no need for any type of
7 rehabilitation to crack my thinking, it was all about
8 me surviving inside the prison system. I had three
9 older brothers inside the prison system and so I was
10 just -- I was banged out, there was -- nothing else
11 mattered. I lost my mom. I didn't say that in here,
12 but during my stay my first year there my mom passed
13 of cancer and that right there was enough to send me
14 over the edge.

15 I done a lot of time in isolation for my
16 behavior inside the prison system. Then when I got
17 out, it was all about learning the prison system, how
18 I can manipulate the prison system, and who and what
19 I could get away with. Drugs was the number one
20 thing that I learned inside the prison system. Then
21 after they took to tobacco, drugs didn't have that
22 much affect, then the tobacco did, because everybody
23 needed tobacco and so tobacco became a way of
24 survival, it became a way of making money inside the
25 prison system, and it is still is right now today.

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1 I was one of the guys that was known for
2 fighting a lot, known for -- I was more of a leader
3 type of guy because I had older brothers inside there
4 that put me on and me being the person I was, I was
5 quick to fight, I was more of a leader, and when new
6 guys came in it was a breeding ground for new guys,
7 especially younger guys, 18, 19, coming through the
8 prison system, being remanded from juvenile to adult,
9 who was looking for some identity. And being the
10 gang member that I was, I gave them some identity,
11 you know, and just put them on, you know. What I
12 mean by put them on, you down with this right here
13 and this is your job, this is what you have to do,
14 you know.

15 And I have got a scar above my left eye
16 right here where I got into -- it was almost like a
17 race riot with the White Supremacy, it was just me
18 and him, and everybody who knew what was going down
19 was isolated in this incident. And after that
20 incident right there I had to prove myself with the
21 White Supremacy is that we ain't going for this, you
22 know, because in Oregon a lot of White Supremacy runs
23 quite a bit of stuff out there but once you establish
24 yourself and your position, there is a difference.
25 It is all about survival inside the prison system

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1 and my job was to look out for my crew, to lead my
2 crew, you know, and hook up with the people that can
3 make it happen, you know.

4 The prison system is corrupt, there's no
5 secret about that. I had guards bringing me in
6 tobacco, you know, making things happen, and it is
7 still going on right now today, and you can spend
8 \$300 on tobacco and make 3,500. I mean, that's a
9 month's salary right there as a corrections officer,
10 you know. So once the tobacco was eliminated, it was
11 just an open market for almost everybody that wanted
12 to get involved.

13 After serving three years of my sentence
14 inside the prison system I got into the Nation of
15 Islam where it opened up my eyes about certain
16 things, you know, and a lot of talking about how the
17 system did this and how the system did that, but we
18 did it to ourselves. It wasn't the white man this,
19 the white man that, because we were killing each
20 other at a large rate. Black-on-black crime was what
21 it was, you know. And by me learning the struggle,
22 learning who I am and learning what I was, opened up
23 my eyes to a whole lot of different things, you know,
24 about my identity, about who I am, about my
25 ancestors, what they did to get me to where I am

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1 today, you know. And once that light came on, it was
 2 hard to turn it off. And I had a different vision
 3 from their own about being a gangster, you know,
 4 because it didn't take much to be a gangster once I
 5 figured out what it took to be a gangster. I mean, a
 6 three-year-old, a four-year-old can be a gangster,
 7 can be a gang member, but to be able to walk away and
 8 to be able to do different things and be responsible
 9 in today's society, it takes a man to do that. And
 10 my father neglected me when I was younger and so I
 11 just jumped on board with my brothers about the stuff
 12 that they were doing and I thought that was the way
 13 that things was supposed to be done, but little did I
 14 know was that that wasn't the way society worked and
 15 it took some older guys inside the prison system to
 16 really teach me some of the things my father didn't
 17 teach me, you know. And I remember him saying that
 18 "You can't become a man until you've held one's
 19 hand," and those brothers inside the prison system
 20 coached me along to be a better person.

21 I'm an ex-drug addict. I got hooked on
 22 drugs inside the prison system, you know, and talked
 23 about -- I never knew anything about N.A. or A.A. or
 24 any of that stuff so when I got out of prison, I had
 25 a drug habit when I was released from prison that I

1 never had before. I got hooked on drugs inside of
 2 prison, and getting out of prison and to be able to
 3 cope with that addiction, that's why I'm wearing this
 4 chain around my neck, is the day I got clean, the day
 5 I stopped drinking and all of that, you know.

6 And right now today I have two sons in
 7 college, one just turned pro, he play in the National
 8 Soccer League; I have one finishing up his degree in
 9 Portland at the university, and I have two daughters,
 10 and I am the proud grandfather of five grandchildren
 11 who I have custody over, me and my wife. You know,
 12 it has been a battle and it has been a struggle, but
 13 it is nothing compared to where I came from and where
 14 I'm at.

15 I now work inside the prison system as a
 16 drug and alcohol counselor, the same prison that I
 17 did the seven years at, and for me to go back inside
 18 there, and some of the guards that still work there,
 19 some is cool with it, some is not, that's not my
 20 problem. My job is to go in and do a job because I
 21 have a mortgage too, you know, and that's what I do.

22 Also I'm a gang outreach worker where I am
 23 now dealing with two guys. One guy just beat a
 24 murder case and he got caught with a gun with a
 25 silencer on and he is on my caseload, and there was a

1 good friend of mine whose son was involved in that,
 2 he had a gun on him too and they were in the same
 3 gang, so I'm working with the court with these guys.

4 I work hand in hand with the guy I spoke
 5 about earlier who shot and killed, murdered a good
 6 friend of mine, and the guy that I assaulted was also
 7 a friend of his. Me and him work, our desk is right
 8 next to each other; is he an ex-Crip, I'm an
 9 ex-Blood, and we work hand in hand with these guys
 10 and whenever we get up and talk about some of the
 11 things that we did and where we at right now today,
 12 they talk about, well, how can you guys get along.
 13 We focus on similarities, not differences, and Carl
 14 Rucker is his name and he is a good friend of mine
 15 and we do panels around Portland to all the high
 16 schools around and it is just a hell of a job for me
 17 to have a friend like him; to be able to set aside
 18 our differences, and a lot of people that know us
 19 inside that community know where we come from and
 20 know some of the things that we have done and to keep
 21 these youngsters' focus on new things.

22 They're not being taught some of the stuff
 23 we teach them. We teach them about building credit,
 24 about keeping a clean record, not having felonies,
 25 something that we don't have, but it don't stop us

1 from getting to where we need to go. It is our
 2 obligated duty and job to inform these youngsters
 3 about having good credit, about how to build equity,
 4 about how to rent a home, how to own a home, you
 5 know, because the prices are steady going up and if
 6 we don't teach these guys how to rent a home, how to
 7 own a home, they will be renters for the rest their
 8 lives. So thank you.

9 JUDGE GIBBONS: Mr. Brown, were there
 10 times when gangs or gang leaders inside the
 11 institutions worked to maintain order in the prison?

12 MR. BROWN: Yes. Especially with the
 13 youngsters that's coming in. You have to put a tight
 14 leash on some of the youngsters because there are
 15 certain rules and regulations that even inside prison
 16 that must go on and most of the leaders do have to
 17 maintain some of these youngsters that's inside
 18 there.

19 JUDGE GIBBONS: Does that suggest that
 20 sometimes prison administrators or administrations
 21 encouraged or tolerated gangs?

22 MR. BROWN: Well, the administration
 23 can only do what they can do and gangs will always be
 24 there regardless; in the institution, out of the
 25 institution, there's only so much that the staff can

1 do. Because I know the staff's number one goal is
2 safety and prisoners are violent and that's just no
3 secret and so the administration -- once it is going
4 down, it is going down, there's nothing that the
5 administration can do really about it. They can lock
6 us up, put us in a hole or whatever, but once it is
7 going down, it is going down.

8 JUDGE GIBBONS: What recommendations
9 would you give to correctional administrators or
10 staff to help reduce gang-related violence in the
11 prison or jail facilities?

12 MR. BROWN: Open up programs like the
13 there's a program we have called Going Home or Going
14 Home Program that we implement and it is just for the
15 STGs, the serious threat groups, and we have focus
16 on, we have Bloods, Crips, Arsenios, Serenials,
17 Skinheads all in one group and we focus on
18 similarities and not differences and we teach them
19 the importance of going home instead of getting out.
20 Getting out is just a function of getting in. Going
21 home is you are going home to stay with your family.
22 So we need more programs that work with all of them
23 together and not separate.

24 JUDGE GIBBONS: You mentioned that some
25 corrections officers were not models of good social
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1 behavior and may be as crooked as some of the
2 prisoners. Would you elaborate on that.

3 MR. BROWN: Well, the prison system is
4 getting younger and younger and so is the staff. The
5 staff is getting younger too. And once you have been
6 inside a prison for so long you become an inmate
7 because your whole -- you are doing time with
8 everybody else, you know. You are a prisoner
9 yourself inside there. You've got 30 years inside
10 the prison system, I mean, you have seen them come,
11 you have seen them go, you have seen them come back,
12 and there's corruption everywhere. Not all but some,
13 you know.

14 JUDGE GIBBONS: Do other commissioners
15 have questions?

16 MS. ROBINSON: Mr. Brown, I'm not sure
17 I understand. Are you saying that you think gangs
18 are inevitable in every prison? Because we certainly
19 see many prisons where there are not gangs; prisons
20 that hold -- that are maximum security, that are
21 well-managed where there are not gangs, so I'm not
22 sure I understand your point on some of that.

23 MR. BROWN: Say it again? What's your
24 question?

25 MS. ROBINSON: I'm sorry.
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1 I thought I understood you to say that
2 gangs are inevitable in prisons. Did you say that?

3 MR. BROWN: I'm not sure.

4 MS. ROBINSON: Do you think that gangs
5 are inevitable to occur in prisons? I heard some of
6 your testimony to say that they're always going to
7 happen.

8 MR. BROWN: The violence inside
9 prisons?

10 MS. ROBINSON: That gangs will always
11 occur.

12 MR. BROWN: Gangs will always occur,
13 yes.

14 MS. ROBINSON: Then why do we see many
15 prisons where gangs are not occurring?

16 MR. BROWN: A lot of prisons are
17 minimum-security prisons.

18 MS. ROBINSON: No, I'm talking about
19 maximum-security prisons where gangs are not
20 occurring.

21 MR. BROWN: Well, all the prisons I
22 have been into, there are gangs everywhere,
23 especially in L.A. There's going to always be gangs
24 inside of prisons, outside of prisons, and there will
25 always be violence.

1 MS. ROBINSON: Well, I'm talking about
2 prisons in other states. Thank you.

3 JUDGE GIBBONS: Our next witness is
4 Gary Johnson, a career employee of the Texas
5 Department of Criminal Justice, advancing from
6 corrections officer to executive director during a
7 time when the Texas system was under federal
8 oversight.

9 Mr. Johnson.

10 MR. JOHNSON: Thank you. Thank you for
11 the invitation to come speak to you this morning.

12 In 1972 an inmate named David Ruiz filed a
13 handwritten complaint with the federal court in Texas
14 and that complaint eventually became a class action
15 lawsuit known as the Ruiz case. That case was filed
16 before I ever put on the uniform in 1973. And when I
17 became the executive director in 2001, about a year
18 later, after much work had been done on this for
19 three decades, the court of jurisdiction was
20 terminated in June of 2002.

21 As a result of that lawsuit which impacted
22 virtually all operations in the Texas, at the time
23 the Texas Department of Corrections; health care,
24 staffing, law library access, inmates exerting
25 authority over other inmates, capacities, standards,

1 infrastructure. You name it, it was impacted.
2 When the court ruled in 1978 for the first
3 time and found the Texas Department of Corrections
4 did have unconstitutional conditions, a special
5 master was appointed, Vince Nathan, and for many
6 years Texas was subjected to quite stringent external
7 oversight provided by the courts.

8 Now when I first went to work for the
9 department back in 1973 the department was -- any
10 kind of oversight was alien to the department. And
11 over three decades from various different
12 perspectives and angles, because I took a somewhat
13 non-traditional route from correctional officer to
14 executive director, I watched the system evolve from
15 one where oversight was alien, to where oversight
16 actually became somewhat systemic and even
17 institutionalized, just a way of doing business. No
18 doubt that that began with the Ruiz case and external
19 oversight. The tensions and pressures that were
20 brought to bear by the external oversight was a
21 catalyst for the creation of an internal oversight
22 system in the eighties, and today there are a number
23 of very strong internal mechanisms within the Texas
24 Department of Criminal Justice to provide oversight.

25 The external oversight, the court-mandated
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1 introduced, the agency was very resistant to
2 oversight and that resistance over a period of time
3 certainly diminished and moved from, as I said, one
4 of resistance to one of a mutual respect and
5 acknowledgement of the value that can be gained from
6 oversight. But I would want to say to you that as a
7 former director, I know there are some current
8 directors in the room, that although we share, I
9 believe, the opinion that oversight, external
10 oversight can be valuable, it could be a real
11 resource to have eyes other than your own or those of
12 inside your department, it could be very valuable but
13 it can be a very complex, dicey issue for an
14 administrator.

15 Administrator, correctional administrators
16 especially, live in a very politicized, pressure-
17 packed environment and absent court mandates or a
18 legislative mandate for oversight, the directors can
19 assume a certain level of risk by inviting oversight
20 into their departments. I would hope that one thing
21 that you, as you contemplate and deliberate the
22 issue, is that you would have an understanding that
23 correctional administrators do value external
24 oversight, but also acknowledge that many times it is
25 a very complex issue for administrators. I think we

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1 oversight which ended in 2002 was, in my opinion,
2 critical to the success of the department over those
3 three decades. It was many times painful in the
4 short run, very critical in the short run, but very
5 productive when you look at what happened over a
6 30-year period.

7 Over that time, even though sometimes the
8 relationship between the department and the Special
9 Master's Office or the plaintiffs' attorneys could be
10 very contentious, quite often we might not agree, but
11 what happened over time was the development of a
12 mutual respect for each other's professional
13 responsibilities and knowledge of the prison
14 operations. They provided an important resource, I
15 think, for the directors through those three decades.
16 And although external oversight in the form of court
17 oversight ended in 2002, the department today still
18 works in some respects with external entities for
19 oversight, they still seek accreditation for the
20 facilities, and periodically will have consultants
21 come in and do some audits or inspections of specific
22 operational areas.

23 But I would say to you that although, and I
24 do want to make sure I make a point that over these
25 three decades when that external oversight was first
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1 have to continue to try to diminish polarization of
2 silence, we have to acknowledge that we, I think, all
3 want the same ultimate goal which is more humane,
4 safer run prisons in this country, and to the extent
5 we can continue to develop a mutual respect for each
6 other's positions, I think there can be a lot of
7 progress made in this arena.

8 So with that, I will end my remarks and
9 take any questions if you have any.

10 JUDGE GIBBONS: You suggest that
11 transitioning a prison facility from a culture of
12 autonomy to one in strict compliance with court
13 orders requires somewhat of a cultural shift on
14 behalf of the staff and perhaps even on behalf of the
15 inmates. Could you describe for us the interaction
16 between the federal oversight on one hand and the
17 staff and the inmates on the other.

18 MR. JOHNSON: Well, I'm not sure I
19 understand your question completely but I will take a
20 stab at it.

21 As I said earlier, there was a lot of
22 resistance initially to external oversight by the
23 courts back in the 1970s especially because for
24 decades the department had operated without any
25 oversight and the prisons generally around the

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1 country had operated without very much federal court
 2 or court intervention, so it was really viewed as an
 3 intrusion into the domain of prisons to have others
 4 coming in providing that oversight, so it took
 5 culture which we talked about a lot, I guess, but
 6 culture takes a long time to change, to make that
 7 shift. It is a mistake for people to believe you put
 8 out a memo and change the culture, it doesn't work
 9 that way. It takes a lot of small steps, a lot of
 10 leadership for a sustained period of time for people
 11 to change the way they see the world. So for a
 12 number of years it was a matter of changing the way
 13 the employees of the system that were currently there
 14 saw how they did their jobs, saw the value of
 15 changing the way prisons were operated, and you have
 16 to also remember that the inmate population has a
 17 certain culture that has to be changed over time.
 18 And then what happens over a period of decades is you
 19 transition out employees who had been there before
 20 the federal lawsuit, inmate population turns over, so
 21 at some point, like today, for example, the vast
 22 majority of employees that work for the department in
 23 Texas, at least, have only known the system under the
 24 current system, they weren't even aware of the system
 25 that existed prior to court intervention, and in a
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1 large respect the inmates were the same way. But I
 2 guess the short answer or a long answer and I will
 3 give you a summary of it, is that it is all about
 4 leadership. You've got to have, I believe,
 5 leadership inside the agency that will stand up and
 6 work with the staff.
 7 And when I mentioned the politicized
 8 environment, the directors, of course, have to have
 9 in mind the legislature, the inmates, the officers,
 10 the victims, there's a variety of constituencies, but
 11 the leadership is certainly the key to making
 12 positive changes.
 13 JUDGE GIBBONS: In the Texas situation
 14 the change came about with the effective coercion of
 15 the federal court. Could a similar culture change
 16 occur through some sort of oversight supplied by the
 17 State of Texas rather than the federal court?
 18 MR. JOHNSON: Could that have occurred
 19 in 1978 or in 2006?
 20 JUDGE GIBBONS: Well, let's say 1978.
 21 Was there any institution in Texas that could have
 22 substituted for the federal court and been as
 23 effective?
 24 MR. JOHNSON: It is my belief that in
 25 1978, that in order to make the changes that were
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1 made in the Texas Department of Corrections it took
 2 court intervention to be the catalyst to move that
 3 forward. Now the reason I asked the question
 4 earlier, 2006 is a different -- we're in a different
 5 place. The department that exists today has no
 6 resemblance to the one that existed in the 1970s, so
 7 I think you have to take into consideration those
 8 kind of factors. You can't do this, I don't believe,
 9 make the jump that because it required court
 10 intervention in 1978, to make that movement that that
 11 would necessarily be the case in today's world.
 12 JUDGE GIBBONS: And when you say
 13 there's different structures in place, what in the
 14 Texas system furnishes the oversight from outside the
 15 wall that the federal monitor was furnishing before
 16 the federal court stepped aside?
 17 MR. JOHNSON: When you say outside the
 18 wall, do you mean --
 19 JUDGE GIBBONS: Outside of the given
 20 institution.
 21 MR. JOHNSON: Of a given institution?
 22 JUDGE GIBBONS: Yes.
 23 MR. JOHNSON: Well, of course, we are
 24 seeking ACA accreditation in Texas but beyond that,
 25 the agency has an entire division that their mission
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1 is oversight and routine, periodic audits are
 2 conducted in every institution in Texas. Not only is
 3 there a division that provides operational oversight,
 4 but there's also an Internal Audits Division that
 5 reports not to the director but to the Board of
 6 Criminal Justice, and there's an Office of Inspector
 7 General that reports not to the director but to the
 8 Board of Criminal Justice, so there are several
 9 entities that exist within the department that either
 10 report to the executive director directly or to the
 11 chair of the Board of Criminal Justice directly, in
 12 addition to some of those external mechanisms that we
 13 have in place.
 14 JUDGE GIBBONS: And what are the, in
 15 your view, are the characteristics of an effective
 16 oversight system?
 17 MR. JOHNSON: Internal, external or
 18 just any oversight system?
 19 JUDGE GIBBONS: Any oversight system.
 20 MR. JOHNSON: I think that the persons
 21 that are involved in oversight need to have a clear
 22 vision of what they're trying to accomplish with a
 23 particular correctional department. I think there
 24 has to be, as I said earlier, some mutual respect
 25 between the administration of the department and the
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1 group providing oversight, I think there has to be a
2 recognition of the complexities of operating large
3 prison systems, I think there has to be integrity
4 between both groups. And when I talk about mutual
5 respect or cooperation, I'm not talking about
6 co-opting, I'm talking about each entity doing their
7 jobs with integrity with the vision of wanting to
8 help that agency become more safe or more humane.

9 I mentioned in my remarks that I gave to
10 you that I think there are sometimes problems if you
11 engage in oversight where there's a single agenda in
12 mind. Not more comprehensive where you are trying to
13 help the department move forward or to become a
14 better department, but that's more single-issue
15 related. I think that would be a detriment to
16 oversight.

17 JUDGE GIBBONS: To be effective does
18 the overseer need political support?

19 MR. JOHNSON: I think to be effective
20 the overseer needs to at least be respected by the
21 political groups in the state. I don't know when you
22 say be respected, I don't know if you mean that that
23 person needs to be respected by particular
24 politicians or if you mean more just does the group
25 need to have a --

1 JUDGE GIBBONS: Hold on. Let me put it
2 this way.

3 When the federal court appoints a monitor
4 for an institution, that monitor doesn't need any
5 political support, it has the United States Marshal
6 Service.

7 MR. JOHNSON: Right.

8 JUDGE GIBBONS: When the oversight is
9 supplied by the state's political process, does the
10 overseer have to have something in the way of
11 political clout?

12 MR. JOHNSON: Well, you are exactly
13 right. If you are talking about a situation where
14 the court has mandated the oversight, then certainly
15 I don't think you have to have the political, the
16 authorization or political approval to make progress.
17 But if you are talking about a situation where we're
18 not, it is not a court-mandated oversight but being
19 promulgated by the study, I think it certainly at
20 least is helpful for the overseer to have some clout,
21 if you would, with the powers that be, because so
22 much about, not everything, of course, but a lot
23 about what happens with the commissioners is going to
24 be about resources provided to them by the
25 legislators and to that extent I think it is

1 important that they at least feel like the people
2 that are making recommendations for changes or
3 improvements in their prisons are doing so in order
4 to move the system forward and not because they've
5 got some other agenda.

6 JUDGE GIBBONS: Do other commissioners
7 have questions?

8 MS. SCHLANGER: You mentioned that your
9 statement talks more about the risks of unmandated
10 oversight and I assume, from reading your statement,
11 you don't mean the risk that something that's going
12 on that's bad will get discovered, you are not saying
13 about the political risks of oversight but an actual
14 operational risk in some way, and I'm really
15 interested to hear you spell that out a little more.

16 I mean, you say in your statement so I don't mean can
17 you tell me whether this has happened, I'm not asking
18 for that, I just want to understand what your concern
19 is about -- there are so many kinds of oversight,
20 about how those might work in a way that is
21 counterproductive rather than productive.

22 MR. JOHNSON: Okay. The internal
23 mechanisms that exist in most states to provide
24 oversight work for or with the director usually or a
25 board or commission, whatever they're called, and

1 that oversight can be a very good resource, a tool
2 for the director to find out what's happening in his
3 or her system and try to make improvements or make
4 corrections to that. It may be a report to the
5 legislature or legislative committee to make
6 improvements or changes. That's what we see in
7 internal audits, Inspector General and our
8 operational audits. But what I was referring to in
9 my paper, my remarks I submitted to you, is in a
10 situation where a director has no mandate
11 legislatively or through the court to bring external
12 entities in to look at their system but an entity is
13 allowed in, the entity has some particular agenda
14 that the director may or may not be aware of, and
15 instead of that group working with the director to
16 try to identify problems, make corrections,
17 submitting a report or a briefing for the director,
18 the director wakes up on the next morning and starts
19 reading in the newspapers the findings of the entity.

20 Now my argument is not about
21 transparencies, my argument is about that is going to
22 polarize the groups. Instead of having a situation
23 where you develop mutual respect and you try to move
24 forward with positive improvements or corrections of
25 something that might be, has been discovered, it is

1 more a situation where you have a contentious
 2 relationship that develops with the entity and the
 3 department and instead of that department then
 4 wanting to or having a desire to proliferate external
 5 oversight, they will truly start putting up more
 6 walls and so that's sort of what I'm referring to.
 7 The risks that are associated is if you have a group
 8 that comes in and instead of working with the
 9 director, the legislature or the agency has an agenda
 10 of just pure exposure, no intent for partnership but
 11 just pure exposure, then that director is going to
 12 certainly have some risk associated with, you know,
 13 why are you doing this absent a mandate to do it.

14 Does that clarify it at all for you what I
 15 was referring to?

16 MS. SCHLANGER: Yes, it does. Thank
 17 you.

18 MR. RIPPE: Mr. Johnson, based on what
 19 you just said, you believe that the ACA accreditation
 20 program should remain a voluntary program?

21 MR. JOHNSON: Do I believe it should
 22 remain voluntary?

23 MR. RIPPE: Should remain voluntary.

24 MR. JOHNSON: There may be some, under
 25 some scenarios some reasons to have some aspects of

1 ACA mandatory but I'm not sure what I said would
 2 impact that question that you just asked.

3 MR. RIPPE: Well, you were talking
 4 about the fact that when outsiders come in, if
 5 there's not a partnership, teamwork established as
 6 you try to improve the prison it can become
 7 polarized, become dysfunctional, so I'm thinking then
 8 about the notion of universally-accepted standards
 9 and whether or not those should be remain voluntary
 10 or should in some aspect be mandatory.

11 MR. JOHNSON: Well, I'm not clear on
 12 how my remarks talk about mandatory or voluntary, but
 13 I can tell you I support fully agencies, correctional
 14 agencies pursuing ACA accreditation and standards. I
 15 think it is very important you have a set of
 16 standards that people can aspire to that are sort of
 17 commonly agreed upon in the profession. Now when you
 18 start talking about should it be voluntary or
 19 involuntary, there are a plethora of issues that then
 20 surface regarding that whole discussion.

21 MR. RIPPE: Not the least of which are
 22 resources.

23 MR. JOHNSON: Not the least of which
 24 would be resources, right.

25 JUDGE GIBBONS: I think we have another
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1 question.

2 MR. GREEN: I have a question in terms
 3 of oversight, and for it to be most effective, does
 4 there need to be both internal and external
 5 oversight? And I raise that because based on the
 6 constituencies that we're dealing with from the
 7 inmates, to the corrections officers, to the
 8 administration, to victims, to the families of the
 9 inmates, the transparency that would come from
 10 external it would seem to me would lend some
 11 confidence to the operation. Can internal really
 12 operate effectively without external, and also what
 13 should external look like? You've talked about
 14 what's in place in Texas. How should that oversight
 15 be put together, who should serve in that kind of
 16 capacity?

17 MR. JOHNSON: For external?

18 MR. GREEN: Yes.

19 MR. JOHNSON: Based on my experience
 20 testifying for the legislature, I will give you a
 21 sort of a two-part answer to this.

22 Can an agency operate effectively with
 23 internal oversight only. Yes. I think, now, that
 24 goes to the whole definition of what is effective,
 25 but I would say yes, they can operate effectively.

1 The question I think is should they. Based on my
 2 experience I would say that if it is developed
 3 correctly, optimum would be internal, strong internal
 4 oversight mechanisms partnered or layered or in
 5 conjunction with external oversight, but I think
 6 there's real value in some of the pressured
 7 intentions that can be created from that external
 8 oversight. I think that those external eyes, again
 9 created correctly, could be a very valuable resource
 10 for a commissioner or a board or a legislature. How
 11 you create that or establish that external oversight,
 12 I don't have an answer for you right now. I can't
 13 tell you today what I think is the best way for any
 14 particular group or agency, entity, to develop that
 15 external oversight system, but I'm confident that
 16 with the commission like this and all of the
 17 experience that we have around the country that that
 18 can be done and be done in a way that will move
 19 corrections forward and will hopefully serve the
 20 needs of all the different constituencies.

21 Like I said earlier, I just believe, maybe,
 22 I hope after 30 years I'm not in the business of, I'm
 23 not overly naive, but I just believe that if we can
 24 find ways, and I believe that we have much more in
 25 common on this issue than we have differences -- we

1 do have differences, there's going to be differences
2 in approaches, differences in philosophies -- but I
3 think our ultimate vision of safer, humane, better
4 run prisons is common. I think we share that. I
5 think if we share that and we have a real commitment
6 to that, we can find ways to diminish the
7 polarization and move forward.

8 MR. BRIGHT: Could I just ask, one of
9 the questions was not just to have oversight, but
10 have oversight which accomplishes the change that
11 needs to be done, right? I mean, the Ruiz case not
12 only provided oversight, it changed a lot of things
13 that needed to be changed in the Texas Department of
14 Corrections. Am I right about that?

15 MR. JOHNSON: That's correct.

16 MR. BRIGHT: So if you have a group as
17 you were talking about a moment ago that comes in,
18 maybe you and the group agree, and it may be that the
19 group exposes this because that's sometimes a way of
20 bringing about change to say these prisons are so
21 overcrowded or whatever, but let's say at the end of
22 the day the legislature doesn't give you the money,
23 the resources to do what you need to do and it
24 compromises safety in these institutions. You are
25 understaffed, for example. The only entity that can

1 deal with that in a way that requires action is a
2 United States district judge, right? In other words,
3 the legislature has gone home, they haven't given you
4 what you need, and the judge says we just simply
5 can't tolerate this but you will be the guy to staff
6 this place up right, you got to do the things that
7 need to be done to protect people from abuse or the
8 court is going to order it in some way or another, am
9 I right?

10 MR. JOHNSON: I don't know if that's
11 the only way it would happen, but I certainly agree
12 with you that's a point well made.

13 JUDGE GIBBONS: I think at this point
14 we should move on to hear from Victoria Wright.

15 MS. WRIGHT: Thank you for hearing my
16 story or Jay's. This is hard for me. I hope I can
17 get through this.

18 JUDGE GIBBONS: Bring the microphone a
19 little bit closer to you.

20 MS. WRIGHT: I have never spoken in
21 front of the public before so I will read this but I
22 want you to know in writing this it was very hard and
23 I left a lot of emotions out.

24 Jay was convicted of a white collar crime
25 and sentenced to three years of incarceration. We

1 were told at the time that Jay would carry out about
2 half the time because it was a white collar crime and
3 because the overcrowding, from what I understand, in
4 the prison system they do cut time in half for,
5 especially for the behavior. And because it was
6 supposedly going to be a minimum-security facility,
7 he would go probably to a ranch possibly, and that
8 Jay would get out in about 18 months, November 17th
9 of this year.

10 I was married for 33 years to Jay.

11 MS. FIGUEREDO: Do it for Jay, Vicki.
12 You can do this.

13 MS. WRIGHT: I will just read this off.

14 Prior to the sentencing Jay completed
15 all the necessary paperwork and medical testing that
16 so that Jay would receive the proper medication for
17 his existing heart attack. Jay had two heart attacks
18 prior. He had the first one at 39 and the second
19 heart attack at 46, I believe. When Jay was under
20 tremendous stress, which running a business is
21 stressful as you know, his heart would spasm which
22 would give, we found out, a second heart attack, so
23 when he was under a lot of stress his heart would
24 spasm and he would have blood clots and have heart
25 attacks. So he was put on Procardia on the first

1 heart attack of five milligrams and that did not
2 work; he ended up having another heart attack. And
3 Jay took that very serious. He exercised, he learned
4 to do some stress reduction in his life, he took
5 vitamins. They had proven that some of the vitamins,
6 niacin, magnesium, B12, B6 helped with his heart
7 condition along with the medicines which, as you
8 know, were denied Jay.

9 So I will read the rest of this because I'm
10 kind of moving forward.

11 When Jay checked into the Alameda County
12 Jail we provided Jay's prescription with him. I made
13 sure that he took it with him, the Norvas, five
14 milligrams, and he took Ecotrim, 81 milligrams, which
15 is an aspirin, and immediately upon entering the
16 system all of Jay's medications were taken away from
17 him, along with his personal property.

18 After the first 24 hours Jay was evaluated
19 by a staff doctor, I believe it was a doctor, at the
20 jail who changed his prescription back to Procardia
21 in lieu of the fact that Jay had been on it
22 previously and Jay informed that doctor that he had
23 been taken off Procardia because he had another heart
24 attack.

25 The doctor told him that they did not have

1 the Norvas and that they would just increase the
2 Procardia to 10 milligrams rather than the Norvas
3 which was five and it was not, the Norvas wasn't
4 available.

5 Jay informed them that we in fact had sent
6 the Norvas with him but that's not allowed, you can't
7 bring your own medicine into a county jail or I guess
8 even a prison system. I don't guess, I know you
9 can't bring in or provide the medicines in the county
10 jails or prison system because they're going to
11 provide the medical that you need, the attention.

12 When Jay was in the county jail he was
13 bitten by something. I went to the county jail which
14 originally that was not the plan, Jay did not want me
15 to go to the county jail and be subject to going
16 through the visitation and that, but after he arrived
17 there he called and I just couldn't stand not seeing
18 him. So I went to the county jail and saw him on
19 Wednesdays, Fridays and Sundays until he was
20 transferred three weeks, about three and a half weeks
21 later into San Quentin because we had been told when
22 he went to San Quentin that it was 30-day, 30 to 45
23 days of they call it a reception area and you have no
24 contact other than writing to your family; no phone
25 calls or no visitation, so I knew I wouldn't see him

1 for at least that 30 days or 45.

2 Jay was transferred to San Quentin on -- he
3 was bitten by a spider in the county jail and got
4 very ill. His leg, I went and saw him, was just
5 enormous and he said he filled out a form prior. I
6 guess you have to fill out a form to see a doctor
7 while you are in the jail system, in the prison
8 system, and no one acknowledged that. He said he
9 filled out two forms. His knee was so swollen that
10 he got a guard to look at his knee and then the guard
11 immediately got someone to come in. Jay was given an
12 antibiotic shot and a scraping to see if it was some
13 kind of a staph infection.

14 And that was on Sunday when I saw Jay, he
15 already had the shot, and he was supposed to go back
16 on Monday to see a doctor.

17 I went home. I live in Arizona so I would
18 fly to California, stay in a hotel, visit him in
19 between the days and then try to go home on Sundays,
20 go back on Mondays or Wednesdays to see him again.

21 On Monday I called to see if he had been
22 transferred because every day he was supposed to be
23 transferred. I didn't even know he was going to be
24 in the county jail for the three and a half weeks he
25 was there. In your mind you think you are doing a

1 plea bargain, everything is set, he would be moved
2 immediately to San Quentin. 30 days he would be
3 there; I would see him. That's what I had hoped.

4 So on the sixth I did call and Jay had been
5 transferred to San Quentin. And on one hand it was
6 good because the time and a half then started. We
7 were told once he hit San Quentin his time and a half
8 would start and then it would cut in half. So he was
9 transferred then.

10 And I then -- I got letters from Jay at
11 that point. I started getting mail from him. Jay's
12 first, one of his first letters, his first cell mate
13 was mentally ill and paranoid; he would talk to
14 himself. Jay said it was terrible in his letters.
15 The guy, he was off the streets, he refused to take
16 showers, he talked to himself, he would yell, he was
17 delusional. And Jay said he was receiving no
18 medication at that point. And when you are in a
19 six-by-eight cell, which is very small and two people
20 in this cell so when he would pace back and forth,
21 and never quiet, and it is very noisy there. Jay
22 asked one of the guards after I think Jay was with
23 this particular man for two weeks, almost three, he
24 was going out of his mind and he said he didn't sleep
25 because Jay was afraid.

1 So Jay asked to be moved and the guard said
2 he would get back to Jay after the end of the day and
3 see about getting him moved. And San Quentin is very
4 full, it is over full, it has got way too many -- it
5 has got way too many prisoners for as many beds that
6 you can be in, so to move Jay I think was a big deal.

7 The man ended up getting upset with Jay for
8 Jay asking to be moved and, in fact, attacked Jay and
9 Jay defended himself. Well, my understanding is that
10 you don't defend yourself in prison, you -- because
11 if you do, then you are just as guilty, you have now
12 committed a crime also. So Jay was put in the hole.

13 I didn't receive any letters from Jay, I
14 didn't know where he was at at that point because my
15 letters from him I got regularly. Well, when the
16 letters stopped I panicked, I thought -- and I always
17 worried that Jay would have a heart attack because of
18 the stress.

19 And I called. All I got was is that maybe
20 he doesn't want to write you. They didn't tell me
21 where he was, they didn't tell me in fact that he was
22 in the hole for five days. And the hole at San
23 Quentin is across from Death Row and Jay in one of
24 his letters, he explained that to me, he could see
25 the people in Death Row. Everything is taken away

1 from you, I guess it is just a cell, that's it.
 2 There's no writing material, there's no nothing.
 3 They do send a psychiatrist to talk to you and Jay
 4 did talk to a psychiatrist, he explained what had
 5 happened, and she said she would look into it.
 6 Jay went before the committee after the
 7 five days. I have the paperwork. He was released
 8 and moved without any reprimand because he was found,
 9 I guess, not guilty for defending himself, so he
 10 didn't -- apparently when you fight or have a problem
 11 your time is added on to you because you've gotten
 12 yourself into trouble, so Jay didn't end up with any
 13 more time for that.

14 Jay spent about 70 days in San Quentin. So
 15 much for the 30 to 45 days that he was supposed to be
 16 there. The reception time should have been 45 days.

17 During the time Jay spent in San Quentin it
 18 became clear that Jay was not receiving his mail. I
 19 would consistently receive letters from Jay
 20 requesting that I write and asking why I hadn't. All
 21 the while I was writing. And I overnighted the
 22 approval form for the visitation which -- so you have
 23 to be approved to show that you are not a criminal
 24 yourself in order to visit someone in prison. And I
 25 finally got that back and I was able to see Jay on

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1 July 29th for one hour, through glass, in shackles,
 2 which was devastating for me.

3 In order to see in San Quentin in the
 4 reception area you have two-hour window from eight
 5 o'clock to ten o'clock in the morning. You call.
 6 You get on the phone and start calling and you just
 7 keep hitting "Redial" because it is busy and
 8 hopefully you get through because there are 3,000
 9 people in the reception area and 20 spots for those
 10 people to see any of their family members during that
 11 time. The fact that I even got through I was told
 12 was a miracle in itself that I was able to see Jay
 13 because most people aren't able to ever get through.
 14 You get through and it is "I'm calling for a
 15 visitation with Inmate Jay Wright," but it is not Jay
 16 Wright, it is Inmate V81947. I did get through the
 17 one time, like I said, and I did get to see him. I'm
 18 not sure that that was the best scenario because all
 19 I did was cry, put more stress on him.

20 His letters told me that -- I couldn't
 21 believe that he was there. Anyway, I did see him. I
 22 talked to him for a short time, an hour. It goes
 23 very quick.

24 And Jay then was moved finally October
 25 15th. August 15th, excuse me. I still called every

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1 day trying to get to visit him and I never succeeded
 2 in getting to see Jay again.

3 I called the 15th of August, and it was a
 4 Monday, and it was different this time because when I
 5 called and asked, and I'm not sure why I said what I
 6 said, I finally -- I was shocked because someone
 7 actually answered the phone. And I said to them, "I
 8 want to talk to my husband."

9 And then the man answered, he was like,
 10 "Oh, really?"

11 So I said, "My husband's name is Jay
 12 Wright." I know it, doesn't matter, V81947.

13 And he stayed on the phone with me for
 14 quite a while asking me did I know when Jay was going
 15 to be moved. What else. He asked me my Social
 16 Security Number, he asked me where I lived. Now I
 17 know Jay was actually on a bus being moved that day
 18 so maybe prior to other things happening where wives
 19 go and do stupid things, that's why he was asking so
 20 many questions that particular day. Because always
 21 before there was nothing available, but he actually
 22 asked my name, my Social Security Number, if I knew
 23 where Jay was going. It was the most contact I had
 24 on any of the phone calls with the San Quentin
 25 system. So I know that Jay was moved that day.

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1 The next day I called again and was told
 2 Jay was transferred but they wouldn't tell me where.
 3 So there is a group in California that's called
 4 Friends Outside. They're not at all the prisons from
 5 what I understand, but they are at San Quentin. And
 6 in my time, from the first, when Jay first was
 7 incarcerated at San Quentin I was told about Friends
 8 Outside from another outside source and began to talk
 9 to Bill Klein, who happens to be the representative
 10 in San Quentin, and what his -- what he does for you
 11 is I would call him and he would go in and check
 12 because I was so concerned with Jay's heart
 13 condition. And when he was transferred from the
 14 county jail and because he was ill I was worried so I
 15 called him and he actually went in and looked at Jay,
 16 sat with Jay and talked to him and came back and
 17 called me, which I was very grateful for, told me
 18 that Jay was doing okay and that he looked good and
 19 that he was a nice man which was kind of nice for me,
 20 because when you are talking to people, when you tell
 21 people your husband is in prison they always assume a
 22 monster, they do. People assume monsters, prison.
 23 That was one of the things that I had to learn to
 24 live with, that -- and I'm just as guilty as some of
 25 the public realizing that they're not all monsters;

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1 that there are people in there that just need help,
2 people in there that --

3 In Jay's letters, I guess I should probably
4 have copied some of his insight. The drug addiction
5 is horrendous there and they're in deep pain, these
6 people. There's not a lot of medication. If they
7 can't get their fix, then they yell all night, it is
8 unreal.

9 Jay would write and tell me about the
10 different circumstances that he would view. Most of
11 the time Jay was in lock-down because the prisons are
12 in constant fighting, a lot of gang problems, and I
13 guess it is just safer to keep everybody in lock-down
14 from what he said to me.

15 Jay was moved. I thought that Jay would be
16 moved closer to Southern Cal, not farther. He
17 actually ended up being moved from San Quentin to
18 Susanville, California, which is up in the northern,
19 Northern California area, closer to Reno, actually.
20 So he was on a bus a minimum of what, eight to 10
21 hours in shackles being moved to Susanville.

22 I found out Jay -- where Jay was at. At
23 that point he -- I did not -- he did not know that I
24 knew that he had been moved so I called the High
25 Desert State Prison on August 16th and verified that

1 Jay had been transferred there and then I was able to
2 make arrangements for the visitation.

3 I flew to Reno and rented a car and went
4 into Susanville and then saw Jay on Saturday and
5 Sunday, which, thank God, because he died on the
6 25th.

7 Jay did look bad but I attributed that
8 because he had not been outside. One of the things
9 at San Quentin, he said when you do go out, you
10 really are not -- it is very racial there and in the
11 letters Jay said that there was a lot of -- the
12 whites stay with the whites, the blacks stay with the
13 blacks. The Mexicans have two groups; the
14 non-speaking English and then the Chicanos, and they
15 had these rules. If you have a problem you go to the
16 head man and that head man talks to that group, to
17 that group. You don't ever talk or socialize, you
18 sit at -- the showers are segregated, the tables are
19 segregated. You don't ever talk to another outside
20 of your race, you stay with your own, you have no
21 choice. Jay was in the woods because he belonged to
22 no group, that's what he was told. He was an old G,
23 old guy. He didn't belong to a White Supremacist
24 group, he didn't belong to anything, so he was in the
25 woods. And in his letters he explains all that to

1 us. And there are cards. You probably know about
2 this. So I learned things I never though I would
3 have learned.

4 I will go back to Jay was moved to the High
5 Desert. I saw Jay on Saturday, so about a six-hour
6 visit that you get to visit. At that time, like I
7 said, Jay was thinner, pale. I had asked, there was
8 an outdoor area, if we could step outside but that
9 area had been closed off because of, I guess,
10 problems in the courtyard. So you are in a visiting
11 room, they had an outdoor area that had a big wall
12 around it, but to even get outside, that's all been
13 closed down because of problems apparently. I don't
14 know the problems.

15 On Sunday I saw Jay again, and standing in
16 line I got to hear the sirens go off and
17 firing, the shots being fired in the air, everybody
18 on the ground. The way it was, the gates you could
19 see through because you are outside standing in line
20 to go inside to be checked in, and then that was
21 quite an experience. Everybody in the line, you hear
22 them say, "Oh, my God, we won't get to visit" that
23 day and "What unit is that? Is that the B?" "Oh,
24 that's the B Building." Because then you know that
25 there's a problem and you are not going to go in

1 there. What the problem was, I don't know. That in
2 itself was -- just standing outside the gates
3 watching and the warning and everybody dropping to
4 the ground. And then Jay saying even in their
5 building, once those sirens go on, everybody hits the
6 ground and you don't know what's going to happen.

7 So I saw him on Sunday and he had said
8 that -- Saturday he said he had had no medication at
9 that point. And I said to him -- he said that he had
10 went and told one of the guards right away on Monday
11 when he got there and by the time he was processed
12 through it was Monday evening. So I believe Tuesday
13 Jay went in and said, "I haven't had my heart
14 medication." One of the guards in fact sent Jay over
15 to an area in which to get his meds. That particular
16 guard or whoever runs the computer told Jay he wasn't
17 on the computer and was explicitly telling him he
18 needed to get away from the area and that he would
19 get it to Jay when it was on the computer and he
20 would get his medicines then.

21 So when Jay walked back to the particular
22 guard that sent Jay over there asked him, "Did you
23 get your heart medication?" And Jay said no, and
24 that particular guard said that that guard was not a
25 nice person. They don't talk like that, though.

1 So Jay asked again for the meds. And I was
2 told that somebody came by on Monday and said that
3 Jay would receive his medicines either that night or
4 in the morning. Jay died and was gone in the morning
5 so he didn't receive his medicine.

6 When it says I allege he didn't have his
7 heart medication, Jay did not have his heart
8 medication. The toxicology report, the coroner --
9 I'm still waiting for the reports on that because
10 they did not do a cause of death on his death
11 certificate because they were waiting for the
12 toxicology report because I did in fact call the
13 prison and told them "You killed my husband, you
14 denied his heart medication." So I am still waiting.
15 I have not had any answers from anyone.

16 I have written my statement, I don't know
17 if you have a copy of my statement, and one of the
18 first things I started to do as soon as I could think
19 straight was I began to write to anyone and everybody
20 that I could possibly think of that could tell me why
21 Jay died.

22 I received -- I wrote to Governor
23 Schwarzenegger twice. On the second time I actually
24 did get a response. He sent it to the California
25 Department of Corrections and Health Department and I
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1 has to be accountable?

2 MS. WRIGHT: That's my sister who went
3 through the whole thing with me.

4 MS. FIGUEREDO: I have been through
5 everything; her visits, everything.

6 MS. WRIGHT: I talked to an inmate, I
7 actually got a wonderful letter from one of the
8 inmates at High Desert State Prison, and he has told
9 me that there are now signs up there stating if an
10 inmate has not received his medicine, they give them
11 a number to call. I hope that's true.

12 Because I went to Friends Outside on
13 Sunday after I left Jay, I have a brochure from them,
14 and I asked them about that particular -- that Jay
15 had not received his meds and they -- in their
16 article it says it is best for the inmate to solve
17 the problem first because outside people, Jay may
18 suffer the consequence or the -- what is the proper
19 wording for that.

20 MS. FIGUEREDO: Retaliation.

21 MS. WRIGHT: One of the other inmates that
22 I was talking about, in his letters, he writes to me,
23 and I asked him if he would speak to my attorney. He
24 doesn't want to; he is afraid. He just wants to do
25 his time and go home, you know. He doesn't want to

1 have received a letter from them. I all I got from
2 that was that I need to prove that I have a right to
3 have Jay's records, although they did release his
4 body to me and his personal belongings. I have not
5 finished the letter back to them probably because, on
6 one hand, I want to know why Jay died, but you can't
7 bring him back.

8 I wrote to Judge Henderson. He had
9 forwarded it on to the prison's law office. I
10 already read about the prison's law office. They won
11 a case in California and they're still negotiating on
12 how to fix the problems in San Quentin. My husband
13 is gone, they won in 2002, they are still negotiating
14 on how to fix the problems. Why write them again and
15 go back to them, they won. They didn't change
16 anything; Jay is gone.

17 I read all about Judge Henderson and I know
18 that he is trying to make changes. Jay is gone. I
19 wrote to Mr. Hickman, I wrote to Mr. Hurley, I wrote
20 to anyone I could think of. I don't know if you guys
21 can make changes, but to let somebody die from lack
22 of heart medication is not right.

23 MS. FIGUEREDO: Not be accountable is
24 not right. Jay had to be accountable, why doesn't
25 the State of California have to be accountable. Who
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1 step forward because he just wants to do his time and
2 go home. I don't even know why he is there, it
3 doesn't matter, but his letters were very kind to me.
4 And I -- I don't know.

5 JUDGE GIBBONS: Mrs. Wright, you have
6 gone through a terrible experience, and you have
7 talked about two problems really; the problem of
8 access by the family members to the prisoner or to
9 information about the prisoner, and the other, the
10 problem of medical attention for people who may be
11 suffering from serious illnesses. If you have any
12 suggestions on either of those topics about how the
13 situation can be improved, we would very much like to
14 hear from you. Perhaps instead of just writing to
15 the authorities in California, you can send copies of
16 your letters to us.

17 MS. WRIGHT: One of the things I do
18 think is important, and I do hope that there is
19 access to the prisoners, that they -- if they have no
20 medicines or need medicines there is an inside line.
21 Why could there not be a phone that goes directly to
22 the infirmary or to somebody who is responsible to
23 say I need my medicine. I understand that diabetics
24 in the county jail go into diabetic shock quite
25 commonly, it is common because they don't have their

1 insulin. They have to have it. The State of
2 California is in a very poor state as far as taking
3 care of their inmates. I don't know about the other
4 states.

5 How do you provide medical attention? It
6 was -- I mean, I don't even know. Was it a
7 cardiologist that changed Jay's medicines? Did Jay
8 ever see a cardiologist? I don't know. And then to
9 take him totally off of them?

10 JUDGE GIBBONS: Well, we have a long
11 day ahead of us and we have to unfortunately try to
12 keep this proceeding on schedule so at this point we
13 will recess for 15 minutes. We will resume at 10
14 minutes before 11:00.

15 MS. WRIGHT: Thank you.

16 JUDGE GIBBONS: Thank you for coming.
17 (Recess)

18 MR. MAYNARD: I'm pleased to introduce our
19 next set of witnesses; Dr. James Byrne on my right,
20 Mr. Daniel Alejandro, and Mr. Tony Delgado, who will
21 examine the role of gang affiliation and drug
22 trafficking and the prevalence of violence in prisons
23 and jails.

24 The link between gangs and violence in
25 prisons and jails is complicated. Some claim that

1 DR. BYRNE: Thank you.

2 I want to start with just kind of picking
3 up on one of the comments earlier about gangs
4 being -- whether they were inevitable or not and
5 start my comments there.

6 My view is that I would not use that
7 sentence gangs are inevitable, but I would say
8 they're an inevitable consequence of a myriad of
9 problems individuals face in community settings and
10 to the extent that we have a prison gang violence
11 problem more at one institution than another, I think
12 it is a reflection of the extent of gang involvement
13 in those communities and so I just want to start with
14 that because that would be my take on it. An
15 interesting way to think about it is from where I
16 take it, start off from, is to think about what
17 exactly do gangs provide to individuals, both in
18 institutional and community settings; why do you join
19 a gang in the first place. I think you heard a
20 little of that in some of the earlier presentation,
21 and I have a by line by Mark Rydell and one of his
22 colleagues that I think highlights it.

23 Basically he argues that gangs' most
24 important role is to provide a source of identity to
25 young males and to a less extent female. Traveling

1 prison gangs use violence to maintain control and
2 coerce participation. Others contend that prison
3 gangs provide inmates with protection from other
4 inmates as well as staff. Still others argue that
5 gangs in prisons operate like businesses seeking to
6 control drug markets and therefore have little
7 incentive to increase violence in the facilities.
8 Our panel will explore gang violence by looking at
9 how the problem has been defined, what reasons
10 prisoners have to join gangs in correctional systems,
11 and some of the ways community-based organization can
12 preempt and respond to gang activity.

13 Dr. James Byrne is a professor of the
14 Department of Criminal Justice at the University of
15 Massachusetts-Lowell and has conducted research on
16 the cause, prevention and control of institutional
17 violence and disorder. Daniel Alejandro is the
18 executive director of Barrios Unidos, a community-
19 based peace movement targeting at-risk youth involved
20 with gangs. Anthony Delgado is the Security Threat
21 Group Investigation Coordinator at the Ohio
22 Department of Rehabilitation and Correction.

23 I would like to extend my thanks to each of
24 our panelists for being here today and we will begin
25 with Dr. Byrne.

1 to high-crime neighborhoods, attending poor schools,
2 victims of racial and ethnic discrimination, gangs
3 provide a source of identity and pride to young
4 people who believe there are few other alternatives.
5 And the reason I start with that little
6 quote is I think we sometimes miss the most important
7 aspect of gang involvement and that is to provide
8 something very positive to individuals. We're
9 obviously talking about consequences of gang violence
10 in terms of prison violence and disorder, but I think
11 we need to think about that because if we talk about
12 solving the problem, we can think about alternatives
13 that can be provided and provide the same kind of
14 things that gangs do, so I would like to focus on
15 three things and one is just kind of inmate-centered
16 response. To what extent can we do different things
17 and organize different programs in prisons that will
18 focus on inmate issues. And I highlight some of the
19 work that's been done, you probably read some of it,
20 on the inmate-centered programs that focus on
21 restorative justice models and the idea that what we
22 need to think about is giving alternative mechanisms
23 to the formal system whereby people can bring
24 complaints to a group. And I like that conflict
25 resolution strategy, I like it in community settings,

1 a lot of community research into restorative justice,
 2 I think it is fairly positive, and I would like to
 3 see that kind of approach considered. It is one that
 4 empowers inmates in terms of alternative problem-
 5 solving mechanisms, alternative to either giving into
 6 gang threats or harassments or challenging that
 7 situation directly as you heard earlier today,
 8 so that's kind of an inmate-centered response that I
 9 think should be put on the table when we talk about
 10 this.

11 The second is the staff-centered response
 12 and I'm involved as an evaluator for the National
 13 Institute of Corrections of the program that they
 14 have been running for several years now, but
 15 certainly they have taken off in the last two or
 16 three trying to change staff culture. Based on an
 17 assumption that I put in the testimony I gave to you,
 18 if you change staff culture, inmate culture will
 19 follow. When you cut to the chase on this, you say
 20 what are you trying to change about staff, I think
 21 you are talking about not only staff attitudes but
 22 staff behavior towards inmates, and that's a very
 23 difficult thing to change and we're trying it in
 24 community settings with a variety of strategies
 25 like proactive supervision models that emphasize the
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1 importance of the relationship between line probation
 2 staff and offenders as a change mechanism, and I
 3 think that same strategy can be applied in
 4 institutional settings as well. That requires
 5 essentially a relationship to be developed between
 6 staff and inmates in institutions. It is different
 7 than the type of relationship that's typically power
 8 and control oriented that you will see in many
 9 institutions today. That's a redefinition of the
 10 role of corrections officers that I'm talking about,
 11 but I think it is consistent with what we're talking
 12 about in the community corrections, so that's kind of
 13 the second approach. But I think the staff-centered
 14 response, in particular this notion that we change
 15 staff culture, really is talking about how to change
 16 the interaction between staff and inmates in
 17 facilities.

18 The third approach, one that we probably
 19 have the most empirical research on, are management-
 20 based strategies that talk about things the type of
 21 people that are in this room today deal with every
 22 day, what kind of things can the commissioners, the
 23 wardens of the prisons do to reduce violence and
 24 disorder. And we're starting to get data on that, I
 25 wish we had even better empirical research, but we're
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1 starting to get that right now and that research
 2 suggests very specific things managers can do. One
 3 of the most obvious is to reduce the scale of the
 4 institutional system. People a lot smarter than me
 5 have suggested this. "If you want to deal with the
 6 drug problem in prison, one thing you can do is do is
 7 stop putting drug users in prison," kind of basic.
 8 And that's a quote from Jim Austin, I wish it was
 9 mine, but it is his, and he thinks I'm wasting my
 10 time on this evaluation research, why don't I focus
 11 on essentially sentencing alternatives, put your
 12 energies where we really need to. If you did that,
 13 then you would be talking about drug users, the
 14 mentally ill, and probably the biggest problem in
 15 terms of the churning of offenders in and out of the
 16 institutions and that's probation and parole
 17 failures.

18 The reason I mention that scale as a
 19 management strategy is that when you compare the
 20 United States to other countries, particularly the
 21 size of the staff and institutions, say, to England,
 22 you can do very different things with restorative
 23 justice and informal social controls when your
 24 staff-to-inmate ratio is 10 to one. When it is a
 25 hundred to one, it is a whole different ball game.
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1 It is not surprising that we rely on the technology
 2 of control, formal control mechanisms in
 3 institutional settings with that type of strategy.
 4 So this scale issue is one that I think can be
 5 addressed, should be. If you say what kind of things
 6 would really reduce violence and disorder in prison,
 7 I think you would see that fairly quickly if you did
 8 the kind of things that people have talked about in
 9 the area of sentencing reform and also probation for
 10 the violators. So obviously institutional and
 11 community control are inexorably linked, I guess that
 12 is the point I would make.

13 The other management strategies, the
 14 important one to talk about in my last minute here,
 15 are programs for offenders, rehabilitation programs
 16 for offenders, and that kind of finishes with the
 17 theme I would have in terms of looking at reducing
 18 prison violence and disorder. I think we need an
 19 open discussion of what we think the purpose of
 20 prison is and I think we need to put the words
 21 "offender change" back into the discussion.
 22 Certainly we can talk about offender control and
 23 certainly offender punishment, but we need to think
 24 about offender change because you can do very
 25 different things with offenders on a daily basis,
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1 daily routines, if you believe in offender change,
2 and I think that's an alternative to gangs that you
3 talk about in both institutional and community
4 settings. Give them something different that will
5 make them have a different view of their lives and
6 their life course changes.

7 To finish with the comments that I read in
8 the community corrections literature, when do people
9 desist from crime. Basically if you read the
10 desistance literature you hear about four things.
11 One is jobs, so employment. We certainly can do
12 things in both institutional and community settings
13 that have an impact there.

14 The second is marriage in the desistance
15 process, and you might think, well, why would he
16 mention marriage. Well, a lot of things have to come
17 into place before somebody can start talking about
18 stable relationships and you are probably talking
19 about dealing with a myriad of individual and
20 community-level problems there.

21 And the third and fourth that are related
22 to in terms of the research on life course
23 criminology is military involvement and relocation.
24 Leave the military out for a moment here and focus on
25 the relocation and that's something to think about

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1 because offenders are typically leaving some of the
2 worst communities in this country and they're
3 returning to those same communities. They're not
4 evenly distributed around the country. 600,000
5 offenders coming out of the prison systems last year,
6 the majority of them returned to five states. Within
7 those five states, they literally returned to a
8 handful of communities. And when you start thinking
9 about relocation as an aspect of it, you need to
10 think about how, if we cannot change the communities
11 in which offenders reside, we need to think about
12 this whole issue of when they're reentering that
13 community, how we can move them, perhaps, to
14 different locations. The research on that is mixed,
15 but that's certainly where we're headed at this
16 point. Thanks.

17 MR. MAYNARD: Dr. Byrne, down to the
18 last minute.

19 Mr. Alejandrez.

20 MR. ALEJANDREZ: Good morning. Buenos
21 dias.

22 I want to thank the commission for giving
23 me this opportunity to address you because, as I
24 wrote, this issue is very personal to me. It has
25 definitely affected my family and I feel for the

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1 individuals that were in the last panel. I have seen
2 that scene over and over again throughout my life and
3 it really has destroyed my family. I come from a
4 large family of over 250 family members and in the
5 last, since 1975, my family has had so many
6 imprisoned that we're going on three generations of
7 incarceration in our family; grandfathers who did
8 time with their grandsons, so the prison system has
9 really affected a typical farm worker family that is
10 now spread out throughout the Department of
11 Corrections, not only in California, but throughout
12 this country.

13 So when we look at the issue of prisons and
14 gangs and the variety of reasons that individuals in
15 my family have been incarcerated -- at this time I
16 have about 20 members of my family in prison, the
17 highest has been 35 at one time -- and if you turn it
18 around, right now I have two in college and I have
19 possibly maybe three or four that are on their way to
20 getting a high school diploma if everything goes
21 well. So what he just said about in terms of the
22 communities that we come from and how we -- you take
23 who is in these prisons, who is -- you take in
24 New York City, most prisoners in New York City come
25 from a certain area and in California the majority of

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1 the prisoners come from right here, Southern
2 California. I happen to live in Northern California
3 and we're pretty much catching up to Southern
4 California.

5 And so trying to deal with the madness,
6 what we call the madness, it is what Barrios Unidos
7 is about, Barrios Unidos, United Neighborhoods,
8 trying to look at the violence in our communities.
9 We started in 1977 trying to approach it and here we
10 are in 2006 and still the gang problem is totally out
11 of control and we have not found any major solutions.

12 We had found some things by forming
13 organizations, community-based organizations that can
14 deal with these problems. We understand that the
15 gangs exist, we don't deny that they exist, we must
16 not deny it, we must face it, but it is also a hard
17 situation to deal with. A couple weeks ago there was
18 a murder in my area and I went to the funeral. And I
19 knew that there was going to be retaliation that
20 night so I went out to the local downtown and I was
21 standing on the street corner, just being there. A
22 lot of people know me in the community and they pass
23 me by. And I turned around and I looked and I said,
24 "How many 56-year-old men are out here?" We have
25 abandoned our children. We have abandoned our

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1 children. And I looked around and I said, "There's
 2 no" -- you know, I couldn't even find a 40-year-old
 3 to stand with me on the corner. So as communities we
 4 have become afraid of our children and so we let the
 5 state take care of them, we turn them over to the
 6 state, and when they get to the state, we have lost
 7 generations. For my family, we lost generations. So
 8 when I say it is personal for me, I'm trying to
 9 capture my relatives. And I call all the folks that
 10 I have been working with in institutions for the last
 11 15 years are my relatives, these are brothers and
 12 sisters that are incarcerated. And when we're afraid
 13 to walk by our relatives, to go hug our relatives, I
 14 don't know. When we are going into the institutions,
 15 the first thing they call, they say, "Here comes the
 16 hug-a-thug day." "Here comes the do-gooders." Well,
 17 you know, if I'm a do-gooder, I'm a do-gooder, but
 18 those are human beings, they're locked up. For
 19 whatever reason, they're locked up.

20 And I don't have much amount of time, but I
 21 was able to generate some letters from individuals
 22 that I worked with, individuals that I have seen
 23 change their lives around completely, and I am
 24 blessed, I am blessed to be part of that, to see that
 25 men, and I'm going to talk specifically men because

1 that's the group that I work with, men of all races
 2 have changed when we go into these institutions.
 3 To talk about gangs and why people join
 4 gangs, and Willie, Willie says, "When I first went to
 5 Pelican Bay, you are so fascinated by, oh, here is
 6 all these guys you've always heard about, all these
 7 guys running everything, just fascinating." All you
 8 hear is the way they talk, Aztec language, all this
 9 knowledge, philosophy from reading all this stuff.
 10 "I want to be like that, I want to be smart and
 11 educated like he sounds." Well, unfortunately, some
 12 of the individuals that get grabbed by that don't
 13 make it outside or some of them realize that's not
 14 really what they were looking for in the first place,
 15 you know.

16 So when we talk about alternatives and we
 17 talk about what it is we're going to do to bring our
 18 relatives back home, what we found in working in
 19 several institutions in California is the culture of
 20 spiritual transformation. What I mean by that is if
 21 I know where I come from, who I am, who Nane is, Nane
 22 will not return to prison, Nane will try to take
 23 himself, transform himself to be a better human
 24 being; that I as a man have a responsibility back in
 25 my community, but also in that community I ask that

1 community for forgiveness and I ask the community to
 2 take me back and to allow me to be a productive
 3 citizen in that community. But this all starts
 4 within the institutions.

5 We knew from the get-go in 1977 that if we
 6 were not in these institutions, we would not have
 7 peace out in the streets. Peace can come from within
 8 these institutions. There are so many, so many peace
 9 warriors inside these institutions that we have never
 10 reached out to to help us to deal with the gang
 11 problem, to deal with those individuals that are
 12 going in and out.

13 And lastly I just want to say that my work
 14 in the institutions has brought me great satisfaction
 15 because I have seen the change in these human beings
 16 and for the prisoners that I work with who help
 17 organize the Cinco de Mayo, Juneteenth and Native
 18 American Pow Wow and all the cultural ceremonies that
 19 go on inside these institutions. I speak for them
 20 because on Friday I was with them and I said that I
 21 would be here and I would try to speak the truth. I
 22 would speak the truth to the best I can because
 23 they're coming back to their communities. We want
 24 them to be better fathers, better brothers.

25 And I brought also some photographs that I

1 would like to later on leave with the commission
 2 where you see black men, brown men holding hands,
 3 dancing, you know. When you bring a culture and a
 4 spirit and the drum, when you bring that drum into
 5 that prison and you start, we all relate to that.
 6 And brothers start coming; black brothers start
 7 coming, white brothers start coming, and all form a
 8 circle and we lead and we dance. Nobody ever thought
 9 we could do that. We have been doing that for 15
 10 years now. And I think that we can change things, we
 11 must change the restorative justice, we must change
 12 the way we look at our relatives. And thank you very
 13 much.

14 MR. MAYNARD: Mr. Delgado.

15 MR. DELGADO: Yes. Good morning and
 16 thank you to the commission on allowing me to speak
 17 to you today.

18 The gang issue is a very serious one that
 19 not only affects our communities, but our prison
 20 communities as well. And I think oftentimes the
 21 reason I use "prison communities" is because they are
 22 in themselves their own little cities and
 23 neighborhoods within those fences.

24 Today's gangs are growing stronger as their
 25 membership increases and through alliances they are

1 strengthened also. Gangs today, in my opinion, have
 2 basically replaced the Mafia of yesteryear, that old
 3 Mafia that we had seen before with the Costa Nostra
 4 and the alliances and basically working together at
 5 times in order to accomplish things even though they
 6 may have actual differences within their particular
 7 groups and we see that. However, the problem is that
 8 we as a society, in my opinion, haven't recognized
 9 that shift, the change in the attitude, and we tend
 10 to look at gangs as neighborhood groups and we tend
 11 to look at gang activity as something that is
 12 juvenile.

13 The challenges we face today are extremely
 14 complex. For example, popular culture through music,
 15 television and video games often glamorizes gang
 16 membership and gang activity. The media, you know,
 17 is continually reporting the gang activity that is
 18 plaguing our communities and as a result, the benefit
 19 to the gang is that they get the notoriety that
 20 they're looking for. A common example that you could
 21 see today, probably one of the most publicized gangs
 22 there is would be the MS 13. However, probably one
 23 of the biggest problems that we see today is, that we
 24 face, is the general view that gangs are youth-
 25 oriented and that we don't look beyond the fact that

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1 adults do participate within gangs and that they do
 2 continue and it becomes generational in a matter of
 3 speaking.

4 Gangs inside prisons, as well as outside
 5 prisons, also tend to take the form of a criminal
 6 enterprise that focuses on business growth and
 7 operations. This has been seen, for example, in the
 8 Black Gangster Disciples, the Growth & Development.
 9 And you look at a lot of different gangs that have
 10 been established in 20, 30, 40 years, you start to
 11 see a shift in actually creating political action
 12 committees and things of that nature.

13 In Ohio, our approach was basically
 14 reactive in the past and what we chose to do is we
 15 chose to look at creating more of a proactive type of
 16 approach to two main issues; one being the
 17 investigative enforcement side and then on the other
 18 side, the inmate programming component to be able to
 19 deal with the problems that we face. Now, Ohio is a
 20 large correctional agency with approximately 45,000
 21 inmates, 32 correctional facilities, and our
 22 department also is responsible for parole supervision
 23 which has probably 35,000 offenders on parole. And
 24 in the past, as I said, they're basically reactive.

25 We approach the things reactively. We profile, we

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1 conduct an investigation, things that are at the
 2 local level, and through our new proactive approaches
 3 we decide to basically refine some of the elements of
 4 our STG program. These added goals are defined as
 5 reducing the flow of drugs in the correctional
 6 facilities, because it is our belief that the gang
 7 activity is responsible for the drugs coming into the
 8 prison as a part of gangs controlling the prison
 9 economy. And, you know, people tend to argue saying
 10 well, it is not all gangs that are actually bringing
 11 those drugs into our facilities. However, if you
 12 look at the amount of people that it takes to
 13 actually accomplish that, whether they actually have
 14 a gang name or colors or not is really kind of
 15 irrelevant when you look at the problems themselves.

16 Two. Offer programming and assistance to
 17 offenders with affiliation issues. One of the things
 18 that we want to make sure that we're looking at is
 19 that we're not just leaving out those people that do
 20 have affiliation issues and to just solely
 21 concentrate on those inmates that have come out and
 22 self-admitted that I'm a member of a particular
 23 group. And as a result, we want to create better,
 24 safer prisons and also that relates back out to the
 25 community.

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1 Briefly speaking, on the refined
 2 investigations, when we did our research and we
 3 looked at an investigator process we realized that
 4 one of the elements that we were missing was the
 5 parolee on community piece. One of the panel people
 6 said earlier, people are often afraid to speak,
 7 they're often afraid to say anything, especially when
 8 they're incarcerated. If you've got drugs coming
 9 into your prison, you've got different types of
 10 activity coming in there, you tend to run into
 11 problems with people saying anything. We found it
 12 was easier to actually approach it from the outside,
 13 work the investigation from the outside in, to be
 14 able to gather the information and then also identify
 15 the players on the street that are involved in the
 16 drug trafficking that's going on inside. Our unit,
 17 which we call the enforcement unit, has been
 18 established for approximately three years now and has
 19 been extremely successful.

20 On the programming side, we want to provide
 21 education showing the negative effects of gang
 22 memberships, strengthening family bounds, and provide
 23 continuing support through incarceration into the
 24 community. That's one of the components that through
 25 our research we found that we couldn't find.

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1 Those people that -- we want to make sure
 2 that this is a voluntary program so that we're not
 3 taking the reactive approach and just forcing the
 4 program on them to do their time in segregation. We
 5 want to be able to focus on programming such as
 6 cultural diversity, anger management, how it relates
 7 to hate, life choices, and also some limited drug and
 8 alcohol education, not just as a user, but also from
 9 a seller perspective, and also some include some
 10 other vocational skills.

11 Our program which we call COPE, which
 12 stands for Creating Opportunities for Positive
 13 Endeavors, is basically currently developed as far as
 14 the prison side of it. We're still working on
 15 community piece.

16 When we started this process of creating
 17 the COPE program we realized that it was necessary
 18 that we include many community partners and also look
 19 at other state agencies. We worked with the Ohio
 20 Department of Youth Services which controls the
 21 juvenile facilities within the state to work on the
 22 process with us, we have a seamless program that runs
 23 between youth and adult facilities, and also the
 24 Adult Parole Authority in conjunction with the Ohio
 25 Attorney General's office. We are currently looking

1 at different vendors to be able to, and community
 2 groups to be able to provide some of the services not
 3 just on the community piece, but to also bring the
 4 community into our facilities and to help with
 5 strengthening family ties through our visiting
 6 component to be able to reintegrate the offender back
 7 into the family.

8 In closing, we feel that we put together a
 9 comprehensive program to combat gangs on many levels.
 10 Of course, it is going to be a difficult task. And
 11 as our enforcement unit project has proved to be
 12 successful, we hope that our gang program is also,
 13 the COPE program is also going to be beneficial.
 14 Thank you.

15 MR. MAYNARD: Thank you. And I want to
 16 thank each of you for your testimony and we will
 17 certainly have three different perspectives on the
 18 gang problem.

19 And I have, just to start the questioning,
 20 a question that was alluded to earlier about gangs
 21 being, gangs in prison being related to the intensity
 22 of the gangs in the community. And do you think it
 23 is possible that in an area where gangs are dominant
 24 in the community, you have gangs in the prisons, to
 25 reduce the impact of those gangs in the prison, each

1 one of you, if you don't mind?

2 Dr. Byrne.

3 DR. BYRNE: You say programs to reduce
 4 the impact of gangs?

5 MR. MAYNARD: Yes. Can you reduce the
 6 impact of the gangs in the prisons if they're in a
 7 community where or in a state where gangs are
 8 predominant.

9 DR. BYRNE: I mean, that's obviously
 10 going to be the \$64,000 question.

11 I think you need to look at some of the
 12 gang intervention programs that everybody is talking
 13 about at the community level. The most obvious one
 14 is Operation Ceasefire. A criminologist by the name
 15 of James Q. Wilson calls it the most significant
 16 intervention program developed in the last hundred
 17 years. Others have taken a more pessimistic view of
 18 what it is about, but it is interesting to think
 19 about in terms of what this panel is doing because
 20 essentially what Operation Ceasefire is, is the
 21 carrot and stick program. The carrot is to offer
 22 incentives to gang members and gang leaders not to be
 23 involved in violence in those areas. The incentives
 24 include taking the marks off, the gang affiliation
 25 marks, access to programs that they wouldn't have

1 access to, job, employment, things like that. The
 2 disincentives, or the stick part of it in terms of
 3 carrot and stick, is to utilize zero tolerance,
 4 policing strategies in those areas which will disrupt
 5 the various types of criminal enterprises those gangs
 6 might be involved in. So essentially what you are
 7 saying, I think I heard at the beginning, is you are
 8 saying to the gangs as long as the stuff doesn't get
 9 bad in terms of serious violence, particularly
 10 homicides in areas, we will let you do the little
 11 stuff, and it is essentially an exchange relationship
 12 between gang leaders and community leaders in those
 13 areas.

14 If you take that same approach and apply it
 15 to prisons, you have essentially handed over some of
 16 the control of the prisons to the dominant gangs,
 17 right? If you say, "Look," you go to a leader of a
 18 gang and say, "We're having problems here, Jim, and
 19 we don't want these problems and if they keep
 20 happening you probably know we're going to come down
 21 here very hard and that might affect things that you
 22 do." It could be something -- so that, to me that
 23 might not translate. I get nervous with Operation
 24 Ceasefire strategies, with carrot and sticks, not
 25 because I don't like this combination of carrot and

1 sticks, as much as typically what I find is we leave
2 out the carrots and we haven't figured out what
3 people really get in terms of their involvement in
4 gangs, that's my original comment. We don't
5 underestimate the importance of gang affiliations to
6 these individuals and I think I answered some of that
7 here.

8 MR. MAYNARD: Mr. Alejandro.

9 MR. ALEJANDREZ: I think that you can
10 have an impact but it is something that has to be
11 unrooted because it has been in there for many years.
12 When you have generations of involvement, you see the
13 same thing over and over again, so why change if you
14 don't have nothing happening in the community.

15 I was at the Hollenbeck area yesterday and
16 Father Greg Boyle is running a great program, all
17 kinds of young people involved in it, but that's one
18 organization in the sea of thousands that are needed.
19 You know, I think that if we can provide jobs, we can
20 provide those programs within the prisons that people
21 have talked about and direct it to the community, I
22 think that we could start to make a dent on it.

23 Also I just want to mention to you, I have
24 been involved in several national peace summits
25 throughout the country and we brought some of the

1 biggest gangs in the country together to talk about
2 peace and economic justice and we asked this
3 government for support, we asked President Clinton at
4 that time, we have asked other governments, to help
5 us to bring economic justice to these communities.
6 And the good example is the Bloods and Crips peace
7 treaty that happened. That was a historic thing that
8 this country I think failed to take advantage of and
9 to look at and how they could support such a
10 movement. I held that to the accord of any peace
11 treaty throughout the world because if you look at
12 the individuals that have died in wars and
13 individuals that died in the war between Bloods and
14 Crips and for them to come up with a treaty to
15 ceasefire and look at economic justice, we do this in
16 every country where we take the courts to every
17 country, we provide them economic sustainability, but
18 yet here in L.A. where we could have, we had an
19 opportunity to create a positive impact on gangs
20 throughout this country, so now we find ourselves on
21 the other side, looking from the East Coast this way,
22 they came this way.

23 And, again, I think just in terms of how
24 the media plays out on this gang thing, one is MS,
25 you know. There's gangs that have been involved and

1 bigger than MS for a long time, yet I think that the
2 media itself is making a great recruitment for MS
3 members, so we have to be aware how the media is
4 playing and how our communities have been betrayed.

5 MR. DELGADO: I think that the relationship
6 between the prison and the community as far as the
7 gang relationship stems from a couple different
8 issues. I think that the family dynamic has broke
9 down within the actual inmate's family, organic
10 members family, I'm not talking about the gang
11 family. It gets confusing at times. And I think one
12 of the components that we were looking at is actually
13 the family strengthening component to the COPE
14 program where we actually through supervised
15 visitation actually tried to reintegrate the family
16 back into the inmate's life to provide the support.
17 And then also in the community piece, one of the
18 things that we're looking at is being able to offer
19 assistance through independent housing which
20 currently exists within the department to be able to
21 basically relocate them to a non-gang area because
22 part of the recidivism that happens with the gang
23 activity tends to go back to -- I mean, you have a
24 guy that goes into a prison who is a gang member on
25 the street, he may have done nothing while he was

1 incarcerated, and then upon release he is going back
2 to the same gang neighborhood and he has got the peer
3 pressures in participating. And it doesn't start off
4 let's go out and do this or that that may be a
5 criminal act, it goes to hanging out with his
6 friends. And really the entire culture -- I remember
7 years ago when I started off as a corrections officer
8 and I used to bring guys in that were new loads that
9 were coming into the prison and there were guys that
10 this was the first they were in prison and as we
11 walked up from Point A, B, C as you are going through
12 the process, guys knew half the population. I mean,
13 it is just the culture that's ingrained. So one of
14 the things that we really tried to focus on in
15 developing the program was actually to get into the
16 cognitive behavioral therapy of actually trying to
17 change values and change how they process and look at
18 other people and to break down some of those barriers
19 that have been established for years and, you know,
20 generations in some cases. So I think that it is
21 important that you look at both together when you are
22 looking at prisons and community because if you are
23 only working on one side of the issue, you are not
24 going to be able to accomplish it from a holistic
25 approach.

1 MR. MAYNARD: Thank you.
 2 MS. ROBINSON: Professor Byrne, I was
 3 pleased to hear you raise the idea of restorative
 4 justice programs because we have certainly seen their
 5 success and seen the research that has shown their
 6 success in settings outside of prison. Do you have
 7 examples where there have been models tried in prison
 8 settings?

9 DR. BYRNE: Yes. The current example
 10 is the research in the British prison system right
 11 now and the results of that evaluation of his model,
 12 which is what I just very briefly described in my
 13 statement, I will describe it to you in a little more
 14 detail, an inmate-focused restorative justice model,
 15 that research hopefully will be available fairly
 16 soon, but right now this is the problem you have in
 17 our field where there's really just a need for a
 18 whole evidence-based practice approach. We typically
 19 don't do Level 3 or above evaluations, we don't do
 20 experiments or quasi-experiments in institutional
 21 settings, so what you are left with is a lot of
 22 observational research, a lot of what is considered
 23 fairly low-level, non-experimental research. So even
 24 if you have a good program and there is a nice
 25 description of it, we don't know if that program

1 really has the effect people are saying it does and
 2 that's typical in our field and that's why the push
 3 in community corrections right now is towards
 4 evidence-based practice. People will say the words
 5 "evidence-based practice," by the way, but they don't
 6 have any evidence, they just say it. It is kind of
 7 nice to say, based on evidence. They're making it
 8 up, there's not a body of research, and I'm doing a
 9 systematic review right now on the prison-based
 10 literature.

11 We have some pretty good research I think
 12 on management strategies, crowd reduction strategies,
 13 essentially situational prison control strategies
 14 that relate to movement of offenders from one place
 15 to the other. We don't have good evaluation research
 16 yet on either the staff strategies that we're
 17 evaluating for NIC or the inmate-focused approaches,
 18 but I think those are the promising strategies and we
 19 have literature from the community, so that's kind of
 20 where people are going right now. I think the real
 21 key is to open up the doors of the prisons and the
 22 transparency part of it is related to performance
 23 measures, but it is also letting evaluators in, and I
 24 think we are right now in the prisons where we were,
 25 community corrections, about 20 years ago. The only

1 people they let in were the people that were going to
 2 do positive, non-critical evaluations because they
 3 were afraid of what they heard and there's a lot of
 4 reasons they should. Think about your job as a
 5 corrections commissioner. Three and a half, four
 6 years if you are lucky. It is not tenure like me,
 7 I'm 22 years at one university. They don't have
 8 that. So they fear me when I come in because I might
 9 produce a negative evaluation and what's the typical
 10 thing you do when you are faced with a crisis,
 11 somebody dies? Obviously that's a crisis situation.
 12 Or a negative evaluation saying the place is poorly
 13 managed. You replace a manager, right? So that's
 14 the danger, of course, of the evidence-based
 15 approach, but I think we're heading in that direction
 16 slowly and I think that's kind of -- if I could
 17 suggest to the commission a recommendation, that
 18 would be the one certainly that you should consider.

19 MS. ROBINSON: Actually that's a very
 20 good suggestion and we are very interested in
 21 evidence-based approaches for programs and are very
 22 keenly aware of the levels of that. In the
 23 restorative justice area outside prison, the program
 24 evaluations that are available are randomized,
 25 controlled trials so they are Level 5, the highest.

1 DR. BYRNE: That's what you need.

2 MS. ROBINSON: Exactly. Thank you.

3 MR. MAYNARD: Any other questions from
 4 the commissioners?

5 MR. KRONE: It seems that you have
 6 academic background, street level background looking
 7 into these problems, you are trying to change a
 8 system. You have to work with political entities I
 9 would think, problem prison entities. How much
 10 resistance are you getting from them to implement the
 11 change or at least accept the information that you
 12 have acquired and learned and how can we overcome
 13 some of those obstacles if they are receptive to
 14 those suggestions?

15 DR. BYRNE: That's an excellent
 16 question. I think a lot of what NIC is trying to do
 17 right now on a very small scale in terms of changing
 18 staff and management culture is about resistance to
 19 change. Everybody says it all comes down to culture.
 20 They said it 30 years ago about policing and we did
 21 our whole watershed change in terms of now we talk
 22 about community-oriented policing and now we use the
 23 term generally "culture." We're really talking about
 24 resistance to change in organizations and how we get
 25 people to start thinking differently about it. Part

1 of it is the transparency. I think the Prison Rape
 2 Elimination Act, opening the doors to institutions,
 3 having to provide information, opening the discussion
 4 on how extensive the violence and disorder problem is
 5 in prison, that helps, that's the -- I think
 6 information is empowering. It is not only
 7 information, but certainly that's one aspect of it.
 8 But, you know, it is not easy and I think just
 9 developing initiatives that focus specifically on why
 10 people think the way they do about offenders helps.

11 You are all excellent active listeners up
 12 here, I'm looking at you, for the most part you are
 13 active listening. A lot of prisoners, when they walk
 14 into a prison they're not facing a group of people
 15 that are saying hey, let's figure out how to change
 16 you, they're saying there goes Jimmy the sex
 17 offender, the pedophile, the guy who murdered Joe,
 18 the corrections workers, they can't stand those
 19 people, and you have to put that on the table in
 20 terms of talking about how you are going to change an
 21 institution. There is a lot of resistance in part
 22 because of attitudes about certain offenders groups
 23 so if we can't change it in the general society, how
 24 do we expect to change it within line staff and
 25 midlevel management in corrections facilities. So

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1 part of it is getting the information out there about
 2 who the offender is and what's really involved, who
 3 is in prison, who should be there, who shouldn't be
 4 there, so that would be my response about how you
 5 break down the resistance to change, and part of it
 6 is just putting it on the table where people are
 7 actually talking about their own attitudes about
 8 offender groups, that helps. I don't know if that
 9 answers it.

10 MR. ALEJANDREZ: Some part of that
 11 resistance, and there is resistance, part of the
 12 resistance is that fear of change, that fear of maybe
 13 something is wrong. And what we noticed, it takes us
 14 a long time to move into a facility where we meet the
 15 warden, we meet the assistant warden down the line,
 16 and so it takes up quite a bit of time to develop
 17 that trust, but our relatives trust us already,
 18 relatives in there, and so if we can develop that
 19 trust. And what I see also in the resistance is that
 20 a lot of people are saying you are helping all these
 21 gang members, you are giving them credibility, and I
 22 always kind of -- it puzzles me in California in
 23 terms of how we say credibility of gang members when,
 24 you know, the State of California gave them that
 25 credibility a long time ago when they built Pelican

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1 Bay Prison specifically to deal with gang membership.
 2 So you look at the millions of dollars that are spent
 3 yearly on the institution specifically to deal with
 4 gang membership. So we have to look at that and say
 5 is that really where we want our resources to go, so
 6 we have to look -- and the resistance to change. We
 7 have to have the laws come in there to change some of
 8 that resistance.

9 I'm hopeful that at some point we would
 10 definitely be looking at restorative justice. We
 11 have gone into the juvenile justice facilities and
 12 looking at that in terms of the county where I'm
 13 from, Santa Cruz County, through the Annie Casey
 14 Foundation looking at restorative justice and other
 15 community organizations, but there's always
 16 resistance with these institutions.

17 MR. GREEN: Just a followup on the
 18 resistance issue.

19 Dr. Byrne, you said that the acceptance of
 20 evidence-based research is showing some progress, it
 21 is growing slowly. What has caused that to be more
 22 acceptable to prisons, to allow persons like yourself
 23 to come in and to get data and to develop programs or
 24 positions?

25 DR. BYRNE: Typically they will be --

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1 what I found in community corrections is that nobody
 2 wants to be the last one on the bus but typically,
 3 particularly, for example, a lot of the reentry
 4 initiatives that happened over the last several
 5 years, you were tied into an evaluation component and
 6 I think initiatives that are developed and built in
 7 in external, objective evaluation are a key. There's
 8 a lot of resistance even within organizations that
 9 provide the money now of doing that and that's what
 10 you need. You don't need -- and I like doing it.
 11 Jim Burn, who is a newspaper reporter, wrote a nice
 12 profile on such and such a program. I did that on
 13 reentry programs and they're out there on the web,
 14 you can read them. I like doing that work. But to
 15 do the objective, external evaluations is more
 16 difficult, it hurts your relationship with those
 17 people, right? If you are my friend and I write a
 18 negative evaluation, you think you are my friend and
 19 Byrne burns me, it is a problem with having a name
 20 like Byrne as an evaluator, obviously you might not
 21 want to let me in again, and that's one of the issues
 22 that you have to put on the table with this. But I
 23 think the way you do it is you tie initiatives and
 24 incentive money to programs to try new programs with
 25 an external evaluation component. You can't do it

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1 internal, you can't let the people running the
 2 programs do the evaluation, and we have that in the
 3 rehabilitation literature right now. It is a
 4 question of whether some of the programs really show
 5 the effects they're supposed to show because the
 6 people who ran the programs are the people who
 7 evaluated them and we know what the problem will be
 8 there, so that's an excellent question. I mean, I
 9 think you do it by tying the initiatives, new money
 10 initiatives in particular. There's going to be
 11 support for new model program development with
 12 external evaluation and funding.

13 MR. RYAN: I tend every now and then to
 14 have a whole naive side to myself that I worry about,
 15 but we can't necessarily fix the community that the
 16 people came from. They came from the community and
 17 we have this whole society out here that says be
 18 tough on crime so give them time, 10, 20, life, all
 19 of those types of things, and put them in prison, and
 20 we don't necessarily have a good connection, although
 21 we probably should have, to the community on the
 22 outside. So I ran a jail and I get people for 23
 23 days is my average. I'm not sure what prisons are
 24 but let's give them a couple of years that they have
 25 people in there.

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1 What do you want us to do between the time
 2 they walk in and the time they walk out to change
 3 what is perceived as a gang culture that is there,
 4 and why as a culture or a prison culture or
 5 administrators do we tolerate gangs being allowed in
 6 our jails and prisons. Why can't we sit down when
 7 individuals walk in and say, and this is my naive
 8 side now, why can't we sit down and say that activity
 9 is not tolerated in this facility, this prison, this
 10 process that you are in; stop it, don't have your
 11 flag hanging out of your pants, don't have all of
 12 those types of things, we will not tolerate that and,
 13 in fact, if you proliferate in some fashion some sort
 14 of gang activity you will end up in the special dorm
 15 down south and you will stay there for your entire
 16 period of time because we do not tolerate that
 17 behavior here. We can't fix the before and sometimes
 18 we can't fix the after, but we do have some control
 19 in between the walls. What should we be doing to
 20 make it safe, secure if gangs are considered bad,
 21 which it sounds like they're bad, what do we need to
 22 do to fix it?

23 DR. BYRNE: Well, I don't think more
 24 control and segregation and those type of stick
 25 approach strategies work real well and they just put

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1 an incredible strain on resources of institutions
 2 because it is harder to manage offenders like that,
 3 but the short answer to what you said is to do what
 4 you and I are doing now, we're looking at each other
 5 one-on-one, and I think relationships that are
 6 developed within institutions are probably the best
 7 way of reducing the power of gangs in the sense that
 8 you develop a relationship with a staff worker or a
 9 counselor or whatever that essentially provides an
 10 alternative to that person to what he gets which is
 11 positive within the gang which is support, identity.
 12 So the first thing you ask what you would do. I
 13 guess it is this, it is that interaction, trying to
 14 make a connection to somebody, and I don't think we
 15 do that just by reading me the rules and telling me
 16 where I might go if I do something, that's probably
 17 not going to do it. What would make more sense, I
 18 think, is to improve informal social control
 19 mechanisms and think about how you might do that,
 20 that's where restorative justice models come in, and
 21 that's certainly where culture change models come in
 22 because you are talking about changing the staff's
 23 approach to offenders as opposed to one where I'm
 24 simply telling you what to do and another where I'm
 25 essentially using motivational interviewing

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1 techniques and a variety of other strategies to get
 2 you to think about what you heard today which is
 3 transformation; that you can do something with your
 4 life differently. How do you do it in 22 days I'm
 5 not sure, but I think the starting point would be
 6 this as opposed to trying to read you a statement
 7 this is what will happen with this commission, it is
 8 not. It is this. I think that's not the right
 9 approach.

10 MR. RYAN: Nane, what do we need to do?

11 MR. ALEJANDREZ: In 22 days it is hard
 12 but, you know, but I believe in miracles.

13 MR. RYAN: We have faith, we can do
 14 that.

15 MR. ALEJANDREZ: One is what I
 16 mentioned earlier. If you don't -- if little Joe
 17 doesn't do what he is supposed to do in this
 18 institution, we're going we send you up to -- I call
 19 it send it up state because they usually wind up in
 20 Pelican Bay, you know. We have seen what happens in
 21 Pelican Bay, we see how people are running the show
 22 from Pelican Bay. No matter how secure you make it,
 23 it is going to operate.

24 Let me take what just recently happened in
 25 L.A. County, the last uprising that happened there.

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1 They had a program there called AmeriCan run by some
 2 brothers on the street and stuff, and all those
 3 individuals that were there, it was mixed,
 4 multicultural, all those individuals that were in
 5 that AmeriCan program did not participate in the
 6 riots. Now, to my knowledge, that program is not
 7 there anymore. So sometimes we have effective
 8 programs. Take Tracy Prison. Tracy Prison had
 9 tremendous vocational programs that allowed the
 10 lifers there to manage the gang situations, to bring
 11 the youngsters into the vocational and guide them and
 12 instead of being out in the yards, let's go to
 13 vocational, let's go to this, get involved in this,
 14 preparing them to leave the institution. I mean,
 15 that's working within, that's what I was saying
 16 earlier about utilizing the resources that we have in
 17 there. Those programs are all closed now and that
 18 side of the prison is like a ghost town. So I think
 19 that we have eliminated some of the programs that
 20 have worked. The word "Rehabilitation" is back now
 21 in the corrections system, we'll see what that means.
 22 One of the reasons that I really wanted to be here is
 23 because I really would like to push that we look at
 24 restorative justice, we look at rehabilitation and
 25 what rehabilitation really means.

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1 And on a personal, you know, all those
 2 relatives of mine, somebody has to deal with their
 3 children that are left behind. How many of you
 4 commissioners have relatives in prison? I'm pretty
 5 sure you'd probably have a whole different take if
 6 you had to go stand up like the lady said when she
 7 was standing outside that prison yard waiting to see
 8 her husband and seeing that.

9 You know, when I see elders, the way
 10 they're treated in the visiting room in Pelican Bay
 11 Prison and make them walk like a duck sideways and
 12 their elders holding their pants up, it is the most
 13 humiliating thing that I have ever seen. We got to
 14 change that system. When individuals are treated
 15 with human dignity, they themselves start to change.
 16 The reason there is rioting, we have not -- we have
 17 not done that in these institutions and I think
 18 everybody knows it. We just go around in circles.

MR. RYAN: Thank you, Nane.

Mr. Delgado.

MR. DELGADO: When we talk about kind
 of the lock-them-up-in-segregation-throw-away-
 the-key-type mentalities, I think the important thing
 in that respect is that is reactive. That's actually
 pretty common throughout the country through the

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1 research that we have done and that's basically how
 2 correctional systems manage their inmates. Now do
 3 those systems have programming during the
 4 incarceration and segregation for their gang members,
 5 yes. And a lot of it is good programming. It
 6 focuses on the issues of looking at different
 7 diversity issues, it focuses on rage, it focuses on
 8 hate and things like that. However, when you present
 9 that in that type of environment, you know, really is
 10 the end result, is the end result, are you getting
 11 that end result because of the programming or are you
 12 getting that end result because you have locked them
 13 up for 10 years, and I think that that's the thing
 14 you look at. Through our research we've looked at
 15 some of the prison systems where they will, a guy
 16 will end up in segregation for a number of years, be
 17 offered the program, and then say we've got a hundred
 18 percent success rate. Is it because of your program
 19 or because you locked him up for 10, 14 years before
 20 you even allowed him to go through the program to be
 21 able to get out of segregation? That's a completely
 22 reactive approach. To really change things you need
 23 to get to them before they do something that is
 24 detrimental to themselves and you really need to take
 25 the proactive approach which starts with when they

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1 come in through reception identifying if they are a
 2 gang member.

3 One of the things that we do, and our
 4 average stay in Ohio is 2.7 years, and for inmates in
 5 general, the one thing that we do at our reception
 6 center is inmates that -- we have a team of people
 7 that are trained to look for signs, for
 8 identification, and they sit down and talk to the STG
 9 person at that institution and they tell them what
 10 the rules are and they tell them what won't be
 11 tolerated and then we deal with it from there.
 12 That mainly in the past, that was for the process of
 13 being able to track and monitor. What we're moving
 14 into is identification for the purpose of programming
 15 needs through reentry, identifying the needs that
 16 they have and then being able to address it in that
 17 short timeframe.

18 You know, 2.7 years may seem like a long
 19 time, and I'm sure that it is for the guys that are
 20 locked up, but when you talk about 15, 20, 30 years
 21 of ingrained behavior and thought process, that 2.7
 22 years is a fairly short period of time.

23 And one of the things that we wanted to
 24 address within our program was not just -- one of the
 25 things you run into when you look at correctional

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1 programming is that, okay, here you go through this
 2 program, and at the end of however long time period
 3 it is, here is your certificate. And, of course,
 4 that certificate is as good as whatever the parole
 5 board wants to make of it and that goes into their
 6 file folder and then they present that to the parole
 7 board when they come up. But the problem with that
 8 is that there's very little aftercare, very little
 9 followup, and being able to help them manage that
 10 change. You know, the fact is they're going to have
 11 to make that decision if they want to do the right
 12 thing or not, but what the system should be doing is
 13 be able to foster it and allow that change to occur
 14 and then to be able to support those positive
 15 decisions and that's the reason why we want to take
 16 the approach from not only having the six-month
 17 program end with three-month step-down and then
 18 continuing type of aftercare, kind of like what is
 19 seen with the models of drug and alcohol counseling,
 20 to be able to go to those meetings, kind of have your
 21 A.A.-type meeting where you are going to something on
 22 a regular basis, you are seeing your counselor, and
 23 then you are working through and even upon release
 24 you've also got community support there as well.

25 I think that that is -- you know, the
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1 downside is it is so easy to lock them up but the
 2 resources that you expend as far as keeping them in a
 3 segregated environment, not just with the actual cost
 4 of building the facilities, staffing those
 5 facilities, but, you know, on the other side you are
 6 actually giving them something to put on their gang
 7 resume. What brings more to the table, for example,
 8 for an inmate that is a gang member in California if
 9 they can say they have been to Pelican Bay and they
 10 have been around all these different people? I mean,
 11 if they're not wanting to change their mind set,
 12 that's the core. You've got to change their mind
 13 set. Locking them up does nothing unless you do
 14 something that's proactive, you now make that
 15 positive change.

16 MR. BRIGHT: Could I just be sure I
 17 understand this. When the person comes into a
 18 facility in Ohio, you say people are trained, even if
 19 they don't say, they identify them as a gang member?

20 MR. DELGADO: Correct.

21 MR. BRIGHT: What happens then? What
 22 is the person told at that point about gang
 23 affiliation, what they can do and then where are they
 24 housed and all that?

25 MR. DELGADO: You are talking about the
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1 tracking processes?

2 MR. BRIGHT: Yes. What do you tell the
 3 person, you can't anymore? What Mr. Ryan said here,
 4 you can't wear any insignia, blah, blah, blah, or
 5 what do you do?

6 MR. DELGADO: Well, basically when they
 7 come in -- and the easiest form of identification is
 8 usually their tattoos and also through self-
 9 admission, you know -- they're asked the question are
 10 you a gang member, have you been part of any type of
 11 organization, and we kind of break it down from
 12 there.

13 On the profiling portion of that, what ends
 14 up happening is that they get profiled as being a
 15 member of a security threat group or an unauthorized
 16 group, and what we do from that standpoint is that we
 17 check up on them, and by policy we have to check up
 18 on them at least every two years and that may include
 19 shaking their property down, making sure that they're
 20 not possessing gang-related materials, and that would
 21 also include within that two-year review talking to
 22 the security threat group investigator at that
 23 facility just to interview them to find out what's
 24 going on, allow them to look back through their
 25 record, try to look at what their behavior has been,

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1 and then just to see what's going on with them so we
 2 can make sure at what level. We utilize a
 3 participation-based system as far as STG
 4 identification. Some systems use a validation
 5 system. California, my understanding, uses
 6 validation where they have to acquire a certain
 7 amount of points to even be validated. Anybody that
 8 exhibits any type of behavior, participating in an
 9 unauthorized group through whatever means, mainly
 10 through self-admission, we profile them and we track
 11 them. And this is to kind of give them the, you
 12 know, the belief that we're continually watching them
 13 and to help them kind of correct their behavior.

14 MR. KRONE: Excuse me. You are
 15 familiar with the term "blood in, blood out"?

16 MR. DELGADO: Yes.

17 MR. KRONE: If you would, explain that
 18 to the group panel what that means and then explain
 19 to me how, if those gang members want to get out,
 20 take advantage of the programs you are offering, how
 21 do you protect them then from the rest of the
 22 inmates?

23 MR. DELGADO: The term "blood in, blood
 24 out" generally means that you shed somebody's blood
 25 to get into the gang and they shed your blood to get

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1 out of the gang, so basically you are kind of in for
2 life-type mentality. We looked at that issue when we
3 were developing our program because we wanted to make
4 sure. And one of the reasons that we were also
5 looking at other inmates that have affiliation-type
6 issues, those people that when they commit those
7 crimes, they are doing it with others, they tend to
8 be followers. We want to be able to hit them too
9 because later on down the road they could also be a
10 more full-fledged gang member.

11 But we wanted to take some of the emphasis
12 off it being called a gang program and for particular
13 reason. Because if Inmate Smith is going through
14 this program and it is the gang program, well, then,
15 the entire population is a gang member. And then,
16 also, they also get the outside pressures from inside
17 the facility for even taking the program.

18 You know, one of the things that we wanted
19 to kind of safeguard against is, one, having
20 disruption within the program which is why we screen,
21 which we will be screening the inmates that go
22 through there, but we wanted to at least during the
23 initial six months, that step-down phase that I
24 talked about, was actually to be able to reintegrate
25 them somewhat into population on a full-time basis.

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1 Within the early stages they're not necessarily,
2 they're not segregated, they just have different
3 recreation time and things like that to kind of allow
4 them to clear their heads, see where they're at,
5 they're not dealing with the outside pressures.
6 They're not locked in their cells or anything,
7 they're within the housing unit, they're going out,
8 they are going to recreation, going to commissary,
9 food service, all that. We just wanted to be able to
10 kind of segregate them a little bit from the
11 population, from the pressures, and then slowly
12 reintegrate them back into GP because they're going
13 to have to go there at some point, you can't keep
14 them completely. And the important part of that is
15 that when they have -- if integration is successful
16 they will be able to deal with the pressures that are
17 coming at them when they finally do get released, so
18 to speak, and they do have to deal with those people
19 that are coming out, and that's the reason why we
20 thought aftercare was extremely important because if
21 you are dealing with the challenge, you know, and the
22 inmate goes out in the population and he is getting
23 these pressures to do certain things or be hanging
24 out with certain groups of people, then this way the
25 aftercare portion where they have to see their

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1 counselor in their peer support group, which I think
2 is an important understanding, peer support is
3 important to be able to help them, you know, overcome
4 those challenges that they have.

5 MR. KRONE: Thank you.

6 MS. SCHLANGER: I have a question that
7 comes from a couple of conversations with folks who
8 run different kinds of facilities, and one of them
9 from a person running a pretty tough jail said, "If I
10 separate inmates based on what gangs they're in on
11 the outside, I've just declared one housing unit for
12 this gang and one housing unit for that gang, I have
13 created a gang problem in my jail." He said, "I
14 would never do that. I manage the inmates in housing
15 where that's not one of the principles."

16 And then a guy who ran a prison, "Of course
17 I separate them by gang, otherwise they're going to
18 kill each other."

19 These are both pretty well-intentioned,
20 experienced corrections guys, and I wonder your
21 perspective on that issue, the separation of folks
22 when they're incarcerated based on you don't mix
23 gangs that don't get along or whether that actually
24 facilitates gang activity and control over the
25 facility.

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1 MR. DELGADO: We don't segregate as far
2 as separating --

3 MS. SCHLANGER: I don't mean segregate,
4 isolating, I just mean separate the one gang from the
5 other gang.

6 MR. DELGADO: Yes. We don't do that,
7 and the reason for that is, again, it gives -- if you
8 are going to have activity going on and you've got
9 all the players together, then that's not going to
10 create, in my opinion, it is not going to create a
11 safer prison.

12 One of the things that we do as an
13 administrative function is that we actually every
14 other month print out a list of the facilities,
15 facilities are responsible for this, looking at the
16 list and seeing where the groupings are in housing
17 and also in jobs. We want to make sure that you
18 don't have too many Crips working in a particular
19 area or too many White Supremacist or Arian
20 Brotherhood members working in a particular area,
21 living in a particular area, because gang members by
22 far are probably the most manipulative type of
23 inmates that you have because they're working
24 together as opposed to the lone inmate out there
25 trying to get a bed moved somewhere. And they tend

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1 to manipulate the staff into getting moved to
2 different things, non-smoking program or this
3 program, whatever the case may be. And the thing is,
4 when you group them together you give them power, and
5 the thing that you don't want to do -- that's
6 negative power, you know. As far as when you are
7 dealing, you want to give them a positive approach as
8 opposed to segregating them.

9 The biggest thing that we get are racial
10 separation requests and basically from White
11 Supremacist-type inmates that don't want to cell with
12 anybody other than another white person and we deny
13 them on a regular basis because we don't believe in
14 that approach.

15 MS. SCHLANGER: Do either of you have a
16 different perspective on that or does that pretty
17 much sound like what you think is the way to approach
18 it?

19 DR. BYRNE: I would like the proactive
20 orientation. I guess my view would be to think more
21 about incidents in prisons, not only in the
22 community, hotspots for crime, maybe looking at
23 incidents in that respect in particular to see which
24 subgroup of the population seems to be responsible
25 for the majority of the incidents that come to light

1 and maybe develop some type of strategy. It is a
2 conflict resolution strategy that deals with what
3 these underlying problems are that lead to the
4 conflict, so that's kind of a variation of a
5 restorative justice model and it is a conflict-
6 centered approach they're trying in at least one
7 British prison right now, and so my orientation would
8 be to look at hotspots like we do in the communities
9 and try to figure out why we seem to be getting the
10 pattern of behavior we do in certain areas of certain
11 facilities and then to apply a problem-oriented
12 response to those areas and sometimes which might
13 break down to this. Well, gee, let's take a look.

14 We have 15 people responsible for 20 percent of the
15 incidents last month. Okay. These 15, we profiled
16 them all, have significant mental illness problems;
17 what does that suggest. Maybe we need to deal with
18 the underlying mental illness problem here, maybe
19 there will be a gang affiliation. I think more
20 likely you are going to see more general categories
21 of conflict in the areas. You are probably going to
22 talk about conflict resolution. Obviously gangs
23 could part of it but I think it could be something
24 like looking at underlying problems like mental
25 health problems, for example, that might explain why

1 you get the pattern of behavior. It is a little
2 different.

3 JUDGE GIBBONS: The inmates you are
4 dealing with are, the men and women, are social
5 creatures who need social interaction and maybe
6 belonging to groups that they can interact with. Has
7 anybody in the corrections profession considered
8 making available alternative organizations that might
9 be a competing force for gang membership?

10 DR. BYRNE: I think if you look at the
11 work at Graterford Prison, for example, the lifers'
12 programs that have been set up in many institutions,
13 that's the obvious example that comes to my mind for
14 me and this whole idea of the transformation they
15 talk about, so I know at least a few people that are
16 on this commission went to Graterford I think last
17 summer and they did the World Congress on Criminology
18 in Philadelphia, so to me that's one obvious solution
19 to negative gangs, is put together essentially a
20 positive gang, right?

21 When I was a kid it was the Junior Police,
22 don't ask me exactly what they were, but Junior
23 Police, and when my kids were in high school I ran a
24 program that was the AU basketball program that old
25 Professor Byrne here funded through his pocket and

1 definitely spent too money, but that highlighted this
2 whole notion if you want to be part of this program
3 you had to stay in school, at least pass your
4 classes, and that is an alternative to a gang, it is
5 another gang because they were with us all the time
6 and we traveled all over the place. So I agree,
7 that's the kind of thing you do. The examples are
8 few and far between, unfortunately, and certainly the
9 Graterford is one example, I think.

10 MR. ALEJANDREZ: I think also we've had
11 examples already like the Impact Program in Soledad
12 Prison, POPS in Solano, Straight Life in Tracy, there
13 are those programs already in place but they need
14 support, they need to be able to survive. Friends
15 Outside definitely is a group, and then there's
16 cultural and spiritual groups inside the institutions
17 that the individuals themselves try to look out for
18 the youngsters that are coming in so they can direct
19 them to these cultural groups, spiritual groups or
20 vocational groups.

21 I just want to say a little bit in terms of
22 when they want to get out, when they want to get out
23 of the gang. In California, you know, we created a
24 whole special needs yard just for those that are
25 dropping out, getting out of the gangs and stuff, and

1 the population is really, really high. I was at a
 2 meeting a couple weeks ago with the sheriff of
 3 Salinas in Monterey County and he was saying
 4 something that there's been a stronghold for a
 5 particular gang there and that he was almost trying
 6 to open up a whole unit because there are so many
 7 dropouts coming out of that particular gang there and
 8 so there is happenings. My concern with that is, and
 9 then the briefing process, is the followup. The
 10 followup to that is how are those individuals going
 11 to be supported to be able to continue. We don't
 12 have a very good track record in supporting those
 13 programs, so, again I would support a lot of inmate
 14 programs that are in there now.

15 JUDGE GIBBONS: Mr. Delgado.

16 MR. DELGADO: I think that when you
 17 look at the social grouping, that's important and
 18 that's one of the usually things I address when I do
 19 training myself. When you are looking at a gang
 20 member, you are looking at a social group kind of
 21 gone awry, you know, as far as entering into the
 22 criminal elements and the activity that goes on with
 23 that. In our facilities, each facility has social
 24 groupings, organizations, per se. For example, we
 25 have Red Cross Chapters, EDA Chapters and different

1 types of chapters within each of our facilities
 2 allowing them to participate, do fundraisers, do
 3 community service and things like that. One facility
 4 I worked at, for example, at Marion has a large focus
 5 on faith-based programming and actually where they
 6 have created an interfaith dorm where you have
 7 Christians living in families and you have Jews
 8 living in families, with Muslims living in families,
 9 and they practice their faith-based approach, and
 10 where you've got Promise Keepers going in there and
 11 inmates being able to participate in good social
 12 groups, I think that's the important thing. You
 13 can't take somebody away from a gang membership
 14 without offering them something else. I mean, you
 15 know, if you take somebody's car away because it
 16 doesn't work, they still need to get to work. So it
 17 is important that you give them something else to be
 18 able to satisfy whatever that fix is that they need.

19 DR. DUDLEY: Along that line, my
 20 question is based in part upon Professor Byrne's
 21 comments about identity as being a central issue.
 22 Certainly the comments that we have heard today from
 23 those who have been previously in gangs and talked
 24 about transformation in a variety of ways, from my
 25 own experiences with gangs that goes back 30 plus

1 years or so, I want to ask a more basic question.
 2 Do we really, do you really think that
 3 gangs, or maybe if we are using the word
 4 "affiliation" as opposed to "gangs" it doesn't sound
 5 so horrible, is bad or is it that the gangs that
 6 we're talking about as opposed to other affiliated
 7 groups have such a limited sort of set of options for
 8 feeling some sort of strength or some sort of
 9 identity, and are the programs that we are really
 10 talking about those that provide other options, that
 11 introduce people to other ways to grow and feel good
 12 themselves. What Mr. Brown was talking about
 13 earlier, coming into contact with other mature guys,
 14 mentors, people who give you another sort of view of
 15 things, what you were talking about with regard to
 16 cultural transformation, those sorts of things,
 17 options that weren't available before that people are
 18 introduced to. So is it affiliation that's bad or is
 19 it having too limited a set of options for feeling
 20 good about yourself that is bad and if you change
 21 that, that that matters, that makes a difference.

22 DR. BYRNE: Well, affiliation it itself
 23 isn't bad for the individual gang member because for
 24 them it is giving them a sense of identity that he
 25 didn't otherwise have. And in these worst, the

1 poverty pocket areas that Sampson and some of the
 2 other people have been writing about so much
 3 recently, these are seriously impoverished areas
 4 where there's not a lot of hope and the gangs, in a
 5 sense, provide a sense of identity that is not
 6 provided in those settings, so the affiliation is
 7 giving them something.

8 Now the second part of it is can we do
 9 something about that. Someone made the comment
 10 earlier we can't solve the problems of the community
 11 within the prison setting but I think they're linked
 12 and you have to talk about providing alternatives,
 13 not just within prisons, and I think you heard some
 14 good examples of that, but also in the community as
 15 well, and that's difficult and that's where people
 16 writing about how to improve collective advocacy at
 17 the community level, improve informal social
 18 controls, I think you can take some of those lessons
 19 learned and apply them to institutional settings as
 20 well. That's where having some type of conflict
 21 resolution panel mechanism that's inmate-empowered
 22 and run provides that type of informal social control
 23 mechanism within the setting. But, you know, you are
 24 right, it is a difficult problem, but I don't know if
 25 I want to use good or bad in terms of the affiliation

1 because for the individual, if you are seeing it
2 through their eyes, they're gaining something that
3 we're not giving them.

4 DR. DUDLEY: I'm responding to some of
5 our discussion that was suggesting that gangs in and
6 of themselves were bad. I wanted to ask that
7 question. And part of I guess what's going through
8 my head too is that if that sort of transformation
9 can happen, if the program is designed to foster that
10 sort of transformation inside institutions, when
11 people do return and can bring that back to the
12 community, and that contributes to change there as
13 well if that kind of transformation is possible,
14 people can change, which some of our speakers seemed
15 to be suggesting is possible.

16 DR. BYRNE: But part of affiliation is
17 how long are you going to stay in the gang. I think
18 if you look at the research on desistance through a
19 life course, what they are saying is people
20 essentially grow out of gangs. I don't know if you
21 want to comment on that, but they get married, they
22 have things, they get relationships, so they can't go
23 out over here tonight, they have to be at home here,
24 and that's a change in terms of just basic activities
25 that relates to stability. So to the extent that we

1 can work on things in institutions that will lead to
2 a more stable person leaving the institution, then
3 you might have an impact on desistance down the road
4 independent of what's going on in the community
5 because maybe they will get involved in more stable
6 relationships as a result of some of the things you
7 work on in an institutional setting.

8 MR. MAYNARD: We have time for one more
9 question, Mr. Nolan.

10 MR. NOLAN: I have heard about a
11 program in Ohio called Opening Doors that started at
12 in Marion and apparently has gone to others that
13 teaches conflict resolution skills to the inmates and
14 I'm even told the COs saw the change so much that
15 they wanted it themselves. Could you tell us about
16 that, are you familiar with Opening Doors?

17 MR. DELGADO: Yes, a little bit.
18 Actually when I left that prison is when they were
19 starting to work on that. They've got other programs
20 there such as Kairos, Kairos programming goes into
21 that facility on a regular basis, Opening Doors. And
22 actually what I saw at that prison was an actual
23 culture change with the staff and, in return, that
24 also affected the inmates that were at that facility
25 too, and to the point where they were, people were

1 changing and trying to do some positive things.
2 That's not to say the entire population bought into
3 it staff and inmate wise, but they have offered some
4 different things to staff. Actually Marion is one of
5 the more progressive institutions that actually takes
6 a look at their staff and tries to provide additional
7 assistance through employee activities and things
8 like that that other institutions do not.

9 I can tell you, that wasn't the first
10 prison I worked at, that was the second one, and the
11 difference in mind set of the facility, you can feel
12 when you go to the prison kind of the culture, and it
13 was completely different from the prison I worked at
14 before. And one of the things that they do focus on
15 there is staff and as far as conflict resolution and
16 things like that. And I think when you get the staff
17 on board there, that will translate down to the
18 inmates. Somebody commented about that earlier, it
19 is actually changing the entire culture, and that's a
20 good example of a prison that has done that.

21 MR. MAYNARD: I want to thank all of
22 you for your testimony today, it has been very
23 helpful, and we are going to break now for lunch and
24 we will come back at 1:15. Thank you very much.

25 (Lunch)

1 DR. DUDLEY: The subject of our next
2 panel is the concept of transparency as it applies to
3 correctional institutions. It is my pleasure to
4 introduce three distinguished witnesses who will help
5 us explore and illuminate this topic. They are
6 Professor Walter Dickey, Ms. Gwendolyn Chunn, and Dr.
7 Silvia Casale.

8 Our panelists will explain the importance
9 for democratic societies in transparent government
10 institutions, they will articulate the key components
11 of the transparency, they will discuss the mechanisms
12 and obstacles to achieving greater transparency in
13 the context of corrections. The panel will also
14 examine how our correctional agencies in the United
15 States stand in comparison to other government bodies
16 and to correctional agencies in other countries
17 regarding issues of transparency and openness.

18 Professor Walter Dickey was the Secretary
19 of Corrections for the State of Wisconsin in the
20 1980s, currently is the court-appointed monitor of
21 the Wisconsin supermax facility, and the faculty
22 director of the Remington Center for Research,
23 Education and Service in Criminal Justice at the
24 University of Wisconsin Law School.

25 Ms. Gwendolyn Chunn is the president of the

1 American Correctional Association and was formerly
2 the Director of the Division of Youth Services of the
3 North Carolina Department of Human Services.

4 Dr. Silvia Casale is the president of the
5 Counsel of Europe's Committee for the Prevention of
6 Torture and Inhuman or Degrading Treatment or
7 Punishment.

8 We have asked, as in prior panels, for each
9 of the panelists to speak for about five minutes and
10 then we can then have an hour of exchange between
11 them and then questions and discussions for about an
12 hour following that, so I thank you all for
13 participating in the examination of this important
14 topic. We look forward to hearing your remarks.

15 We would like to begin with Professor
16 Dickey.

17 MR. DICKEY: Thank you.

18 Rather than repeat my paper that I think
19 you might have seen, I thought I would go at these
20 questions in a slightly different way in the hope we
21 might illuminate the questions before us.

22 I think if you ask most wardens of prisons
23 what the purposes that they have were I think the
24 first one they would say is the maintenance of order
25 and I think they would be right. If you ask the

1 question how do you get it and why do you want it, I
2 think the reason you want order is it brings safety
3 and that's one of the primary things prison wardens
4 should want. How do you get it. I think in a broad
5 sort of sense it is a function of compliance with the
6 rules, and that leads to the question how do you get
7 compliance with the rules if that is what gives us
8 order.

9 I think the thing about prisons is it is
10 tempting to look at the bars and the handcuffs and
11 the technology and all that sort of stuff and assert
12 or believe that's the primary method for getting
13 compliance with the rules and that certainly plays a
14 role in getting compliance, but I think there are
15 other things that work that are very important and I
16 think they have everything to do with this question
17 of transparency.

18 I think first of all for all of us, and it
19 goes to prisoners too, we get compliance for the
20 rules mostly through agreement. We have all agreed
21 to play by the rules and comply by the rules, and I
22 think in Monaghan Prison one of the things that you
23 want more than anything is to have the prisoners
24 agree to play by the rules, abide by the rules,
25 because that's one way of getting compliance.

1 I think, secondly, compliance with the
2 rules is a function of habit and prisons, of course,
3 run on procedure and repetition and habit and the
4 more of that we can get, the better. And obviously
5 there are incentives, rewards for playing by the
6 rules; disincentives, punishment for not playing by
7 the rules, and incentives play a powerful role in
8 ordinary life as well as in prisons in getting
9 compliance with the rules.

10 Now I guess to sort of return to my
11 question, if agreement to play by the rules is
12 important, the question is how do you get people to
13 agree. Again, I think the lessons of ordinary life
14 often apply with respect to prisons. I think we
15 agree to play by the rules because we think the rules
16 are fairly and legitimately made, we understand them,
17 we understand why playing by them is something that
18 we ought to be doing, we think they're factually
19 necessary for a civilized and civil sort of life.
20 And I think without legitimacy, without that sort of
21 agreement because they're fairly made and because
22 they're factually based and well understood, it is
23 very hard to expect people to comply because they
24 agree. And, secondly, if you don't have programs,
25 whether they're schools, jobs, factories, whatever

1 they are, the things again that make up the naturally
2 occurring forces that bring compliance with your
3 rules, you are much more likely to be relying on
4 force and handcuffs and all that sort of stuff as a
5 way of getting compliance because the less agreement
6 and the less naturally occurring forces that are
7 contributing to compliance, the more you are going to
8 have to resort to those sorts of things. To put it
9 another way, it seems to me the more legitimacy we
10 have, the more compliance and the more desirable,
11 that is a way of getting people to comply to the
12 rules.

13 And I think this question of legitimacy
14 goes to the very heart of what is called
15 transparency. It has to do with visibility, it has
16 to do with the fact that they are factually based, it
17 has to do, I think, with accountability because if
18 there's not factually-based rules, well understood,
19 made in the ordinary course of things, fairly made,
20 it is very unlikely that you are going to have, as I
21 say, compliance. It is also very unlikely you are
22 going to have accountability, and you need
23 accountability and visibility in order to get
24 compliance of the kind that I just described.

25 You need other things as well. I think in
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1 business, for example, in this country today, if you
2 look at the sort of competitive environment that we
3 have, I think what you see are companies that are in
4 a sense constantly scanning the environment, trying
5 to figure out better ways to make money because the
6 environment is a competitive one that's changing and
7 therefore they have to be on top of their game in
8 order to be profitable.

9 Unfortunately, that competitive environment
10 doesn't exist in prisons, there is not that incentive
11 certainly to be reviewing what you do, yet I would
12 say because the facts and circumstances of life in
13 prison are also changing, that also needs to be
14 continually under review by leadership in those
15 institutions because I think without that sort of
16 continual review, you can't have rules and a way of
17 life that is, in a sense, legitimate and responsive
18 to the environment in which people live. All of
19 that, as I said, would require, I would say,
20 basically compliance with the rule of law because it
21 is through the rule of law that we get compliance,
22 accountability and visibility. The rules fairly made
23 are rules that are made according to the rule of law.
24 That requires legislative interest and oversight,
25 that requires some administrative process by which

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1 these rules are made as they are in other areas of
2 public life, and I think by in large when we don't
3 see the rule of law operating in the prisons in that
4 very ordinary sort of way, I think what we tend to
5 resort to is things like court oversight or oversight
6 of some other kind because the ordinary methods that
7 we use in the democratic society to bring visibility
8 and accountability and oversight really aren't
9 operating.

10 So I think if one of the questions here is
11 why would we want visibility, I think one of the
12 answers is because it lends legitimacy to this
13 endeavor and by lending legitimacy to this endeavor,
14 it brings compliance with the rules and order and
15 therefore safety.

16 Let me just say one or two more words about
17 this question of oversight here and also one thing
18 about gangs because I listened to the discussion this
19 morning and I didn't hear at all, but there was one
20 thing that I felt was absent from this that I thought
21 was very important in understanding this question of
22 gangs, and that is we tend to talk about intervention
23 and all that sort of stuff to try to deal with gang
24 problems. When I was running the Wisconsin prison
25 system and we looked at this problem and we thought a

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1 lot about it and we tried to figure out what to do to
2 not have it, one of the things we quickly realized
3 was that gangs can find a foothold in any institution
4 when the institution isn't doing business the way it
5 should. That is to say, if the institution doesn't
6 have safety and protection of the people there, the
7 inmates are going to look for it somewhere and if it
8 comes from group activity, they're going to go to the
9 group activity. Now safety is one thing they may
10 look for but if you ask who has control of the jobs
11 in the institution, if it is the staff and you can
12 look to the staff making the job decisions in
13 legitimate and lawful sorts of ways, I don't think
14 you are going to go to trustees or other inmates to
15 try to influence those kind of decisions. But in a
16 sense when the institution abrogates its
17 responsibility, I think that is the moment at which
18 it is possible for the gangs to sort of take over.

19 Finally on this question of oversight, let
20 me just say this. I worked with a lot of people in
21 corrections and one of the things I have always
22 started out my work with, I think it has always been
23 confirmed in my work with the folks I work with, is
24 that the people want to do the right thing. You may
25 disagree with them about what the right thing is, you

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1 may disagree with them about how to get there, but
2 they invariably want to do the right thing. And I
3 think if you enter into any sort of partnership in
4 which you are going to bring oversight or involvement
5 or engagement of any kind, I think to approach it in
6 any way other than on the assumption that they're
7 trying to do the right thing and that you are in a
8 partnership with them to find out what that is and
9 how best to get it, it is likely to end in failure.

10 Just think about it this way. Suppose it was you
11 that was going to be the subject of oversight and the
12 approach we took was we're going to assume you want
13 to do the wrong thing, we're are going to assume your
14 motives are lousy, you want to hurt people, whatever
15 it is. If that was the assumption that one started
16 with, that is hardly the sort of engagement that is
17 going to bring any kind of a positive partnership,
18 and so I think oversight takes a lot of forms and a
19 lot of shapes. It really is circumstantial, whether
20 it is special masters as I currently am, or boards or
21 visitors or whatever the heck it is. But I think
22 unless it is entered in that spirit, it is likely to
23 turn out to be so contentious as to really end up
24 being largely ineffective and, quite honestly, run
25 the risk of making things worse rather than better.

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1 And these are fragile sorts of endeavors and I don't
2 think you should ever forget that interventions, well
3 intentioned as they may be, have the risk not only of
4 success, but also of failure.

5 DR. DUDLEY: Thank you.

6 MS. CHUNN: I submitted already some
7 written remarks that speak largely to the role and
8 the contributions that the American Correctional
9 Association has played since 1870 in the professional
10 growth and development of persons who work in this
11 field. I thought my time might be better spent if I
12 gave you a few reasons as to why it is difficult to
13 cultivate a transparent system. I am particularly
14 aware of the clock over here and I'm going to do my
15 best to sort of move through this so I won't
16 elaborate as much as I might. I will just urge you
17 that if there are things that I don't cover that you
18 would like to hear me talk more about, that you will
19 feel free to do so during the question and answer.

20 Number 1. Corrections leaders are
21 generally assumed to be guilty before any findings of
22 fact, and what I mean by that is that generally we
23 are assumed to be people who enjoy meting out harsh
24 punishment and punitive sanctions. Nothing could be
25 further from the truth. The reality is that prison

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1 has been glamorized in this society for a number of
2 years. Even it will go back to George Rath in the
3 Big House and all of that. We are still doing it in
4 television today.

5 You get the resounding notion during prison
6 reform that let's not make it too comfortable for
7 these people, maybe they won't want to come back.
8 Well, certainly evidence would suggest that that is
9 not true. They're coming back faster than we can
10 take them in.

11 Number 2. The public generally lacks the
12 political will to get involved in prison reform and
13 to demand changes. As one legislator said to me,
14 "Corrections won't get you elected but it can
15 certainly keep you from being reelected." So we're
16 striking this balance between citizen concerns,
17 victim concerns, which are long overdue, and
18 treatment which often means providing education and
19 other resources that the general public has to pay
20 for and so there is this tension about that.

21 What offenders get in terms of dispositions
22 is often a function of who they are and what they're
23 able to pay. Truth in sentencing went a long way to
24 help improve that situation, but we still have had
25 work with disproportionate minority confinement for a

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1 long time. To hear this morning that one out of
2 three African-American males can expect to be a part
3 of the system is one thing. When I started 20 some
4 years ago, the ratio was not quite that high. And so
5 we see a situation that is getting worse and worse
6 and now including brown people as well, so that the
7 problem is exacerbated and we still continue to say
8 in so many words, "Ain't it awful," but we're not
9 doing a lot to intervene in that process.

10 Number 4. Time in office I believe is a
11 correlate with success. If you look across the
12 country to those people who have been doing this work
13 for a number of years, who built some trust, who have
14 some political capital, then those people understand
15 what it takes to make systems work and whether or not
16 you moved around the country or whether you stayed in
17 one place, it is important to recognize that that is
18 important in setting a tone where people can be
19 authentic with what they're doing and they're not
20 afraid of what's going on.

21 You might also want to know that the
22 average tenure for a director is only three years in
23 adult corrections and less than that in juvenile
24 corrections. The appointing authority, and I would
25 like to sort of bring home to this point, none of us

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1 actually volunteer for these jobs. Though we may
2 think that it would be a nice thing to do, somebody
3 has to believe that you are capable of doing it.
4 Usually it is the governor or county exec or somebody
5 like that or you are elected if you are a sheriff,
6 but somebody believes that you are able to do it.
7 What really needs to happen is those appointing
8 authorities need to begin to understand that this is
9 a profession. You cannot take people off the street
10 because they are great contributors to your campaign,
11 you have to have people who have the experience and
12 the wherewithal to make the difference.

13 Finally I would like to say that it is the
14 quality of the person that you get in the leadership
15 role in corrections, and I would like to say a few
16 words about the American Correctional Association
17 here.

18 Many people such as myself who came out of
19 a background that had nothing to do with corrections,
20 those folks after a point began to say somebody in
21 the country must be doing this better, let me find
22 out where the resources are that will help me to be a
23 better manager in terms of corrections. And so it is
24 important that you have a person of character, a
25 person who has commitment, a person who believes that

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1 you are capable of change because the bottom line
2 right now is there are no incentives for you to do a
3 good job. If you don't hold it in your heart, nobody
4 is saying to you you really need to go out and make
5 sure that the system is transparent; that you have
6 some integrity, it is authentic.

7 So one of the things that I would like to
8 see this commission consider is the importance of
9 providing some incentives. And, folks, that doesn't
10 always mean money, but it doesn't also mean that we
11 can't have money, it simply means that sometimes we
12 need priority. We know, for example, that substance
13 abuse problems, mental health problems, have plagued
14 our systems for years. Most of us can't afford to
15 buy those services. So if we could even get some
16 priority from federal agencies and from state
17 agencies, that could go a long way in making the
18 difference.

19 I continue to applaud what we have done in
20 the American Correctional Association because
21 accreditation has been the only avenue for one to
22 guarantee that what you see is what you get, and in
23 that regard then I think we have gone the extra mile
24 in making the difference.

25 DR. DUDLEY: Thank you.

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1 Dr. Casale.

2 DR. CASALE: Thank you. It is a great
3 pleasure to be here and to contribute to the
4 commission which is obviously doing very important
5 work.

6 DR. DUDLEY: Could you pull your
7 microphone in a little?

8 DR. CASALE: Yes. Sorry. Is that
9 better?

10 DR. DUDLEY: That's much better.

11 DR. CASALE: I want to speak briefly
12 about a few things which I didn't mention in my
13 written note which I hope people have had a chance to
14 read.

15 I want to speak about prevention, negative
16 and positive findings, cooperation and layers of
17 oversight, publication, and the need for independent
18 scrutiny, all in five minutes.

19 I start from the basis of a mandatory
20 system. A mandate comes from the treaty which 46
21 European states have signed, and have by that signing
22 conveyed exceptional powers of access to all persons
23 deprived of liberty by the state to all places, to
24 all information that the CPT might consider it was
25 necessary to have in order to do its work. So

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1 confidential information such as court files, police
2 files, you name it, whatever it is, secret files.

3 So this is a rather extraordinary mechanism
4 and it doesn't obviously translate to other settings.
5 However, there are some features which might be of
6 use in other settings to think about and to at least
7 consider, not least some of the misconceptions that
8 have arisen and some of the problems that we have
9 faced might also be faced in other settings.

10 The preventive approach is extremely
11 important. We are looking to the future, not to the
12 past. Some of the interlocutors; that is, ministers
13 of state or heads of prison systems or prison
14 governors or prison staff on the ground or prisoners,
15 some of the people we are working with, think that
16 we're trying to build cases in order to pursue
17 individuals who have been ill treated. That's not
18 so. We are building a dialogue basis, a basis of
19 dialogue for change. In prisons we speak to many
20 people, staff and prisoners, so it is not possible to
21 attribute what we report to any particular
22 individual. That's important. We cross-check, we
23 corroborate. We have forensic medical experts on our
24 team, we have forensic psychiatrists on our team and
25 lawyers and we assemble data from various sources.

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1 We would never proceed to fact-finding without
2 verification. And we do this not to, as I say,
3 pursue cases, but in order to have a basis of fact to
4 get over the first hurdle which is that people don't
5 want to be inspected and the first reaction is
6 defensive. If we can get over the defensiveness in
7 order to demonstrate that we know that there are
8 weaknesses in this system, we have found ill
9 treatment, we know it exists, it often does in many
10 systems. Even if it doesn't exist, we have found
11 that there were gaps in the safeguards that protect
12 persons.

13 When I say ill treatment, I don't
14 necessarily mean physical ill treatment. We monitor
15 police facilities also and there we do find torture,
16 but in prisons we rarely do. What we find instead is
17 basically conditions that are substandard and
18 omissions. We give negative and positive feedback,
19 we want to give credit where credit is due, and we
20 find often that the positive examples are ones which
21 are not pursued by the prison system so that where we
22 have found good practice, it may depend on an
23 individual whose initiative will cease to have effect
24 when that individual moves on because the prison
25 system doesn't recognize the practice necessarily,

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1 and we as a monitoring body can help to point the way
2 to good factors and try to convince the managers to
3 apply that good practice elsewhere.

4 We work with layers of oversight and we
5 don't think that they are mutually exclusive. Layers
6 of oversight at monitoring board level, the oversight
7 prison services conduct for themselves internally are
8 not, they do not run counter to independent scrutiny.
9 Independent scrutiny is necessary in systems so that,
10 Europeans would say, because we are talking about
11 exceptional powers of the state; powers which have
12 been delegated by the people to the state in order to
13 carry out one of the most extreme uses of power
14 against the individual.

15 In Europe the most extreme power against
16 the individual is the deprivation of liberty since we
17 do not have the death penalty in our 46 countries.
18 And so we feel that if that delegated power is to be
19 exercised rightly, that it must be open to
20 independent scrutiny in the interest of the public,
21 the public which has delegated that power in the
22 first place, and we proceed on the basis of shared
23 values about which I have talked in my written
24 summary.

25 I have also in that talk highlighted a
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1 number of issues which we may wish to return to in
2 discussion. That is independence, expertise,
3 impartiality, the powers of enforcement and
4 persuasion, cooperation and confidentiality, and the
5 values that underpin the European prison models.

6 Thank you.

7 DR. DUDLEY: Thank you.

8 Each of you had said in somewhat different
9 ways why having transparency may be important or not
10 be important. I'm wondering just as a starting point
11 for our discussion, I suppose, assuming that
12 transparency is something that's good or necessary,
13 if each of you could kind of summarize why, what you
14 think could be gained from having a transparent
15 correctional system.

16 MR. DICKEY: If transparency means
17 visibility in decision making in policies and
18 procedures, it is very hard to have accountability
19 without visibility and it seems to me accountability
20 is a highly desirable quality. Without visibility
21 and accountability, I don't think you have that
22 legitimacy I mentioned, and it seems to me in the
23 most utilitarian sort of way you want legitimacy
24 because it is going to make it easier to run the
25 institution the way it should be run, fairly and
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1 effectively and the like.

2 The second thing about it is that all
3 institutions require public support. Now prisons,
4 people may not care, but one of the disincentives
5 here is people don't seem to care that much. But the
6 fact of the matter is if we're going to have any
7 confidence in the stewardship of these places we have
8 to know what's going on and I think when the public
9 loses its confidence in its institutions that's a bad
10 thing, so I would say legitimacy is important not
11 only for the consent of the government, of the
12 institution, but also because the people on the
13 outside need to feel or have some level of confidence
14 that this is being done in the right way and without
15 visibility and accountability how can they have that
16 belief; they have to take it on faith.

17 MS. CHUNN: I think it is a matter of
18 integrity and morality. I really believe that this
19 is one of the greatest countries on the face of the
20 earth. I only say "one of" because of my esteemed
21 colleague here. If she were not here I would say the
22 greatest country in the world. She says I can say
23 that, that's okay.

24 I think that we been founded on principles
25 that speak to integrity, that speak to a quality of
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1 life issue that has not been diminished over time.
2 Even myself as a former, as a descendent of a slave
3 family knows the importance of what can be done when
4 we decide to make a difference. I see this as being
5 no different. These people can be reclaimed, they
6 can be reintegrated into communities, they can become
7 part of the solution rather than part of the problem.
8 Will that happen for everybody, no. Not everybody
9 who goes in the hospital comes out alive; not
10 everybody who goes into a university comes out
11 educated; not everybody who does anything will ever
12 get the absolute response, but can we do more than
13 we're doing now? I believe that we can and I believe
14 we have the know how.

15 I think what we have demonstrated already
16 in the American Correctional Association speaks to a
17 process where we can find some agreement among 50
18 states and six territories about what we collectively
19 see as being responsible, professional behavior. And
20 so with that in mind, I think it is a matter of
21 integrity and it is a matter of reflecting what the
22 society is all about.

23 DR. CASALE: I think transparency is
24 part of the instrument that I use in order for a
25 democratic society to reassure itself that it is
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1 truly democratic in the modern sense of the word
 2 which is more than a matter of universal suffrage, it
 3 is about the public being able to perceive that what
 4 it wants to happen in its state is happening and this
 5 is something, therefore transparency, which is
 6 required in all public services, all organizations
 7 which perform public services. It is not something
 8 that is uniquely needed for prisons, but it is,
 9 perhaps, from my point of view especially vital in
 10 prisons because while the great majority of what
 11 happens in prisons is according to the rule of law, I
 12 know from my personal experience of work in 46
 13 countries, and that's all I can speak about, I can't
 14 say for the United States, that sometimes it does go
 15 remarkably wrong and that is not a criticism of the
 16 system because all systems go wrong some of the time,
 17 and transparency is the instrument by which you try
 18 to minimize the degree to which things go wrong and
 19 to reassure the public that, in fact, the rule of law
 20 is what is happening.

21 DR. DUDLEY: Thank you.

22 MR. SCHWARZ: I want to actually take
 23 off from Ms. Chunn's comment about the greatest
 24 country. I suppose we aspire to being the greatest
 25 country, but I would like to ask the two other

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1 witnesses comparative questions on that subject.

2 First a specific one to you, Dr. Casale,
 3 and then a general one to you, Professor Dickey.

4 In the European Union where you've had in
 5 the past, at least, problems with terrorism in
 6 Ireland for the British and in Algeria for the
 7 French, did either of those two countries ever
 8 establish prisons which were secret and could not be
 9 visited; for example, by the Red Cross?

10 DR. CASALE: No.

11 MR. SCHWARZ: And then the general
 12 question of Professor Dickey. I saw in the little
 13 outline of your comments that you were worried about
 14 whether the United States stands as well as we would
 15 hope it to in terms of comparison with other nations
 16 on transparency and what did you have in mind?

17 MR. DICKEY: Well, I think, first of
 18 all, it is important to be mindful we have 51
 19 jurisdictions and there's variation in practice and
 20 variation in visibility of transparency, whatever you
 21 want to call it, and there's also variation,
 22 therefore, in legitimacy and other things that I have
 23 mentioned. But I think by in large what you have to
 24 say about the American corrections systems is that
 25 they're more characterized by the absence of the rule

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1 of law as we ordinarily know it. Now I don't mean to
 2 say there are lawless institutions, but if you look
 3 at the processes that we use for most governmental
 4 agencies or institutions, how they have to operate by
 5 way of information gathering about their practices,
 6 how they operate by the way of rule making,
 7 visibility, opportunity for public comment, what we
 8 do by way of accountability and the like, I think you
 9 have to say prisons really sort of stand out as
 10 places to which rule of law as we ordinarily think of
 11 it just doesn't apply.

12 Again, I think if you went and looked at
 13 the laws of the states of this country you would
 14 find, for example, just take administrative procedure
 15 records which is one of the usual ways that we do
 16 this, most prison systems are exempt from this and it
 17 has always been so, and they have sort of, and I
 18 don't want to hold the administrative rule making up
 19 as the be all and end all, I don't think there's any
 20 answer, but I think what you see is the hands-off
 21 doctrine, as we used to call it, with respect to the
 22 courts. Actually there's been a hands-off doctrine
 23 with respect to the legislature and actually there's
 24 been a hands-off doctrine respect to the governor.

25 In large, if we don't hear about it from a

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1 politician's point of view, that's the best thing
 2 possible, right? Visibility is almost always going
 3 to bring this respect in the eyes of elected
 4 officials, and it may be because the people who are
 5 in institutions tend to be poor and of classes that
 6 are not the dominant classes in our society. There's
 7 also a willingness to sort of not pay attention to
 8 them, disregard them, not really attend to them the
 9 way I think we would expect our institutions to
 10 respond to people of greater wealth or a greater
 11 status in our society.

12 I guess the point that I would make is,
 13 granted, it is a little hard to generalize amongst
 14 the 51 jurisdictions, but I don't think you would see
 15 the rule of law applied the way we see it in other
 16 governmental agencies and institutions and I would
 17 say by in large you don't see it in the way you see
 18 it in Europe, at least not to the degree that we
 19 think it exists there, and I think the explanations
 20 for that are many and complex. That is to say, we
 21 don't apply the rule of law because we have chosen
 22 not to, we have chosen not to in a sense because it
 23 is them, that's one of the reasons we have chosen not
 24 to, and because of the political risks and all the
 25 disincentives that exist. Just think about the

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1 press, right? If you are a corrections commissioner,
 2 I have sat in this position, and the idea is, well,
 3 the press is going to be paying attention to what
 4 we're doing in the institution. By in large, my
 5 experience with the press is it has not been very
 6 fair minded it its reporting of what goes on in
 7 correctional agencies. They tend to report crises,
 8 terrible things, and the like. In a sense, opening
 9 yourself up to that kind of visibility and
 10 accountability is a high risk sort of proposition,
 11 news is always going to be bad, and that's going to
 12 have profound effects on the commissioner, as well as
 13 a lot of other people and the politicians. The point
 14 I'm trying to make is you see all these disincentives
 15 operating to not bring to bear on these governmental
 16 institutions the level of visibility we claim to
 17 attach to lots of others.

18 One of the things, again, I just think
 19 about in coming from a state, I didn't grow up there
 20 but I lived there at one time, Wisconsin, the
 21 Department of Natural Resources, big deal; deer
 22 hunting, how many deer you can kill and fish you can
 23 catch and all that is a big deal. Do you know how
 24 much public interest, attention there is to that?
 25 The idea that the Department of Public Resources
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1 would have visibility and accountability about how
 2 they make those decisions? It is unthinkable, they
 3 would never be able to get away with that. Compare
 4 corrections. There's no comparison, right? There's
 5 not anything like the public demand for visibility
 6 and accountability in that area of life as opposed to
 7 this other one. So if we're looking for reasons why,
 8 one of the reasons we don't have what we're talking
 9 about, is because at some level we don't want it.

10 MR. BRIGHT: I want to follow up on
 11 that, but I want to ask a question of what we mean
 12 exactly by transparency and accountability and I want
 13 to say I'm a big supporter of the American Prison
 14 Association, but it has not been my experience that
 15 what you see is what you get. The American Prison
 16 Association says you have to have a policy with
 17 regard to fill in the blank, and the institution has
 18 policy after policy after policy and you go to the
 19 warden's office and they're all piled up in there and
 20 then you go into the institution and none of those
 21 policies are being followed, so my question is this.
 22 When we talk about transparency and those
 23 sorts of things, are we talking about the media? It
 24 used to be that newspaper reporters and television
 25 people and all that could come to these institutions,
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1 see what was going on, interview inmates, take
 2 telephone calls from inmates. The prison in
 3 Louisiana printed a magazine, still does, uncensored
 4 prison magazine that won numerous journalism awards
 5 because the inmates there wrote stories that were of
 6 award-winning quality and all that. Today that
 7 magazine is censored. Most departments, as far as I
 8 know, do not let the media in, do not let the media
 9 in to interview inmates, so that's one of the
 10 guardians for a free society, is the media.

11 And the second is, I would ask is there
 12 anywhere in the United States where we have like in
 13 Europe where an independent watchdog agency has the
 14 ability to just show up any time and go through an
 15 institution solely for the purpose of seeing whether
 16 or not these various things are being complied with.

17 Go ahead.
 18 MS. CHUNN: Thank you.
 19 I ask you to remember what I said to you
 20 about the average tenure of a director of
 21 corrections; about three years. It takes the first
 22 year to understand where you are and what's really
 23 going on because invariably what the governor's
 24 office tells you and what is really going on are two
 25 different things. You have to then begin to build
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1 some trust. In those places where facilities have
 2 been accredited and they have policy after policy, as
 3 you put it, stacked up, the problem --

4 MR. BRIGHT: They're good policies.
 5 I'm not criticizing the policies, I'm just
 6 criticizing the failure to implement the policies.

7 MS. CHUNN: Please, I'm not suggesting
 8 that either.

9 I'm just saying that if you look at the
 10 person who's leading the agency, if they have been
 11 around for a number of years the chances are those
 12 policies have been implemented. If they have been
 13 around as in the case of California for only a couple
 14 of years, the chances are that they're still trying
 15 to figure out where are the problems in this system
 16 and where are the places that will get us in trouble.
 17 You learn quickly as a corrections administrator it
 18 isn't what you know, it is what you don't know that
 19 will get you in the press and get you eaten alive,
 20 and so you spend a lot of time trying to find out if
 21 what you think is going on is in fact going on.

22 I have seen a number of commissioners, both
 23 adult and juvenile, who have been relieved of their
 24 job primarily because they thought staying in the
 25 capitol, finding out what was going on in the
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1 governor's office, was more important than knowing
2 what their people are doing.

3 These places are out of sight and out of
4 mind by design and if you have ever tried to build
5 one you know how difficult it is because nobody wants
6 one in their backyard. However, they want you to be
7 tough on crime which means that it is very difficult
8 to strike a balance between what the governor's
9 office wants and what the political entities need in
10 order for you to get the support, particularly before
11 the legislature, and what you need to do in terms of
12 what I call your mission and that is the
13 rehabilitation of the people. So I would ask you to
14 be thoughtful about those policies where they have
15 been implemented and where they have got good
16 leadership that's committed to this.

17 Running a 24/7 operation means that by
18 definition somebody is out there Christmas, New
19 Year's, Grandpa's birthday, Maxine's graduation, and
20 it is going on all the time. And increasingly what
21 you see in terms of commitment to the mission is a
22 function not only of training, but also of pay, and
23 we are beginning to see that we are retiring a number
24 of people and we don't have people standing in line
25 to work in corrections. That's going to be a very,

1 very serious problem in this coming decade. Already
2 we are beginning to see people running vacancies,
3 high vacancies because they can't find people clean
4 enough to work in them. When I say clean enough, I
5 mean who can pass the background investigation. And
6 so when you talk about a watchdog situation, the
7 problem is that many governors don't want that. As I
8 said, corrections won't get you elected but it can
9 get you unelected, and many directors are told keep
10 the lid on, do a good job over there, but there is
11 never any articulation of what does that mean, and so
12 there's a lot of space there where you can carve out
13 what it means.

14 For me when I was Director of Juvenile
15 Corrections it meant to me find a place where
16 somebody is actually doing something that works, but
17 I did that at my own volition. Most people that I
18 know do this because of their own commitment. We
19 want to be transparent, you want to feel like you
20 have done a good job, you don't want to do business
21 by suit.

22 In the late eighties the notion was get
23 sued. Well, it only takes a couple of getting sued
24 when you end up with a Cadillac and all you really
25 wanted was a good bicycle, and so you end up getting

1 a whole lot more trappings that generally begin to
2 consume not only your time and effort, but also begin
3 to compromise what you are able to do somewhere else
4 because there are opportunity costs that go with
5 this.

6 MR. BRIGHT: And should the media be
7 availed of that? Put aside the governor. You are
8 the commissioner of a system. Should there be media
9 access, should there be access by watchdog groups,
10 should there be access by citizens?

11 MS. CHUNN: I would like to see it
12 carefully thought through because the kinds of crimes
13 that you have now are not simple crimes anymore. You
14 have somebody that's there for armed robbery but they
15 also have a substance abuse problem, they also are
16 retarded, and there are other issues at play, so you
17 have to think very carefully about who do you want to
18 play that function. Not should the function be
19 played, certainly it should be played on some level,
20 but who plays it and do they play it forever, because
21 the politics surround this so much you begin to see
22 people who have their own political agenda about
23 doing this. When we get to that point where you have
24 an outside watchdog who also has a political agenda,
25 you begin to by definition compromise the integrity

1 of the whole thing. If we cannot make this --

2 MR. BRIGHT: Is that really true? I
3 mean, is the legislature compromised because half of
4 the people are Democrats and half the people are
5 Republicans and they don't have the same agenda? I
6 thought in a democracy that self-criticism was the
7 secret weapon of making things better.

8 MS. CHUNN: I'm not suggesting that it
9 isn't, but you have seen this Congress unable
10 sometimes to perform because of those problems and so
11 we know that there are times when it goes awry. I
12 think rather it is thoughtful, that we need to be
13 very thoughtful about these solutions because we
14 don't want to do any harm. We don't want to make it
15 worse than it is. We want to make sure that people
16 understand the professional payoff, and I'm not
17 talking about another job, I'm talking about the
18 satisfaction that makes you continue to do this work
19 because you believe it is an important piece in the
20 quality of life for everybody in this country.

21 MR. DICKEY: Let me take inmate
22 discipline, the transfer from one institution to
23 another, who gets to visit, three matters that are of
24 vital interest and importance with people in
25 institutions. I guess it is hard for me to imagine

1 why we would say we don't want to make the rules
2 about those three things in ways that are consistent
3 with democratic society. Now I don't mean prisons
4 are a democracy, but why would we make those rules
5 and have them not be clear, have them be a secret?
6 Now that's the rules.

7 What about their application? If you are
8 going to be accountable, I don't see how you are
9 going to have it unless you know how things are being
10 administered. And so, again, stated that way, as a
11 matter of principle it is very hard to argue about
12 the idea that in a democratic society we should keep
13 all those things a secret. Now how do you develop
14 mechanisms that permit visibility, legitimacy and the
15 things that I was talking about and have, I think as
16 the other speakers have mentioned, responsible review
17 of how those are actually being operationlized.
18 Again, I don't want to be riding this horse too long,
19 but I think what we usually think is that's the job
20 of the legislature, that is what the oversight is
21 supposed to be, but I think, as I said, I don't see
22 very much of that. So now you are groping around,
23 trying to find ways that make for visibility and
24 accountability about those very important decisions,
25 in a sense a default position, because the way we

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1 usually look to those sorts of reviews and oversight
2 are not functioning in that sort of way. And so you
3 get oversight, you get the other things that have
4 been talked about this morning and now, and I guess
5 the point that I would say is, and I think this is
6 consistent with what the other speakers have said, it
7 has to be done in a sensitive manner to the
8 circumstances in which one finds one's self because,
9 among other things, you are making things worse, not
10 better, and in a sense you want to work in harness
11 with those that are trying to do this as well as they
12 can with the sort of capacity limitations that they
13 may have; training, staff, and the like.

14 You know, I think the English system, and I
15 have read the inspector general's reports with a lot
16 of interest and I really want to compliment the folks
17 that prepared them because it is pretty obvious that
18 the degree of sensitivity that I alluded to is one
19 that is brought to in many of those inspections and
20 reports. It is not contentious, it is not you are
21 bad and we are good, that sort of stuff, that tone,
22 but I really think that is the spirit in which this
23 sort of engagement has to come, because otherwise I
24 think the first do-no-harm principle is very much at
25 work here.

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1 DR. GILLIGAN: I wanted to ask Dr.
2 Casale if you could describe for us some of the
3 details of the inspection process and procedures that
4 the CPT follows in inspecting European prisons and
5 then I would like to ask the other two panelists if
6 they could describe how that compares with the
7 inspection procedures we have in this country. I'm
8 interested in whether we have procedures for
9 discovering what actually is going on in our prisons
10 that are as effective as the ones that you have in
11 Europe.

12 DR. CASALE: I don't think Europe has
13 any magic solution let me say, I think what we do is
14 just hard work. Inspections are confidential, I
15 think this is very important to note at the outset.
16 Nothing becomes public at all until we have been
17 through the dialogue and then the states, all of them
18 voluntarily except for one, Russia, have agreed to
19 publish all their reports. They don't have to but
20 they always agree, and I think that's the measure
21 that the inspection has somehow worked even though
22 there are very critical things in it. What we do is
23 we would arrive unexpectedly so you have to get over
24 the first hurdle by having sort of a cook's tour,
25 but -- you understand the concept cook's tour, it is

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1 sort of -- I'm not sure what the -- it is not always
2 the same English in America. But while you are
3 having the cook's tour you are trying to figure out
4 the places that you are not being shown, obviously,
5 and after a while you get a nose for the things that
6 are being intentionally missed. And, of course, we
7 will have been armed by the ministry with a detailed
8 plan of the building. Obviously prison maps are
9 confidential and they're secure matters but we are
10 entitled to them and we will keep them confidential.
11 And so we know what's there and so you do your
12 subtraction and you figure out where some of the
13 people go while I as the president am talking with
14 the governor and, of course, we can go anywhere
15 because that's the mandate. And you don't barge in
16 but when you find the place that has got 40 people in
17 a room that doesn't allow them all to sleep at the
18 same time and 14 of them say that they've got active
19 T.B., then you know you found one of the places that
20 they didn't want you to find and that's just one
21 rather extreme example.

22 But what we do is we spend a lot of time
23 talking with staff because in that example I just
24 gave you that is a health risk for staff as well as
25 prisoners, and we need to know how the staff are

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1 trying to deal with that. Why is it that they push
 2 the food through the hole at the bottom of the door
 3 and don't go in? Well, it is obvious why they do it,
 4 because they're not sure what risk they're exposing
 5 themselves too. We will go in and spend a lot of
 6 time talking to the 14 people even though the
 7 temperature recorded by my thermometer, which goes
 8 with me everywhere, is, say, 36 degrees. But it is a
 9 process of demonstrating by what you do that you are
 10 prepared to understand what's happening in the most
 11 practical and concrete sort of way. And then we -- I
 12 mean, if there's an issue that the prisoners seem
 13 malnourished, we will look at the medical records to
 14 see if any weighing has occurred, we will do timed
 15 studies of what people weighed when they came in
 16 because everybody gets weighed on admission and what
 17 they are weighing now. We do surveys, we do in-depth
 18 interviews, we do corroboration because if some
 19 allegations are made we want to know whether they're
 20 true or not and we will pursue to find out that
 21 they're not as hard as we will pursue to find out
 22 that they are and we will present conclusions without
 23 giving names.

24 I mean, we have a lot of technical staff on
 25 our teams, people who know how to deal with vermin
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1 or -- I mean, the whole gamut, really, anything that
 2 puts the staff and the prisoners at risk in one way
 3 or another, and the best of all methods is to know
 4 how to interview, to let people tell their stories,
 5 and then afterwards, of course, as we all know, you
 6 go over and you check on the details until they
 7 either match or they don't and if they don't, then,
 8 of course, you start wondering and you pick the
 9 uncertainties and it is just standard police
 10 procedure, but I won't go any further because I'm
 11 taking up too much time.

12 Then we report in confidence and we have a
 13 dialogue with the staff and the management
 14 acknowledging that they've got problems, asking them
 15 in your best case scenario what would you like to see
 16 happen next, because we're looking to the future.

17 Documenting all of that, then going to the
 18 ministers and saying look, how can you expect these
 19 people to do X when you are giving them Y, and we can
 20 be a powerful pressure for change in that respect
 21 because, of course, if you are talking to the
 22 minister who is in charge, ultimately who is
 23 responsible, then they have a case to answer and they
 24 must answer because they're obliged to.

25 MS. CHUNN: That's an interesting
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1 approach to doing it that I don't think would work in
 2 this country. Corrections has been born in the
 3 cradle of politics and I don't see how with an
 4 average tenure of three years we could ever build
 5 enough trust to get to that point. However, I do
 6 believe that it would be a very interesting internal
 7 mechanism and, as a matter of fact, when I was
 8 Director of Youth Services in North Carolina I used
 9 it, I used it with a group of my central office
 10 staff. We would hit unannounced every institution
 11 and before one could call another everybody was in
 12 different places, but you would know then we only
 13 talked to kids on those days. You were accompanied
 14 by a kid who would generally tell you what was
 15 happening or what, rather, wasn't happening.

16 I think it is an interesting idea for an
 17 internal procedure, but I think even then there has
 18 to be enough trust so that people believe that you
 19 are going to help them to remedy the problem rather
 20 than to point them out as incompetents which further
 21 then makes people close ranks because they feel under
 22 attack. I like to think of myself as the poster
 23 child of new corrections. I am all the wrong things;
 24 I am black, I am female, I spent my career in
 25 juvenile corrections, but I was elected by some

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1 20,000 members to be the spokesperson of this
 2 organization. We are better educated that we have
 3 ever been before, and I think to do this externally
 4 would suggest that there is no confidence which we
 5 already feel because we have been marginalized. And
 6 so I believe that while it might have some usability
 7 for internal monitoring, I do not believe we are at a
 8 point yet where we could do that externally without
 9 feeling like we have been manipulated and misjudged
 10 and actually betrayed.

11 MR. DICKEY: It might be useful to
 12 pursue the health care point. My personal experience
 13 is dated but I have no doubt that things are still
 14 probably the same in corrections.

15 As a group inmates have not taken care of
 16 themselves, haven't seen doctors, haven't had medical
 17 insurance, had lousy diets and basically abused
 18 themselves. Their physical condition, despite all
 19 the weightlifting and stuff, is actually not very
 20 good. And if you look at their teeth, they have
 21 never been to a dentist.

22 Now we spent an enormous of money on health
 23 care in the prisons in Wisconsin, though look at the
 24 state of health care of the country and you see lots
 25 of people that have insurance don't get health care

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1 either. We spent a lot of money on health care, but
2 I made decisions about what we were going to do and
3 not do, we're not going to perform those kind of
4 operations, and if it was me I would want it, let me
5 tell you, and the facts of life are we didn't have
6 the money or the capacity to do it. And we did a lot
7 with people, dental work and stuff like that as well
8 as we could but, again, were we providing the level
9 of dental care we would like for ourselves? Not
10 close.

11 Now if the inspector general came out --
12 people in corrections know this, this is not a big
13 secret -- but if the inspector general comes along
14 and now looks at that situation, I guess the sort of
15 interesting question is what would we expect to
16 happen. They would discover that, and it is not that
17 they want unhealthy inmates, they want healthy
18 inmates, but the facts of life are they don't have
19 any capacity to do any better than they're currently
20 doing, making some decisions you might agree with,
21 some you might disagree with. Now what happens. The
22 inspector general goes to the legislature, says give
23 us some more money so they can give more health care
24 to the inmates. Well, that would be nice. Is it
25 realistic? I think that's a way of trying to

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1 approach things. There's visibility, right? There's
2 accountability. I don't think the folks in
3 corrections would be hiding that sort of stuff, it is
4 not that they're deliberately denying people
5 anything, those are what they are dealing with as
6 well as they can. So what you really may be talking
7 about is trying to generate support for different
8 policies so that there's more adequate health care
9 or, in a sense, let's have fewer people in prison so
10 that we can do better by the ones we've got, right?
11 That's an allocation of resources question. It might
12 lead to that sort of thing. But, you know, I think,
13 I understand that correctional associations worry
14 about this. See, if it came out there they don't
15 treat the inmates right when it comes to health care
16 and sort of pointing the finger, they are awful and
17 they're all cruel and that sort of stuff, I wouldn't
18 be very happy with that. That's why I say it can be
19 presented and approached in ways that are
20 constructive, but there's also the possibility for
21 destructiveness and I think the worry that
22 corrections people have about this is an
23 understandable worry. They felt that stuff has been
24 used to sort of blame them for things over which they
25 have no control. Again, it seems to me if it is part

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1 of the momentum to make things better, then I think
2 folks by in large would welcome that, but they're
3 mindful of the risks.

4 MR. BRIGHT: Isn't the answer to that
5 just to tell people this is all the money we have for
6 health, this is all the money we have for dental
7 care?

8 MR. DICKEY: We certainly hope that was
9 the way it were read but, as I said, I think folks in
10 corrections would say I can give you examples of
11 situations in which the report certainly didn't read
12 that way and sort of blamed us for a situation we had
13 no control. You have to understand that that's --

14 MR. BRIGHT: But that's transparent,
15 that produces a conversation, the democratic
16 conversation about what ought to happen if you want
17 to have that and not many public officials get to
18 censor that by keeping them out of the public eye
19 altogether.

20 MS. CHUNN: Let me give you a good
21 example of what he is saying.

22 North Carolina was one of the last states
23 to have a sex offender program for juveniles. All
24 the literature suggests how many people will be
25 victimized by people who are not treated for sexual

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1 offending. I asked for the program through the
2 proper channels. The governor's office said there
3 were other priorities. Somehow or another one of my
4 more aggressive staff people decided they would
5 inform the press. I end up on the editorial page.
6 The governor's office is angry with me because I'm
7 trying to make an end run with his budget. Now
8 nobody debates the merits of should we have a program
9 for sex offender, particularly juvenile sex
10 offenders, but sometimes you don't end up being able
11 to get what you know is the right thing because there
12 are other things beyond your control. And when we
13 end up in that situation, we will more often than
14 not -- remember now, we are appointed -- so we end up
15 then swallowing whatever the issue is, trying to put
16 a happy face on it, and you live, if you are lucky,
17 to fight another day. Well, it just so happened in
18 the end it did resolve itself but there were some
19 tense feelings about the whole thing and who told the
20 press and why did the press know this. And you can't
21 sit there when the press calls you and says, "Is it
22 true you've got 40 sex offenders?" "Yes." I can't
23 say no because I do. And so you end up in a
24 donnybrook in a lot of things and that's why we keep
25 saying we've got to be very thoughtful as to how we

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1 implement these things. Not that we cannot benefit
2 from feedback that will help us to be more effective
3 and efficient, rather let us do it in a manner that
4 really predicts some forward motion.

5 DR. DUDLEY: Are you suggesting that
6 there's a particular risk in this regard for
7 corrections as compared to any other comparable
8 government entities; Child Protection, Social
9 Services? I mean, they would all run the same, the
10 example that you gave is the same sort of thing that
11 happens to --

12 MS. CHUNN: Well, yes, but I would say
13 that the consequences of error when you are talking
14 about corrections are greater because --

15 DR. DUDLEY: I'm not sure what you
16 mean.

17 MS. CHUNN: By that I mean that if you
18 don't take the appropriate action, because you have
19 these people confined they have fewer avenues that
20 they can exhaust to make a difference with this. And
21 so to me, it is a more difficult situation because
22 these people are out of sight, often out of mind,
23 don't have people who want to champion their cause.

24 DR. DUDLEY: But the mental health
25 commissioner would say the fact we don't have enough

1 money for outpatient mental health services and there
2 are people who are mentally ill on the street and
3 when one of those commits a crime I get all the
4 blame, I'm not quite sure what --

5 MS. CHUNN: But a mental health person
6 on the street --

7 DR. DUDLEY: I'm just picking it out.
8 I'm saying what is it about corrections that would
9 make the risk of transparency so much greater that it
10 should be excluded in a way that other governmental
11 organizations and entities are not, that's my
12 question.

13 MS. CHUNN: The stigma of having been
14 arrested. Even this morning the lady talked about
15 white collar crime. She didn't say what kind of
16 crime that was or whatever. If you are from a
17 certain socioeconomic background that makes a
18 difference, you don't want people to know you have
19 been in this system. There are others who see it as
20 a rite of passage; my brother, my father, my uncle,
21 everybody else. And so when you began to try to
22 program for two extremes and more on the low
23 socioeconomic group than on the high end and try to
24 be fair in terms of respecting people's humanity, it
25 is much more difficult because you generally have

1 more power over where they are, what they can do. I
2 think that's part of what's been implied here,
3 there's no denying that, that many facilities are out
4 of sight, out of mind, and many people are not that
5 sophisticated. Your average inmate is not reading
6 according to the level, nor does he understand often
7 the process that he has been through that got him
8 there. I mean, not only that, but the families don't
9 understand it either. It becomes a very difficult
10 thing to administer when you are thinking about the
11 person, being the person in charge and trying to be
12 fair. And so to me, corrections then carries a
13 heavier burden than other agencies because often they
14 are seen as being more worth saving than this group.

15 DR. DUDLEY: I guess I picked the
16 mental health commissioner because they would say
17 their clients are stigmatized in the same sort of
18 way.

19 Professor Dickey.

20 MR. DICKEY: The way I feel about it, I
21 worry every day about the inmates and staff in our
22 institutions and about their safety. And I very much
23 believe in -- I don't know if "transparency" is the
24 word, visibility and accountability, and I think we
25 ought to be applying the democratic principles to

1 correctional institutions. But I will tell you, I'm
2 very mindful of the dynamics of institutions, they're
3 fragile places, you don't want disorder and chaos,
4 and how things are explained, how inmates view them,
5 how staff view them can start dynamics that can have
6 very destructive consequences. So when I said before
7 do no harm and these are fragile things, what I meant
8 was what you worry about, whether rightly or not, is
9 unleashing forces and dynamics in institutions that
10 are going to lead people to get hurt, that's what I
11 used to worry about. And so when I tried to manage
12 the information that we revealed to others, that was
13 my primary concern I like to think, right? I was
14 worried about trying to make sure we didn't do or say
15 something that was going make things worse in those
16 places rather than better and that's there, that's a
17 fact of life.

18 DR. DUDLEY: Saul.

19 MR. GREEN: Is part of what you were
20 saying kind of an admonition to us in terms of what
21 this commission comes up with, what we recommend, how
22 we say it? Because one of the greatest challenges I
23 think relates to something that you said earlier, Mr.
24 Dickey, if I heard you correctly, concerning people
25 don't really care and so we have the problem of

1 trying to move people who would rather not even see
2 or understand what's going on until we've got to do
3 it in a way that has impact, but the impact could
4 affect members of the profession in a way that
5 they -- is part of what the message is for us to be
6 very careful in how we communicate our findings and
7 recommendations? I actually wasn't going to ask that
8 question but I just kept listening to what I was
9 hearing, I was really worried.

10 And then I guess I wanted to ask Ms. Chunn
11 about the issue of leadership. You talked about how
12 important leadership is in effecting change and in
13 accomplishing the greatest good in institutions and
14 you talked about incentives.

15 MR. DICKEY: Let me just say when I was
16 at the prison system I had the luxury of tenure at
17 the University of Wisconsin Law School so getting
18 fired wasn't a big deal. You know, it would have
19 hurt my pride and all that sort of stuff, but in a
20 sense I had the luxury of being able to worry about
21 the inmates in the way that I just mentioned and not
22 have to worry about my job all that much.

23 Now that's a way of saying you need to be
24 sensitive to the people to whom you are going to be
25 speaking. If what you want is acceptance by people
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1 in corrections, some of the ideas that we're talking
2 about, the steps toward implementation, you need
3 legitimacy, right? I mean, because one question is
4 why the hell should we pay any attention to what you
5 say, right? And I think the answer is because we
6 have considered and reflected and we have heard a
7 little bit about walking in your shoes and what that
8 all amounts to and we have a kind of an understanding
9 that we think can help us advance the endeavor.

10 In that spirit it seems to me there would be far more
11 acceptance of this than, as I said, if you approach
12 it we're going to tell you what to do. So, yes, my
13 point is, as with anything, one has to be careful and
14 cautious about how one presents one's self if one
15 wants to be effective because you don't want your
16 report standing on a shelf somewhere, you want it to
17 be effective; therefore, you've got to be careful
18 about how you frame it and who it is addressed to and
19 how you say it. It just seems to me that too is a
20 fact of life.

21 MS. CHUNN: I don't think that implies
22 that we only hear what we want to hear, that all of
23 this is for nothing, that's not it. We want to hear
24 what you think we can do to improve the system, we
25 want to be able to dialogue about what the logical
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1 next steps are because, as I said before, good
2 leadership wants to also, more than anything else,
3 have the satisfaction of knowing I made the
4 difference, I made some difference, at least. I
5 liken this to a relay race where you take it to a
6 certain point and somebody else picks it up, nobody
7 does it alone. But I believe that as members of this
8 commission you also want a feeling of having given
9 this some careful scrutiny, to have heard what we
10 have to say that explains, that also identifies some
11 of the problems that are perennial problems that have
12 always been there, and that you have made
13 recommendations and suggestions that can be used by
14 us in addition to what we are already doing to make a
15 difference.

16 Now I believe conscience leaders -- let me
17 drop back and say it this way. Most of the people
18 who have bristled with this whole notion of this
19 commission have done so because they have stabilized
20 their systems, they have tried to be good leaders,
21 and they routinely go out to make sure what the
22 quality of life is. Now those people who aren't
23 involved in any kind of accreditation process, any
24 kind of professional development process, will feel
25 like I must know it because the governor appointed
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1 me. Those are the people that we're worried about.
2 We are worried about Andy and Barney in Mayberry
3 because they don't seem to ever talk to anybody else,
4 so what we want here is some guidance that assists us
5 in what we are already doing that begins to say to
6 those people out there who are not involved; hey,
7 there's a whole body of knowledge, there are all
8 kinds of resources that can help you be more
9 effective in what you do.

10 DR. DUDLEY: We have several more
11 commissioners who have questions and we have about 10
12 minutes left so let's try to keep our questions brief
13 and to the point and try to answer as quickly as you
14 can.

15 MR. KRONE: Ms. Chunn, I need some
16 clarification, some understanding. Something I heard
17 earlier was really concerning to me. As you know,
18 we're going to write a report. It is important to us
19 to get to the facts, to get something that is
20 useable, workable, and we've had numerous employees
21 and prison officials that have told us you don't
22 understand the problems that we face. We have to get
23 to that point to know what to write and know whether
24 it is available, and something you said really
25 concerned me and that was a statement you said that
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1 the duration, their average life expectancy, if you
2 will, is three years. That means that some of them
3 serve five years but some of them only serve one year
4 which is in that area where you said they even don't
5 know what they're doing yet. How are we going to
6 implement policies, practices and stuff that we are
7 going to have to deal with people in a revolving
8 door, such a floating morass, how do we deal with
9 that problem and why is this happening.

10 MS. CHUNN: You are going to have fun,
11 aren't you, you really are.

12 Yeah, that's the perennial problem, it has
13 been, and that's what I mean when I say we often
14 don't acknowledge the role that politics play in
15 this. What I would like to see you do is to also
16 begin to make suggestions to appointing authorities;
17 the National Governors' Association, district
18 attorneys. There needs to be constituent bodies who
19 also hear what the issues are, that unless you've got
20 somebody that has been in this business for a while,
21 the probability of your getting a transparent system
22 is greatly diminished because it will take them a lot
23 of time to build some credibility. You are not only
24 building credibility with constituents on the
25 outside, you also are building credibility with your

1 staff, because if they don't believe, and a lot of
2 people will say to you, "Look, I have seen
3 commissioners come and I have seen them go,"
4 if you can't get to the point where they think you
5 can last, it won't make a difference at all, so I
6 think you just need to keep that in mind.

7 MR. DICKEY: I think the answer has to
8 be that you've got audiences beyond correctional
9 commissioners. That is to say, you've got to be
10 reaching to legislators and the like because they are
11 the people that are going to implement this, they're
12 going to have to pass something like that, so I would
13 think you've got ultimate audiences for what you are
14 going to do. Corrections commissioners are only one
15 of them; legislators, governors, Governors'
16 Conference and the like are the amongst the others,
17 because they may have more staying power here and
18 actually they're the political bodies that make the
19 decisions here or they are going to take their cues
20 from their commissioners, that's another real fact.

21 MR. RYAN: I would like to get your
22 reaction to -- at the last hearing I gave a list of
23 things and I want to kind of give you a list and see
24 what your reaction to it is.

25 Set the stage with almost 25 years ago,
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1 more than that, probably, there was a decision by the
2 Supreme Court, KQED versus Houchins, which is a
3 California case, which told the media that
4 correctional administrators could restrict the access
5 of the media to correctional facilities. Now I have
6 been working under that all my life, in essence, in
7 this business and so I thought how do I open it up,
8 how do I make it more transparent and yet still keep
9 my defenses where I needed to have more, felt more
10 comfortable so we can put things together.

11 We have a citizens academy which allows
12 citizens to volunteer, they have to come in every
13 Wednesday night for three hours for 13 weeks, and
14 they come and visit us. We have no restrictions on
15 who can come in there other than they can't be a
16 criminal. We have a T.V. program on the county
17 channel that comes on once a month for a half an hour
18 and at the end of that we ask a set of questions. We
19 say what would you like to know that we haven't told
20 you and they can send it to us, E-mail or otherwise,
21 and the next show or the next show we will talk about
22 those types of things.

23 Every new reporter that goes to the local
24 newspaper or, if we can, T.V. is a little struggle,
25 we invite them to come down without their pen and

1 paper in hand and talk to them about what we do for a
2 living and what they may want to find out about our
3 business.

4 With our staff, we have when they graduate
5 from the academy, on the fourth night after they have
6 graduated we invite the staff to come and meet the
7 bosses and bring their kids and their spouse,
8 significant other, to come in and visit where their
9 significant other is going to be working for the rest
10 of their career and say this is what we do for a
11 living.

12 We're building a new building and we're
13 going to give citizens an opportunity to come in and
14 visit, touchy-feely and so forth, the entire new
15 building before we get in there. We're going to have
16 families do that.

17 We have a volunteer orientation program
18 where we have over 700 people in the community that
19 have the opportunity to come through and see, they're
20 faith-based, normally, folks, but 700 of these people
21 do it. We have a program called the Orlando
22 Leadership Program and every six months they choose
23 70 bosses, the leaders of the community, to go
24 through the program and one day is spent at the jail
25 saying okay, this is what you are spending your money

1 on.
2 Every new legislator that gets elected, I
3 send them a letter and say by the way, I'm in your
4 district, do you want to come and visit what's there.
5 I had one in four years decide to do that.

6 I have been in the business 35 years and at
7 this point, and bless all judges, I've had less than
8 five of them that actually have come out to find out
9 what happens when they sentence a guy to a year in
10 the county jail, actually walk out there and see
11 where they go. Now I know that's not in this room,
12 but in my world out there, that's what happens.

13 I can go on with a list of other things
14 that we do to expose our business to the community.
15 The unfortunate part is my community doesn't
16 necessarily want to find out about it. I have
17 trouble getting people into my citizens academy. My
18 new reporter only comes because the editor says you
19 know what, you have the chance, go out and take a
20 look. They don't want to be there either.

21 I recently had one of my T.V. reporters
22 come out and sneak pictures of then jail when all he
23 had to do is call my office; you want some pictures,
24 come out and look. I guess reacting to that, I want
25 to take baby steps. I'm not going to open up the big

1 sally port and let everybody in the world come in and
2 do whatever they want to do. It is a jail and we
3 have security.

4 What sort of baby steps aren't being taken
5 in that litany of things, what sort of things should
6 we be doing to open up where we feel comfortable, is
7 there a way to engage the community in something else
8 that I haven't talked about to say here we are, come
9 and see us; if you want to see what's going on,
10 please, let me invite you in to the extent I can.

11 MR. DICKEY: In a sense, though, the
12 discussion has been at the commissioner level so far
13 here until you made these points and so we have been
14 asking about transparency as made from the central
15 office. But I think in many ways when I used to go
16 around and visit our prisons, and I did it a lot, one
17 of things we always go through with the warden is
18 what he was doing with the community, and by in large
19 I think at the ground level you really see a lot of
20 warden willingness to involve the community and to be
21 transparent, at least about some of the things, and I
22 think in part that's because the wardens feel that
23 they need a certain amount of community support in
24 order to function. They're in a community, they have
25 got family members working there, concerned about

1 their safety and the like. And so another place at
2 which to come at this from is the one you are talking
3 about, though your experience, particularly with the
4 legislators and the judges, is pretty typical in my
5 experience, but that's coming at it from a, at a
6 different level, and I think an important one. I
7 would say this is a question that ought to be looked
8 at from many different levels and that's one, where
9 at the local level, the warden of the individual
10 institution is trying to do this in the circumstances
11 that he or she finds himself in and is trying to get
12 people involved in and engaged. Though, again, the
13 point I made earlier about people not caring and want
14 out of sight, out of mind, is very much at work here
15 and it is a terrible sort of challenge. You know,
16 the thought that judges want to prescribe this
17 medicine and then don't want to see what effect the
18 medicine has on the patient, irresponsible from my
19 point of view, but a pretty clear pattern. I don't
20 know that you find many wardens will say, yeah, I
21 have judges coming in all the time, want to see what
22 our programs are, what we do and the like, so they're
23 in a sense like so many others, they just don't
24 appear to care, at least by their actions.

25 DR. DUDLEY: Last question.

1 Judge Gibbons.

2 JUDGE GIBBONS: There's a suggestion
3 that corrections institutions are fragile
4 institutions and, therefore, maybe we can't have too
5 much transparency. The question I have is are police
6 departments similarly fragile, are public hospitals
7 similarly fragile, and does it follow that they too
8 should have some lesser degree of transparency
9 because of their fragility?

10 MR. DICKEY: Well, let me answer your
11 question.

12 You see, suppose, how would you feel if you
13 said look, we're going to have lots of transparency,
14 we're going to open it up and all that sort of stuff
15 and you did what I said I worried about before,
16 started a dynamic where you had a riot and some
17 people got killed. Would you put that in the one
18 column? Right? We had transparency and a bunch of
19 people died. I don't think that's a win. And I'm
20 not saying we shouldn't have transparency and I'm not
21 suggesting that we shouldn't be exposing what goes on
22 in institutions to the public view and to other kinds
23 of oversight, and the other kind of oversight is
24 probably more important. My point simply was one
25 needs to be mindful that there are risks involved and

1 one has to be careful about how one goes about this
 2 because it is not a freebie, right? It is not all
 3 good as a result just because you open things up.
 4 And, again, that's, maybe I'm real risk adverse and I
 5 just worried about that more than I should have, but
 6 that was very much on my mind and I think that's on
 7 the mind of people who work in corrections and,
 8 therefore, it needs to be done in a considered and
 9 deliberate and careful sort of way. It is not no
 10 transparency or visibility; on the contrary. It is
 11 maybe as much a matter of how you go about it as
 12 anything, but it seems to me that's something that's
 13 a problem; you can't act as if it is not there.

14 MR. BRIGHT: If it turned out that you
 15 learned that people were being sexually abused in the
 16 prison, that would be one on the other side, wouldn't
 17 it?

18 MR. DICKEY: That's true. And so
 19 there's ambiguity --

20 MR. BRIGHT: More likely, actually, but
 21 that's what you are going to find.

22 DR. DUDLEY: I'm sorry, we're out of
 23 time, but thank you very much for taking your time to
 24 be with us this afternoon.

25 (Recess)

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1 MS. ROBINSON: Our next panel is on
 2 government oversight and I think it is a terrific
 3 follow on to the discussions we just completed before
 4 the break.

5 We're going to specifically be talking
 6 about issues relating to government oversight of both
 7 prisons and jails. We have before us this afternoon,
 8 the final panel of the day, three expert witnesses in
 9 the field; Professor Michele Deitch, Mr. William
 10 Yeomans, who I have to say is a former colleague of
 11 mine in the Department of Justice and delighted he is
 12 here, and Mr. Matthew Cate.

13 Our panelists are going to be providing an
 14 analysis for us of the strengths and weaknesses of
 15 the governmental correctional oversight models that
 16 currently exist in the United States. These include
 17 ombudsmen, inspectors general, and offices of
 18 independent review, and they're going to detail the
 19 factors, including independence, transparency and
 20 adequate resources, that are needed to sustain robust
 21 governmental oversight. The role of government
 22 investigation into litigation as a form of oversight
 23 is also going to be examined in their discussions.
 24 Let me introduce them specifically.

25 Professor Deitch is a 2005-2006 Soros
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1 Senior Justice Fellow and teaches criminal justice at
 2 the University of Texas's Lyndon B. Johnson School of
 3 Public Affairs. Her research is focused on the issue
 4 of independent prison oversight.

5 Bill Yeomans is the director of programs at
 6 the American Constitution Society in the area of law
 7 and policy, and I think, very importantly, he served
 8 for 24 years at the Department of Justice in the
 9 Civil Rights Division holding a series of important
 10 positions there, including acting as an assistant
 11 attorney general.

12 Mr. Cate has been serving as the inspector
 13 general in California and was appointed in that
 14 position in March of 2004 and was subsequently
 15 confirmed by the California Senate for a six-year
 16 term in that post. Prior to his appointment Mr. Cate
 17 served as the deputy attorney general in the
 18 California Department of Justice.

19 I want to thank all three of them for being
 20 here to today to address what I think is a very
 21 crucial topic in the explorations this commission is
 22 undertaking, and we will go ahead and begin with
 23 Professor Deitch.

24 MS. DEITCH: Thank you very much.
 25 Thank you for the opportunity to appear before you

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1 today.

2 As we talk about oversight, I think we
 3 would all do well to remember that this is a term
 4 that tends to be possibly too loaded and, more
 5 importantly, misunderstood, it is misconstrued very
 6 easily, and, as a result, it doesn't give us any
 7 confidence that we're all using the word in the same
 8 way when we talk about oversight. I actually find it
 9 much more productive to reframe the concept of
 10 oversight, at least non-traditional prison oversight,
 11 as an umbrella term that actually encompasses at
 12 least six distinct functions. Those functions are
 13 regulation, audit, accreditation, investigation,
 14 reporting, and inspection and monitoring. I think
 15 that each one of these is essential but it is a
 16 separate part of prison oversight.

17 When we talk about prison oversight, the
 18 problem is that we tend to merge all those concepts
 19 and we assume that they're somehow in competition
 20 with one another or mutually exclusive or they're in
 21 competition with each other as to which one is most
 22 effective. What we have, what each of us has in mind
 23 is a different one of those functions. It makes
 24 communication about oversight very difficult because
 25 oftentimes we're talking at cross-purposes; one

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1 person has regulation in mind, another person has
2 inspection in mind, for example.

3 We need to begin talking about these as
4 separate functions and we need to figure out how to
5 make each one of them stronger and more effective.
6 There's no one entity that can meaningfully serve
7 every one of those functions. There are different
8 constituencies that are served by them. In a
9 nutshell, let me try to mention some of the
10 differences.

11 Regulation is a function that's served by
12 those governmental entities that have enforcement
13 authority, they have the ability to wield a hammer
14 over the agency in some way, whether it is financial
15 or some other kind of penalties; the ability to close
16 an institution, for example.

17 The audit function is concerned with
18 whether the agency is meeting certain established
19 performance standards, performance indicators, or
20 policies. It could be internal, it could be
21 external. It is extremely important and it serves as
22 a management tool, it is a critical aspect of
23 effective management. It is critical that agencies
24 have effective internal accountability mechanisms
25 that are part of this audit function.

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1 The accreditation function is yet
2 different. It indicates accountability to fellow
3 professionals, it indicates a stamp of approval.

4 The reporting function has to do with the
5 role of the media or human rights organizations or
6 even temporary commissions in bringing attention to
7 prison conditions, helping draw public attention to
8 prison conditions or to a particular incident.

9 Then there's the investigation function.
10 That has to do with accountability for wrongdoing.
11 It is redress for past violations, it is reactive.
12 Critical, but it is very different from the other
13 functions.

14 And, finally, we're talking about
15 inspection and monitoring. Inspection and monitoring
16 is perhaps the one we're least familiar with. It
17 involves an independent outside entity, it involves
18 routine and regular review of every institution as a
19 preventive measure, it involves an entity that has
20 unfettered access to every prison and jail facility,
21 and it involves a holistic look of the impact of
22 prison on prisoners. There's no enforcement
23 mechanism that goes along with inspection and
24 monitoring. It relies on persuasion, on cooperation,
25 on public pressure for change, but, remember, there

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1 are other functions served by other entities.
2 Independent monitoring and inspection provides an
3 opportunity for dialogue, it is not another layer of
4 management. As both Gary Johnson and Walter Dickey
5 indicated earlier, it is best seen as a partnership
6 between the agency and the monitoring entity.

7 Again in the last minute I have I would
8 like to stress that it is important that we not try
9 to compare and contrast these different functions,
10 the different mechanisms, but rather encourage a wide
11 range of oversight mechanisms, both inside and
12 outside of the agency. We need to look for ways to
13 strengthen each one of those critical functions.

14 MS. ROBINSON: Thank you.
15 Bill Yeomans.

16 MR. YEOMANS: Thank you, Commissioner
17 Robinson. And members of the commission, thank you
18 for having me here today.

19 I'm going to talk about two very dramatic
20 forms of external oversight involving the enforcement
21 of federal law by the federal government in federal
22 courts and, in particular, I'm going to talk about
23 how the Civil Rights Division of the Justice
24 Department goes about doing that. The first form is
25 criminal and the second would be civil.

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1 The department enforces 18 USC 242 which is
2 a post-Civil War statute that allows criminal
3 prosecutions of individuals who interfere with
4 constitutional rights and federal laws. It does that
5 through the Criminal Section of the Civil Rights
6 Division which consists of about 45 attorneys in
7 Washington working in conjunction with U.S. attorneys
8 around the country. In the course of a normal year,
9 the division and the U.S. attorneys prosecute roughly
10 60 cases criminally. Obviously that's not very many
11 nationwide, and that involves all law enforcement
12 prosecution, so a good number of those are police
13 officers or other public officials. So in any year,
14 roughly a third of color-of-law prosecutions involve
15 people working in prisons and jails.

16 The most common type of prosecution is the
17 use of excessive force by a member of, staff member
18 in a prison or jail, and can frequently, it can
19 sometimes involve battery, sometimes sexual assaults,
20 frequently results in bodily injury. Generally the
21 FBI serves as the lead investigator under very tight
22 reporting deadlines that apply only in civil rights
23 cases. In part that comes out of history and
24 tradition, these are not popular cases, it is
25 necessary to have reporting deadlines to keep the

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1 bureau moving forward. It is also important to
2 remove a cloud of suspicion from a corrections
3 officer as quickly as possible.

4 It has been a long-standing practice to
5 require an investigation whenever the facts, if true,
6 would make out a civil rights violation. That means
7 there are thousands of potential cases every year
8 that comes to the Civil Rights Division. There is a
9 preliminary investigation. A vast majority of cases
10 are disposed of through a preliminary investigation.
11 It is necessary to have a preliminary investigation
12 to winnow out the non-meritorious cases from the
13 meritorious cases. That's a difficult thing to do
14 because of the situations in which these cases arise.
15 Generally the victims are powerless, they have
16 difficulty acquiring and communicating the facts, and
17 so it is necessary to have an outside look to
18 determine what's really happening.

19 The cases are prosecuted under very
20 difficult standard. It is necessary to show that a
21 corrections officer acted with the intent to use more
22 force than was reasonably necessary in the situation.
23 That means that the corrections officer had to know
24 at the time that he or she used the force that it was
25 more than what was required at the time, so these are

1 Prison Litigation Reform Act. There has been a clear
2 drop-off nationwide in conditions cases. There are,
3 I think, a variety of reasons for that that we can
4 talk about. But what you see in particular in the
5 Civil Rights Division is that in the last few years
6 investigations and prosecutions involving conditions
7 in prisons and jails has ground to a virtual halt,
8 and I see the inexorable zero.

9 MS. ROBINSON: Mr. Yeomans, thank you
10 very much.

11 Matthew Cate.

12 MR. CATE: Thank you, Commissioner
13 Robinson, and thank you to all the commissioners for
14 having me here.

15 To provide you with a little bit of
16 background of who I am, I was a career prosecutor at
17 the county level with the state attorney general's
18 office focusing primarily on issues of corruption and
19 wrongdoing by police officers and public officials
20 when I was plucked from obscurity two years ago and
21 plopped in this job. I obviously had a lot to learn
22 about corrections and being an inspector general and
23 I think I'm still learning.

24 What I found was that at the time I was
25 appointed the inspector general was an at-will

1 difficult cases to make. Generally you need a
2 cooperating officer, a videotape, very strong
3 circumstantial evidence.

4 Criminal convictions are very important.
5 They're important because they send a message to an
6 institution, also to the inmates, that everybody in
7 the institution is bound by the rule of law and the
8 law will be applied both to inmates and people who
9 run the institution. But these are a very limited
10 tool. They have a limited impact because they
11 address very specific situations, they rarely get
12 into the underlying conditions that may have led to
13 violence, and so it is necessary to have the civil
14 enforcement as well.

15 And though I'm running out of time, let me
16 just mention that since passage of the Civil Rights
17 of Institutionalized Persons Act, actually starting
18 before passage of the act but certainly since passage
19 of the act, the Civil Rights Division has had the
20 authority to sue prisons and jails to correct
21 unconstitutional conditions of confinement and it has
22 done so. It has investigated roughly 400
23 institutions during that period. There is a very
24 clear progression in the number and type of
25 prosecutions since 1996 with the enactment of the

1 position who was hired and fired by the governor.
2 The audits conducted by the inspector general's
3 office were confidential, they were not available to
4 the public. Staffing at that time was minimal. The
5 inspector general's office funding rose and fell with
6 other agencies depending upon the state coffers, and
7 at the time I began we had only about eight auditors
8 and investigators in the office and as you recall, in
9 California we have 160 some -- five, 6,000 inmates
10 and 50,000 staff members, and we began to see change
11 immediately. In part it was due to cooperation
12 between the California legislature and the governor
13 but -- and I think that was in part due to the fact
14 that the conditions at the prisons at that time were
15 recognized to be poor, overcrowded, little
16 programming, health care, both mental health and
17 physical health care was determined to be broken by
18 federal courts, and the courts also deemed the system
19 unable to police itself, so part of the idea of
20 addressing those issues was to invigorate the office
21 of the inspector general.

22 I came in with the following priorities.
23 The first was to rigorously audit and investigate to
24 the extent that my resources would allow. The second
25 was to be transparent in everything we did which

1 meant advocating for all of our reports to be a
 2 matter of public record. The third was to
 3 collaborate with the correctional officials.
 4 This isn't always as easy as it sounds because there
 5 could be a natural tendency towards conflict, as you
 6 might imagine, between an inspector general and the
 7 appointed correctional officials. And the fourth was
 8 accountability. In that I hoped that when we found
 9 things wrong and made recommendations for change,
 10 that those changes would actually occur rather than
 11 the problems just continuing to proliferate. And,
 12 finally, we hoped to do all of this with
 13 independence.

14 So if I could, I would just in my brief
 15 time explain what the California model looks like and
 16 then answer your questions about how it is working.

17 As you know, I was appointed by the
 18 governor. After my appointment as an at-will
 19 employee the law was changed and now I was
 20 reappointed with a six-year fixed term so I can only
 21 be removed for cause. Secondly, I'm responsible only
 22 for the California Department of Corrections and
 23 Rehabilitation so I don't have oversight authority
 24 over any of the other agencies in California. We're
 25 organized as a separate agency, I'm not a part of the
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1 department at all, I operate completely autonomously
 2 from the Department of Corrections and
 3 Rehabilitation, funded separately, et cetera, and I
 4 report directly to the governor in that capacity.

5 Next is staffing and budget is now caseload
 6 based. Again through cooperation with the
 7 legislature and the governor's office, we're no
 8 longer a zero-based budget agency but I submit a
 9 caseload budget to the legislature explaining how
 10 many matters we're auditing and investigating and
 11 what areas we're providing oversight and expressing
 12 those in dollar figures as far as the need for
 13 funding. Now that's brand new, this will be the
 14 first budget cycle under that system, so it is still
 15 in experiment.

16 Next, the inspector general's office has a
 17 golden key so my deputies and I can go anywhere at
 18 any time and into any facility and speak to any
 19 inmate or any officer, we can demand any document and
 20 it has to be provided or it is a misdemeanor.

21 Finally now, as a matter of statute, all my
 22 reports are a matter of public record so anytime I
 23 complete an audit my staff immediately posts that on
 24 our website and we issue a press release announcing
 25 it to the public. We provide summaries of our
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1 investigations of misconduct which don't include the
 2 officer's name but does provide the basic areas that
 3 the misconduct occurred.

4 We have two major parts of the office. The
 5 first is what I would call the traditional audits and
 6 investigation function. By law now we're required to
 7 audit every institution every four years. Again,
 8 that's brand new and so we are just beginning with
 9 that.

10 We also vet every warden, so every warden
 11 before they're appointed has to be evaluated by the
 12 inspector general's office and we submit a
 13 confidential report to the governor on the
 14 qualifications of that warden. If we find the
 15 individual unqualified and the governor appoints
 16 anyway, then our finding is made public. We also, as
 17 I said, investigate wrongdoing by public officials at
 18 the highest levels.

19 And then I see I'm at zero but in the last
 20 30 seconds I will tell you that we also have a new
 21 function called the Bureau of Independent Review
 22 which was, frankly, stolen from the Los Angeles
 23 County Sheriff's Department, and what that function
 24 involves is we have hired attorneys with expertise in
 25 criminal law, employment law and civil rights, and as
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1 teams they provide realtime oversight of all internal
 2 affairs cases that reach a certain level of
 3 importance and so they evaluate those cases as
 4 they're conducted and then they publicly report on
 5 the quality of those investigations and on the
 6 discipline that's ultimately determined so that the
 7 idea being that the public, and in this case the
 8 federal court that's providing oversight, is
 9 comfortable with the officer discipline process and
 10 knows that if there are bad apples, that those cases
 11 are being handled effectively and that the discipline
 12 is fair to the officers also, so that's our function,
 13 and we're all open to your questions.

14 MS. ROBINSON: Is that last function
 15 you described the bulldog accountability, is that --

16 MR. CATE: Oh, that's different.

17 MS. ROBINSON: Okay. Can you tell us
 18 about that? I know you mentioned that in your
 19 statement.

20 MR. CATE: I'm slightly embarrassed to
 21 admit, I invented that term.

22 MS. ROBINSON: I thought it was quite
 23 catchy.

24 MR. CATE: Thank you.

25 And it is brand new so we will see how many
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1 teeth that bulldog actually has as time goes on, but
 2 here is the idea. Traditionally in an inspector
 3 general's office or a state auditor will conduct an
 4 audit and then a year later conduct a followup audit
 5 to see how many of the recommendations have actually
 6 been carried out and whether there's actual change.
 7 The only thing that bulldog accountability adds is
 8 that I promised my correctional administrators that I
 9 work with if you don't fix it a year later, then what
 10 I'm going to do is I'm never going to let that go,
 11 I'm going to keep reporting that that same problem
 12 exists again and again and again until they kick me
 13 out and so that's the idea, and with the hope that if
 14 my people go to all the trouble to find the problem
 15 and bring it to light, they darn well better fix it
 16 or I will try to embarrass you, that's it.

17 MS. ROBINSON: Let me step back as we
 18 start questioning and ask the three of you to reflect
 19 back on the last panel that we had and, in
 20 particular, the concept that I think Walter Dickey
 21 and really all of them talked about on the question
 22 of kind of a partnership between an oversight or
 23 monitoring person or persons and the agency, to what
 24 extent does that, should that play a part. And I
 25 suspect, Professor Deitch, that you might say it
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1 might play a different part in different of the
 2 sectors or roles that you laid out, but I would be
 3 interested in reflections on that or any of the other
 4 kind of major themes that the last panel brought out,
 5 and, Professor Deitch, why don't we start with you.

6 MS. DEITCH: Sure.
 7 I think the notion of partnership is
 8 absolutely criticality but, as you suggest, I think
 9 it plays out in the inspection monitoring function
 10 and less so in, say, the investigation function. I
 11 think it does play an important role in the
 12 accreditation function as well and auditing.
 13 Given that the role of an inspector or a
 14 monitor is to aid in improvement, try to help the
 15 agency move beyond where it is, that can only happen
 16 through a collaborative process, through dialogue.
 17 I think that both a monitoring entity and the
 18 correctional agency share a set of values that has to
 19 do with wanting safe and humane institutions and
 20 wanting them to operate according to the rule of law,
 21 and by working together they can point out ways that
 22 that improvement can occur.

23 I think there's a lot that correctional
 24 administrators would like about the inspection and
 25 monitoring process. For example, the outside entity
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1 is often saying the same kind of things that the
 2 Department of Corrections has been saying for a long
 3 time but coming from an outside entity it is going to
 4 carry a lot more credibility with the public or
 5 legislators, for example. Also information that's
 6 produced by monitors can be an excellent management
 7 tool for the agency. You can stave off lawsuits by
 8 taking into account some of the things that are being
 9 pointed out by a monitor or inspector. You are
 10 solving problems before lawsuits are filed, you are
 11 decreasing suspicion by letting the outside folks
 12 know what's happening inside the agency, and you are
 13 preventing problems because it is acting as a form of
 14 informal social control over people within the
 15 agency. It can help leverage resources for the
 16 agency. That's a very important aspect of it being a
 17 partnership. And I think it is really part of
 18 professionalism in corrections to look for ways for
 19 an agency to improve, to recognize that it often
 20 takes an outside set of eyes to draw attention to a
 21 problem.

22 This summer I was spending a lot of time
 23 studying the British system and I spent time with the
 24 director of operations for the British Prison Service
 25 and I was asking him about this. And he said to me,
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1 "If you ever believe everything is okay you shouldn't
 2 be in this job, there's always ways that we can
 3 improve," and that's what I think an inspector and
 4 monitor can do and why it is such a partnership.

5 MR. YEOMANS: I certainly would never
 6 come out against partnerships and cooperation, but it
 7 does seem to me that it is, in the world in which I
 8 function, sometimes important to maintain an
 9 adversarial relationship, to maintain leverage, and
 10 that can happen during an investigation. It is
 11 important at times to insist that you are getting
 12 what you need. It is sometimes important in
 13 negotiations, in trying to develop a remedy for a
 14 situation, to maintain an adversarial relationship.
 15 Certainly it is good to be as cooperative as
 16 possible, but not to the extent of coming up with a
 17 weaker remedy than is necessary. But certainly,
 18 certainly once there is a resolution, then working
 19 together, cooperation, collaborative monitoring is
 20 essential to make sure that the resolution is
 21 properly and fully implemented.

22 MR. CATE: This is a touchy point.
 23 I've had a good relationship with Secretary Hickman
 24 who has been the only secretary since I have taken my
 25 position, and I think that's been helped by the fact
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1 that he knows that I'm required by statute to publish
 2 every audit that I conduct and so we can on one hand
 3 say on a collegial basis, you know, here is what I
 4 think is wrong and here are my ideas for fixing it
 5 and he tells me, you know, you don't understand the
 6 complexities of X, Y and Z and we have a good give
 7 and take in that respect, but I think because he
 8 knows I have to publish in the end, that we maintain,
 9 I think, enough independence. It is always the push
 10 and pull. On one hand you want to collaborate and
 11 help improve the system and, on the other hand, you
 12 don't want to be co-opted by someone because you get
 13 to know them and like them.

14 I think the same is true for other
 15 stakeholders. Whether they're plaintiffs' lawyers or
 16 advocates for reform or labor, each group has their
 17 own agenda that they would like to see go forward for
 18 what they see is the betterment of the system and so
 19 I try to listen to those groups when they want to
 20 talk and, again, because of resource or a difference
 21 of agreement over what we should be looking into we
 22 don't always agree, but I think it is having an open
 23 door and an open phone and I think that's very
 24 important.

25 MS. ROBINSON: Matt, do you find that
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1 there are approaches that other states are using that
 2 you have been able to pick up ideas from and model
 3 some of your approaches on?

4 MR. CATE: Yes. To some extent
 5 there's, in some respects this system, this model has
 6 been put together through the political process and
 7 either the governor's office or myself will implement
 8 change and that would be codified by the legislature
 9 or the legislature would implement change and we
 10 would execute that change. Each system is so
 11 different. For example, most inspector generals work
 12 inside of the agency but have dual reporting to the
 13 agency head and to the governor's office or to a
 14 statewide inspector general, so it is hard to put
 15 those together. There are good enforcement tools
 16 that people are using to try to ferret out fraud and
 17 abuse and I have learned from those and, thanks to
 18 Professor Deitch, I started reading about what the
 19 British inspectorate is doing and the tone of their
 20 reports is terrific as far as using what I would call
 21 least force necessary, they don't embarrass the
 22 officials but just point out the problems in a
 23 constructive way, so try to learn as we go. But
 24 really this is kind of a new area of public
 25 administration and so we're learning it as we go and
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1 certainly don't claim to have all the answers because
 2 we're just starting here in California.

3 MS. ROBINSON: Professor Deitch, as you
 4 see this kind of emerging feel around the country,
 5 are there any kind of suggestions that you could make
 6 to us as a commission as we're kind of thinking about
 7 recommendations that we can be including in our final
 8 report.

9 MS. DEITCH: How long do we have?

10 MS. ROBINSON: I would say not forever,
 11 we have a dinner tonight.

12 But, I mean, in terms of general
 13 principles, I mean, obviously we're thinking about
 14 kind of on the broader scale, but in terms also of
 15 balance of trying to achieve objectives and
 16 recognizing our goals, but recognizing also the need
 17 for kind of the operational side and management
 18 concerns.

19 MS. DEITCH: There's a couple ways I
 20 could answer that question. My first point is to go
 21 back to what I said before which is the need to
 22 strengthen each one of those functions and I can
 23 point out good examples of each one of those
 24 functions and we can talk about things that are good
 25 and bad about them. But if you are looking for a way

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1 to structure some kind of entity, I can't tell you
 2 there's one way to do it. I think that every state
 3 has its own culture, every country has its own
 4 culture, and you need to look at what are the options
 5 in that state, what kind of entities exist there that
 6 we can strengthened in some way.

7 When I started doing my research I assumed
 8 there was going to be an ideal way to structure some
 9 kind of entity. There isn't. I have seen it work in
 10 ways as varied as a nonprofit organization doing
 11 inspection work, to a legislative inspection entity.
 12 The Ohio Correctional Institutions Inspection
 13 Committee is based at the legislature but they have
 14 inspectors that do work that looks a lot like what
 15 the British inspectorate does.

16 You can have a body like what Mr. Cate was
 17 describing. There are regulatory agencies such as in
 18 Texas there's the Texas Commission on Jail Standards
 19 which inspects every jail according to various
 20 standards. It has the ability to decertify a jail if
 21 it doesn't meet those standards. I can go on with
 22 various other examples, but the point is there's no
 23 magic way to do it, you just need to find out if each
 24 of those functions is being served.

25 MS. ROBINSON: Bill Yeomans, let me go
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1 back to you and your comments about the kind of
2 changing function of the Civil Rights Division in the
3 Justice Department and the degree to which the Civil
4 Rights of the Institutionalized Persons, the CRIPA
5 Act, is to a great degree being used to a much lesser
6 extent than it was in the past.

7 To what extent should or could Congress be
8 exercising a greater oversight function there? I
9 know you allude to that question in your testimony
10 and you didn't really have a chance to address it in
11 your oral remarks.

12 MR. YEOMANS: Yes. I think it would be
13 extremely important for Congress to do some
14 oversight. There has been a major failure of
15 oversight by Congress not only in the civil rights
16 area, but other areas as well, but civil rights has
17 suffered a great deal. There have been, obviously,
18 policy decisions made within the Civil Rights
19 Division that have never been explored and those
20 policy decisions have resulted in far fewer
21 investigations of prisons and jails and far fewer
22 cases filed. It seems to me that it would be well
23 worthwhile for Congress to take a look at what's
24 motivating those decisions. Certainly it is possible
25 that people have concluded there's been a lot of

1 progress and there simply isn't occasion to file as
2 many lawsuits, it could be that there are legal
3 impediments that need to be explored, but certainly
4 it is not a decision that should be made without some
5 public airing of policy.

6 MS. ROBINSON: But generally, Bill,
7 from the standpoint of oversight of prisons and
8 jails, even if CRIPA were used to a larger degree, I
9 think you used the term "lightening strike" in your
10 testimony which I thought was a good kind of term to
11 show that at best it is going to be kind of an
12 example or a highly publicized usage and not
13 something that's going to be kind of a regularized
14 use such as a regular monitoring of facilities. I
15 guess in the broadest sense, what is the role that
16 that kind of litigation plays in terms of government
17 oversight?

18 MR. YEOMANS: Well, let me just
19 distinguish. When I said lightening strike, I was
20 speaking mostly about the criminal side where it
21 really is a lightening strike because officers simply
22 are sort of stunned when they are singled out for
23 criminal prosecution, and it has become that way on
24 the civil side because there's so little litigation
25 being pursued. It seems to me that it doesn't

1 necessarily have to be that way. Now it may be that
2 the golden age of conditions litigation has passed
3 but surely the need for that kind of lawsuit has not
4 passed entirely and it is not a grand remedy, it
5 certainly is not the be all and end all in this area,
6 but it does seem to me to be a necessary component of
7 ensuring oversight, of ensuring compliance with
8 constitutional and statutory minimum, and that
9 component is being lost.

10 MS. ROBINSON: Let me turn to my fellow
11 commissioners. Margo.

12 MS. SCHLANGER: This is a direct
13 followup.

14 As you know, Bill, I used to work in the
15 Civil Rights Division and I did those CRIPA lawsuits
16 and I'm interested in your perspective on a question
17 that I never asked myself when I did that 10 years
18 ago.

19 It seems to me that when the Civil Rights
20 Division lawyers go into a new facility, that the
21 kind of inspection that they do looks a fair amount
22 like the inspection we heard about in Europe. They
23 come in with, you know, a forensic psychiatrist and a
24 correctional medicine guy and a sanitation person and
25 a couple of lawyers and in a cooperative jurisdiction

1 had pretty free ranged. It is announced but other
2 than that, it looks a lot like what we were hearing
3 about in Europe, and yet we heard from Ms. Chunn that
4 she thought that would be a terrible model for the
5 United States so I wonder if you think that, in fact,
6 that model, that confrontational model from the
7 outside of fighting federal against state government,
8 has had the kinds of bad effects that she -- I'm not
9 talking about the exact same thing but that she
10 thought might come from that same thing, or if, in
11 fact, it turns out that conflict gets managed and
12 progress is made, and I mean this very sincerely. I
13 didn't think in those kind of grand terms when I was
14 a lawyer doing this stuff and so I'm very interested
15 in what your thoughts are on that.

16 MR. YEOMANS: I think, of course, there
17 are a lot of variables that can play in whether or
18 not it works in any given instance, but I do think
19 that the approach to it, I agree with you that the
20 approach we go in with is very similar to the one
21 that's described, and it can produce, as you know, a
22 fairly informed and detailed findings letter which is
23 then shared with the jurisdiction along with the
24 suggestion that these are some things that you ought
25 to do and, by the way, if you don't do them, there

1 could be legal consequences.
 2 It seems to me that that is a very good way
 3 to lay out for a jurisdiction a blueprint based on
 4 considerable expert opinion, expert examination of
 5 what can be done to improve an institution. And I
 6 think that, as I said before, some adversarial
 7 contexts can be helpful in that it keeps the push
 8 going and obviously some cooperation is also helpful
 9 too. In a jurisdiction that is inclined to make the
 10 kinds of changes that are necessary to bring the
 11 facility into compliance with the law, it can be a
 12 very cooperative and a very constructive process,
 13 so I guess I would disagree with the previous witness
 14 that it is a terrible model and I do think that, for
 15 the most part, it has beneficial effects.

16 MS. DEITCH: Can I just add on to that
 17 one point.

18 While there are similarities to the models,
 19 I think it is important to point out that the kind of
 20 inspection and monitoring we heard about from the
 21 last panel was regular, regular and routine, it is
 22 not once a problem has been identified.

23 MS. ROBINSON: Other questions from the
 24 panel? Tim.

25 MR. RYAN: I never thought I would get
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1 to this point, but one of my worst nights as a
 2 supervisor in the jail was the night after CRIPA
 3 investigators came in and had total chaos in the jail
 4 because of what they said to the inmates. They said
 5 lots of things. They wouldn't allow us in the room.
 6 One of your words concerns me in that, if I heard it
 7 correctly, that an adversary is good, that
 8 sensitivity sometimes is not necessary or some words
 9 like that. I'm probably not saying it correctly.

10 I believe that if we are going to take a
 11 look at ourselves and allow the federal government to
 12 come in, which we are required to do, and I was
 13 required to stay outside the door where they went in
 14 with a bunch of inmates, and then they proceeded to
 15 leave at five o'clock, and my shift, my seven
 16 officers and myself, and 1,200 inmates had to deal
 17 with the repercussions of your office coming in.

18 My concern as a person who has had to live
 19 through something like that which went on for three
 20 nights until we got control of the place again is
 21 that there needs to be sensitivity, there needs to be
 22 an assessment of what the adversarial situation is
 23 and what the goal is in accomplishing those tasks, so
 24 I hope I didn't hear what I thought I heard.

25 MR. YEOMANS: No, certainly I didn't
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1 suggest there that should not be sensitivity, there
 2 should be sensitivity. Obviously there needs to be
 3 sensitivity as to the needs of the institution and to
 4 the continuing safe function of the institution, but
 5 I do think there also needs to be sufficient
 6 independence that the investigators can get to the
 7 facts and that's, as you point out, a very delicate
 8 situation that needs to be managed carefully.

9 MR. RYAN: Thank you. I got that off
 10 my chest now after 25 years now.

11 MR. YEOMANS: I'm glad I gave you the
 12 opportunity.

13 MR. RIPPE: A question for Matthew.

14 You talked to us about how you satisfy
 15 yourself that standards are being in fact followed
 16 and if they're not, how you can ensure that the
 17 situation is corrected so the standards are followed
 18 so my question is, what's the book of standards that
 19 you all use. Is it ACA or something that because of
 20 your culture in California along with ACA you
 21 developed or how do you do that?

22 MR. CATE: Primarily we base our
 23 standards on either the California Penal Code or
 24 Title 15 of the California regs and then, third, the
 25 department's own operating manual. And so our view

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1 is what does the law say, what do the regs say and
 2 what do you say you should be doing and then we judge
 3 them according to their own standards, and the
 4 department's operating manual is usually the one that
 5 they get hung up on the most.

6 MR. RIPPE: Thank you.

7 MR. KRONE: In our criminal justice
 8 system, if you are investigated by the police and it
 9 goes to prosecutor and they believe that you are the
 10 one that did it, from what I have read and understood
 11 from you it sounds almost like they tell the guy you
 12 better change your ways or we're going to put your
 13 name on the Internet. I'm wondering, is there a step
 14 that we can go farther to further enforce that rule?
 15 From what I read it sounds like you do your auditing,
 16 you find problems, you identify it to the warden. He
 17 may or may not implement that and there's no system
 18 where he has to with the exception of public ridicule
 19 by your website. Is that true?

20 MR. CATE: Well, you have your choice.
 21 You either are going to be a part the system, meaning
 22 I would work for the secretary, and then have some
 23 authority with the secretary to make change that way
 24 but lose a degree of independence, or I work outside
 25 the box of the administration and I have great

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1 independence but little authority to say what happens
2 so I don't think you can have it both ways. I do
3 have a bully pulpit in that I can, whether it is hold
4 a press conference or just publish my findings, I
5 think that is powerful, and I have assess to the
6 governor and so from time to time if I find something
7 that merits his attention I can go all the way to the
8 top and make my pitch and then the people that are
9 elected then decide whether they're going to
10 implement that or not.

11 MR. KRONE: To maintain that little bit
12 of independence or what independence you have so that
13 you don't kind of make waves for the groups that
14 don't have any further enforcement except passing it
15 on to higher-ups that can then take the proper
16 action; is that correct?

17 MR. CATE: I think so.

18 MR. KRONE: It is hard for me to
19 understand a system where you just say look, I wish
20 you would do this and if you don't, nothing is going
21 to happen.

22 MR. CATE: Well, that's the nature of
23 an outside auditor, there's no other way about it.
24 And I think the most -- again, it is early, and so we
25 may look back in five years and say you know what,

1 this independence thing is for the birds, you are
2 better off working inside the system, but I don't
3 think that was working very well and so my view is
4 independence is better, my view is transparency is
5 better, and I think that so far we're starting to see
6 change and it is too early to tell, admittedly, but I
7 think that's better than the alternative.

8 MR. KRONE: As to your initial figuring
9 out how to work that system, do you project down the
10 road that you will make changes, the asked for
11 changes, more power, strength to cure your findings?

12 MR. CATE: It is a Titanic-sized system
13 and I'm a little rudder, but it is my hope that we
14 are going to start, we will turn in the right
15 direction, and the think that the correctional
16 administrators are earnest in their desire to do
17 that. They have been forthright with me and I have
18 leveled 10 different broadsides into their ship and
19 they're still nice to me when I come in. I think one
20 of the things that was mentioned is that you have
21 this high turnover rate and that's another area
22 where, frankly, you look at the pros and cons of the
23 California system. On one hand I've got an at-will
24 employee in Mr. Hickman that I have oversight of and
25 so rapid turnover of that position probably isn't

1 conducive to progress. On the other hand, it is my
2 job to publicly, you know, yell about every problem I
3 see. And, of course, the media picks up on all of
4 those so that's a tug of war also that I think has to
5 be dealt with by the policymakers.

6 MS. ROBINSON: Let me leap in here,
7 Matt, and just kind of follow up on that.

8 We've had discussion off and on throughout the
9 course of the commission's life and today about the
10 importance of public attention to corrections and how
11 oftentimes the public isn't very interested. Do you
12 find that the public is interested when you issue
13 reports and is the legislature interested? We know
14 Gloria Romero, who is a member of our commission, is
15 interested, but generally are legislators interested,
16 is the public generally interested?

17 MR. CATE: The media, you would be all
18 surprised to hear, is more interested in the bad news
19 than the good it seems, but there was coverage
20 recently when the federal court announced that he had
21 seen, that Judge Henderson had seen progress in
22 health care, that made the newspapers, and so that
23 was a positive. And I can't cast the legislature all
24 with one role. As you said, some are very interested
25 in the issue and others appear to be interested in

1 other issues, I guess, to be generous.

2 MS. ROBINSON: And the public
3 generally, or do you have any sense about that beyond
4 the media?

5 MR. CATE: I don't have any more
6 insight than anybody else except that people always
7 ask me what do you do what is that, and it seems to
8 me that the general public just wants to be safe.
9 And there seems to be a rising tide of people who are
10 interested in making sure that everyone in our
11 society is treated in a humane way, even those that
12 are incarcerated, at least I hope so, but I don't
13 think we're anywhere near the majority and most folks
14 just want to be safe.

15 MR. SCHWARZ: This is to Mr. Yeomans.
16 You have, I guess, just recently joined a
17 really important organization and in terms of what
18 the public interest is in these issues, I wonder if
19 the American Constitutions Society has taken
20 positions on prisons, a yes or no. Indeed if they
21 have, what they are.

22 MR. YEOMANS: We have not simply
23 because the society as a society does not take
24 positions, we work through our members who speak out
25 on various topics, so we have not taken any positions

1 as a CS.

2 MR. SCHWARZ: Here is a very
3 progressive organization that for one reason or
4 another hasn't taken a position on important issues.

5 MR. YEOMANS: We don't take positions
6 at all.

7 MR. SCHWARZ: You do. You take very
8 enlightened positions on some things.

9 MR. YEOMANS: Well, we try to promote
10 people who take enlightened positions but the society
11 itself does not take enlightened positions or other
12 positions. For instance, Commission Schlanger is an
13 active ACS member.

14 MS. ROBINSON: Are there further
15 questions?

16 Let me then, let me shift the topic to
17 maybe a large extent. We really haven't raised this
18 subject today of privately run prisons and jails.
19 What do we do about government oversight there?
20 Obviously we have, you know, oversight of contracts
21 in contracted facilities generally, but does that
22 really do it as far as private prisons are concerned?

23 MS. DEITCH: Let me take a stab at
24 this.

25 First of all, when you talk about oversight
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1 of privately run facilities, the most important thing
2 we have going right now is control over the contract
3 and monitoring process, contract monitoring process,
4 which means you have to have contracts that deal with
5 all of these issues. Most of them don't. Texas
6 actually has really a model system for writing
7 contracts and then for monitoring compliance with the
8 contract but that's all they have the right to do is
9 to monitor compliance with it. So most privately run
10 jails in particular and prisons in most parts of the
11 country do not have that level of specificity in the
12 contracts and, as a result, there's really very
13 little knowledge about what's going on in those
14 facilities.

15 I think it is a critical issue. I think
16 that any kind of entity that is set up to monitor
17 public prisons and jails needs to cover the private
18 facilities as well. It took a long time, for
19 example, in Texas before the Texas Commission on
20 Jails Standards, before the standards even applied to
21 private jail facilities, so they are often left out
22 of the decision and it is critical.

23 MS. ROBINSON: So are there examples
24 now of states where, I gather Texas is an example,
25 where it is including private prisons and other
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1 facilities in those kinds of oversights or models?

2 MS. DEITCH: What I'm saying is the
3 Texas Department of Criminal Justice, when it
4 contracts with a private facility the contracts are
5 well written and allow monitors to be stationed in
6 each of those facilities to do contract monitoring.

7 MS. ROBINSON: I see.
8 Bill.

9 MR. YEOMANS: With us it comes down to
10 a legal question usually as to whether the person
11 involved or people involved are state actors on the
12 one hand or are acting under color of law and, for
13 the most part, certainly at least on the criminal
14 side, we have argued that they are; that they are
15 acting on behalf of, at the behest of the state
16 because they have this contract to perform these,
17 basically these state activities.

18 MS. ROBINSON: Is that settled law?

19 MR. YEOMANS: Not entirely. So it
20 imposes difficulty.

21 MS. DEITCH: Can I add one comment that
22 I was talking about prisons and not jails in Texas.

23 MS. ROBINSON: Right.

24 Matt, how do you deal with that here in
25 California?

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1 MR. CATE: Well, first of all, I agree
2 there's oversight and we can go into the private
3 prisons. We have issued one audit on fiscal areas
4 involving private institutions, but primarily the
5 issue is resources from my office and these are Level
6 1 and Level 2 inmates at the most, and I spent I
7 think about 50 percent of our resources dealing with
8 the juveniles and the young people in our Youth
9 Authority, former Youth Authority, now Division of
10 Juvenile Justice, and so between that and prisons
11 with the highest level inmates, it is difficult to
12 cast those resources towards the private prisons
13 which they need. So although the availability is
14 there, frankly we haven't done as much of that as I
15 think is probably necessary yet.

16 MS. ROBINSON: Has the state
17 legislature focused at all on that question or has it
18 been too absorbed with what's already on its plate
19 with the public facilities?

20 MR. CATE: Again, it is a mixed bag.
21 Some are interested in what happens in the private
22 facilities and from time to time we'll have a riot or
23 something will happen and the question will be raised
24 are the private individuals, private security
25 sufficient to provide the necessary safety for the

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1 inmates and staff and so you'll see that raised
 2 oftentimes if there's a large fight or riot in an
 3 institution and that will get legislative attention.
 4 And then sometimes the funding issue comes into play
 5 and you will see that grab the legislature's
 6 attention because the question is always raised is it
 7 truly less expensive to run a private institution
 8 versus a public when you look at the level of inmates
 9 that are there and long-term costs, et cetera, so we
 10 see those kind of issues come up most often.
 11 Conditions of confinement we don't see come up that
 12 often.

13 DR. DUDLEY: Just a comparative
 14 question of a different type. I mean, I realize we
 15 have been talking about different types of government
 16 monitoring and different aspects, but I'm wondering
 17 when we look across the board at the range of issues
 18 that should be considered when monitoring a prison
 19 system through any of these methods, whether we're
 20 talking about the health services or the mental
 21 health services or whatever, do you find that, are
 22 there areas, no matter which approach we are talking
 23 about, which tend to be ignored or not adequately
 24 monitored or explored when you look across the
 25 breadth of the elements that go into corrections

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1 systems.

2 MS. DEITCH: In terms of substantive
 3 areas?

4 DR. DUDLEY: Right.

5 MS. DEITCH: I guess my feeling is that
 6 there's so little monitoring that's going on right
 7 now that you couldn't possibly narrow the scope of
 8 that.

9 MR. YEOMANS: I'm not sure I can give
 10 categories of things that are being ignored more than
 11 other things. Certainly in looking at medical care,
 12 issues can arise across the board from mental health
 13 services to provision of basic first aid emergency
 14 care, so I'm not sure that can I single out any
 15 particular area.

16 MR. CATE: In California we have a
 17 lawsuit for every issue almost so plaintiffs' counsel
 18 and the federal courts have largely monitored the
 19 health care area and so that gets quite a bit of
 20 attention, at least it has recently, the officer
 21 discipline process. The mentally ill also, that area
 22 is monitored, and parole is monitored. The Division
 23 of Juvenile Justice is monitored by the courts. I'm
 24 sure I'm missing three or four.

25 So I think one area that I would like to

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1 see more attention to is programming, and one of the
 2 things I think the ACA is doing well or the ACA and
 3 the administration of state correctional officials,
 4 is they're working towards standards that can be
 5 utilized by everyone on issues like who is really
 6 being rehabilitated, what are the true rates, what's
 7 a true level of comparison when you account for all
 8 the different factors. No one really looks into the
 9 programming issues because, frankly, I think, from
 10 many points, as long as there's people dying on
 11 condition of confinement issues resources have to go
 12 to that, and once that is taken care of, then you can
 13 probably turn to issues like inmate programming,
 14 rehabilitation, and trying to prevent future victims.

15 DR. GILLIGAN: This is for Mr. Cate.

16 A few years ago I was invited by a
 17 committee in the California senate to work with them
 18 on formulating a law which the legislature and state
 19 assembly passed to monitor violence in the California
 20 prison system, particularly, of course, lethal
 21 violence; homicides, suicides and so forth, to really
 22 have a comprehensive summary of these sort of year by
 23 year, how many occurred, who were the perpetrators,
 24 who were the victims, what were the circumstances,
 25 which institutions seemed to be most dangerous,

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1 et cetera, with real investigations of each and every
 2 case and a public reporting of what was being done to
 3 reduce the level of violence.

4 They passed the law and appropriated the money for it
 5 but, unfortunately, Governor Gray Davis vetoed it.

6 I'm just curious with the program that you
 7 have in place now, is there any sort of systematic
 8 emphasis on monitoring the sort of extreme violence
 9 that occurs throughout that system and get a
 10 systematic handle of what's causing this, are things
 11 getting better or worse, what can be done, that sort
 12 of thing.

13 MR. CATE: In some circumstances in
 14 some areas, yes. For example, the department, the
 15 agency is currently working on a new death review
 16 process where they have a team of experts who are
 17 going to, who have just started to review inmate
 18 deaths and are going to triage those, if you will, to
 19 Internal Affairs or to professional peer groups, to
 20 licensing boards, et cetera, so they're starting to
 21 get more systems in place there. But I think one of
 22 the areas that the department has struggled with over
 23 the last few years is that they really don't have a
 24 great -- information technology is still in the real
 25 rudimentary stages.

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1 We do have oversight investigation of at
2 least the officer discipline process, and we're also
3 putting in place memorandums of understanding between
4 the various prisons and the county D.A.s and sheriffs
5 to try to get homicides investigated in a
6 professional way, that's an ongoing process, but
7 there's nothing as comprehensive as you described in
8 place, as I understand it.

9 MS. ROBINSON: Tim.

10 MR. RYAN: One of things that we do and
11 as a society is we're very credential of ourselves.
12 You go in and it feels like criticism, it may not be,
13 but obviously you will find things that have gone a
14 little bit sideways. A lot of our energy in this
15 commission has to be put forward to how do we make it
16 safe, how do we make it a safe organization, and one
17 of the things that I would be familiar with is the
18 National Institute of Corrections which spends a
19 great of time in training.

20 What sort of efforts can your agencies do
21 towards helping us getting better at what we do when
22 you see a problem out there? How do you educate me
23 as an administrator either through NIA, ACA, your
24 local state agency, how do you help us get better
25 when you find a bad thing, how do you help us get

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1 best practices out there, what could you do to
2 educate me to be a better correctional administrator
3 today, tomorrow and in the future?

4 MR. CATE: Well, frankly you know a lot
5 more about this than I do so that's a challenge. I
6 think I take -- and that's true for most of the
7 correctional people that I work with. They have been
8 doing it for 25 years, I have been doing it for two.
9 But I can let you know where you are out of
10 compliance with you're own rules, I'm trained to do
11 that, and I can collaborate with you and as they used
12 to say use the brains that the good Lord gave me and
13 sit down with you and collaborate and say all right,
14 this seems to me to be broken and it seems like we
15 have a couple options here, don't you think that this
16 might be a better approach, but I think it is the
17 dialogue that is really the most effective tool. The
18 professor probably has a greater knowledge of many of
19 these things than I do, but my experience in
20 California has been when we sit down face to face and
21 we talk in a non-adversarial way, when we respect the
22 knowledge that you bring as a correctional
23 administrator into the dialogue, then we get further
24 than we do if I just sit down and tell you you are
25 wrong and here is what you should be doing.

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1 MS. ROBINSON: Gary.

2 MR. MAYNARD: I've been thinking about
3 the advantages of state oversight or federal
4 oversight and most of us administrators who work in
5 the field, we work very hard to advise our
6 legislatures about the issues of mental health,
7 mentally ill in prison, substance abuse problems in
8 prison and also our congressional delegations, and it
9 seems that Congress has been reluctant to put money
10 into our dealing with the mentally ill and substance
11 abuse funds are being cut back and I'm just curious
12 as to how responsive they would be to oversight if
13 they would open up all those doors and create all
14 that cost.

15 MR. CATE: The first goal of oversight
16 is to figure out what's going on and try to identify
17 what the needs are. And you don't necessarily get
18 action out of oversight, but what you get is
19 transparency, you get an understanding of what's
20 going on, and then you think about whether there are
21 things that need to be done. And I agree with you
22 that it is unlikely at this point that the federal
23 government is going to be passing out increased
24 funding for a variety of programs, that seems to be a
25 budget reality at this point. But I do think that it

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1 is important to find out what's going on, what the
2 facts are and what the needs are and whether the
3 federal government can meet them now or in the future
4 or whether they can be met now by states or some
5 other bodies. I think any way that they're met is
6 good.

7 MR. WOOL: I'm hearing Professor Deitch
8 talk about the rarity of independent inspection and
9 monitoring, perhaps two or three state systems only
10 across the country, and Mr. Yeomans is talking about
11 the diminution in civil litigation from the federal
12 government and we're going to hear tomorrow about the
13 Prison Litigation Reform Act, restrictions on private
14 litigation. I'm wondering if you could comment on
15 the causes, the reasons for this diminution, if
16 that's what we are seeing, and also the consequences.

17 MR. YEOMANS: I think the reasons are
18 broad and they go well beyond this specific area. I
19 think that we have seen doctrinal shifts obviously in
20 the law, we have seen a changing political climate
21 that has contributed to those shifts, and so that
22 there is at this point simply far less tolerance for
23 structural injunctive litigation than there was in
24 the past. Part of that is because the bench is more
25 conservative, part of it is that there simply is not

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1 the kind of political will that once existed to
 2 address those problems, and, frankly, it is
 3 inconceivable that today Congress would pass anything
 4 resembling CRIPA, that instinct simply doesn't exist,
 5 and it is largely, I think, a political change. It
 6 is also a result of, I think, political attacks on
 7 courts and the way courts operate. We hear endlessly
 8 about judges who legislate from the bench or judges
 9 who read their own predilections into the
 10 constitution and what that really means is that they
 11 rule against you, but we hear that rhetoric over and
 12 over again, and I think it has an effect. And
 13 obviously because we have had conservatives
 14 consistently appointed to the bench, there are fewer
 15 judges now who approach this kind of litigation with
 16 the kind of sensitivity and aggression which really
 17 is necessary to make it effective.

18 MS. DEITCH: I would agree with all of
 19 that and I would just add, I was a court monitor in
 20 the Ruiz case, the big Texas prison reform case, and
 21 so I have a personal sense of the extent to which
 22 there was tremendous resentment among legislators,
 23 among corrections officials, among really many
 24 different layers of government, about the intrusion
 25 of the courts into correctional affairs.

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1 I think that the costs that, the financial
 2 costs that resulted for the state as a result of this
 3 kind of court intervention, while perfectly
 4 appropriate, just led to a sense of we want to cut
 5 this off, we can't have the federal government
 6 telling us what to do in the states, we can't have
 7 federal judges determining correctional policy, et
 8 cetera. The whole reason why the courts were
 9 intervening in the first place was that there were no
 10 other mechanisms, the courts were all there was, that
 11 was the problem and that's what needs to be remedied.

12 MS. ROBINSON: Matt, do you want to add
 13 anything to this?

14 MR. CATE: Well, I guess I was kind of
 15 mulling this over and I think that much of the
 16 independence of the inspector general's office in
 17 California has occurred over the last 18 months, two
 18 years, and I hope the governor hasn't regretted it,
 19 but I'm the bearer of -- the fact he calls, I don't
 20 know if he remembers my first name, but he remembers
 21 me as the guy who always brings bad news, and not
 22 only that, but I always bring it publicly, and so
 23 what worst combination could you have for an elected
 24 official. And so it is difficult, I think, for an
 25 executive to decide to sign off on someone to

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1 publicly report on things that aren't working well,
 2 that's the nature of the beast.

3 MS. ROBINSON: Any followup?

4 MR. WOOL: The consequences side, what
 5 are the consequences for prison conditions for
 6 prevalence of issues of safety and abuse of somewhat
 7 weak systems of oversight, other than what's emerging
 8 in California, as seen as generally the case across
 9 the country at least in the prison systems, we
 10 haven't talked much about jails.

11 MS. DEITCH: Well, one consequence is
 12 that we have very little way to know what's going on,
 13 we end up dealing with anecdotes. Whether people
 14 think things are good or things are bad, we don't
 15 have information, we don't get regular reports about
 16 what's going on, we rely on what was reported in the
 17 newspaper or an individual lawsuit, but to how much
 18 widespread these problems are, we don't have that
 19 kind of information.

20 MR. YEOMANS: I would second that. We
 21 don't really have an empirical basis to know what the
 22 consequences have been. I think we can speculate
 23 that we wouldn't have been all engaged in these
 24 activities if we didn't think they were reported and
 25 they certainly had results in the past, and so you

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1 can imagine a world where litigation and other forms
 2 of oversight don't exist, and I think that would be a
 3 world where prisoners were less safe and it was less
 4 humane.

5 MS. ROBINSON: I think we're getting
 6 near to wrapping up for the afternoon but I do want
 7 to throw out one other question to you, we kind of
 8 danced around it a little bit, but clearly there are
 9 different challenges between monitoring and oversight
 10 for prisons as opposed to jails and, Michele, I think
 11 you allude to that in your paper primarily, you do,
 12 but, Bill, clearly you have dealt with that issue as
 13 well in litigation, and I'm wondering if each of you
 14 can fairly quickly touch on that, what some of the
 15 differing challenges are there, and, Michele, why
 16 don't we start with you.

17 MS. DEITCH: Sure.

18 I think that jails in particular,
 19 specifically smaller jails, more rural jails, a lot
 20 of them fly under the radar screen, frankly. They're
 21 not regulated and we get very little information
 22 about what's going on, and these are jails that are
 23 more likely to have people at the helm that are not
 24 trained, they're not brought into national
 25 associations, et cetera, et cetera, and the state in

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1 many cases has very little control over what's going
 2 on in these places; they're not brought before the
 3 legislature. They're accountable typically only to,
 4 say, in Texas the Board County of Commissioners,
 5 whatever the county body is that funds them, but
 6 those bodies don't have any expertise in jails. They
 7 know they spend a lot of money on it but typically
 8 their concerns are do we need a new jail, not what's
 9 in fact happening in the jail. Those inquiries just
 10 plain don't happen. So I guess the short answer is
 11 we need to think of mechanisms that would allow those
 12 jails to come under some body, some entity, whether
 13 it is a state governmental entity or something else,
 14 to find out what's going on, to ask the hard
 15 questions.

16 MR. YEOMANS: I think it is important
 17 to distinguish among jails and obviously there are
 18 the kinds of jails that Michele was just talking
 19 about that are rural, small, generally run by one guy
 20 that has a lot of power, and those tend to be less
 21 professional. They tend to produce for us a
 22 disproportionate percentage of our criminal
 23 prosecutions simply because they're not
 24 professionally run and because a person who is there
 25 is basically unchecked and is more likely to resort

1 to force and more likely to inflict unlawful
 2 punishment. Obviously other jails, large, the L.A.
 3 County jail, these are large institutions that are
 4 much more professionally run and much more like
 5 prisons.

6 I think one of the principal
 7 characteristics, though, obviously that distinguishes
 8 jails from prisons is the length time that inmates
 9 are there, and I think that that has, and I haven't
 10 seen a lot of empirical work on this, but I think
 11 that has some effect of the likelihood of litigation
 12 simply because inmates who are there for a shorter
 13 term are less likely, first of all, to have the time
 14 to try to change the institution but, second, to have
 15 as much a need to change the institution. They know
 16 they're moving on or getting out, getting released.

17 People who are in a prison facility for the
 18 long haul and are living with the conditions are
 19 going to think long and hard about how to improve the
 20 living conditions that they may be with for years.

21 MS. ROBINSON: Anything to add, Matt?

22 MR. CATE: No, that's outside of my
 23 jurisdiction and outside of my depth as well, I
 24 think.

25 MS. ROBINSON: And you are not
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1 volunteering to take it on.

2 MR. CATE: No.

3 MS. ROBINSON: On that note I want to
 4 thank our panel, you have been very helpful.

5 We're going to wrap up for the afternoon.
 6 I don't know if Jenni is in the room or if Alex has
 7 any words for us. Any announcements that you want to
 8 make before we wrap up?

9 MR. BUSANSKY: We have another day to
 10 go, nine o'clock tomorrow morning. I think it will
 11 be interesting and exciting in its own way, I hope
 12 all of you will return, and hope to see you all
 13 tomorrow. Thank you very much.

14 MS. ROBINSON: Thank you.
 15 (Hearing concluded at 4:19 p.m.)

1 State of California)
) ss.

2 County of Los Angeles)

3
 4 I, SUSAN A. SULLIVAN, CALIFORNIA CSR No.
 5 3522, RPR, CRR, do hereby certify:

6
 7 That the aforementioned hearing was taken
 8 before me at the time and place therein set forth,
 9 and was taken down by me in shorthand and thereafter
 10 transcribed into typewriting under my direction and
 11 supervision.

12
 13 IN WITNESS WHEREOF, I have subscribed my
 14 name on this 23rd day of February, 2006.

15
 16
 17 _____
 18 SUSAN A. SULLIVAN
 19
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