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
COMMISSION MEMBERS:
1. The Honorable John J. Gibbons (Co-Chair)
2. Stephen B. Bright
3. Richard G. Dudley, Jr., M.D.
4. James Gilligan, M.D.
5. Saul A. Green
6. Ray Krone
7. Gary D. Maynard
8. Pat Nolan
9. Stephen T. Rippe
10. Laurie O. Robinson
11. Timothy Ryan
12. Margo Schlanger
13. Saul A. Green
14. Ray Krone
15. Gary D. Maynard
16. Pat Nolan
17. Stephen T. Rippe
18. Laurie O. Robinson
19. Timothy Ryan
20. Margo Schlanger

COUNSEL:
1. John Wool, Senior Counsel
2. Michela Bowman, Counsel

EXECUTIVE DIRECTOR:
1. Alexander Busansky

Los Angeles, California: Wednesday, February 8, 2006
9:00 a.m.

JUDGE GIBBONS: Good morning.
Professor Levenson.

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

This is a university that is committed to
social justice and we share your concerns about the
conditions of our prison system. In fact, these
hearings could not be timelier; this past week 2,000
inmates in our California jails here in Los Angeles
County rioting, leaving one man dead and scores
injured. Our sheriff has called an emergency
situation and segregated the inmates, something the
Supreme Court decided last year should not be done
except for an emergency circumstances. Well, indeed
it seems like almost every day it is an emergency
circumstance given the condition of our prisons.
These riots and the abuses are only the tip of the
iceberg for prisons throughout the nation.

Loyola Marymount University firmly believes
in a commitment to all our fellow human beings.
Before these hearings I had an opportunity to talk to
Commissioner Green and as he so aptly put it, all
people have value, including those who are sitting in
our prison institutions. This is especially
important when we recognize that one out of every
three young African-American men in our country is in
our criminal justice system. This issue takes on new
importance. We indeed recognize the enormity of the
task, your task.

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

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

Let me tell you just a little bit about what we're going to hear today and tomorrow. There will be a great deal of conversation about what correctional systems are doing to overcome or to, rather, to oversee their own institutions beginning in just a few minutes with testimony by Roderick Hickman, Secretary of the California Department of Corrections and Rehabilitation. Over the course of the hearing you will hear from several other senior corrections administrators. You will also hear from individuals who are overseeing corrections from the outside, from California's Inspector General Matthew Cate to Judge Myron Thompson, who serves on the State of California where people managing penal institutions are grappling with enormous, tough problems. This is the commission's fourth and final hearing and the focus of our work over the next two days is on oversight and accountability.

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to California. I hope this meeting will be
productive and informative for the commission.
I’m very grateful to have the opportunity
to address this group today. Quite frankly, no one
denies that violence occurs in prisons and jails in
this country. As you alluded to earlier, just
looking at this past week in newspapers here in Los
Angeles, you can see there is a very serious issue in
this country. In an ideal world we can eliminate
violence in prisons and jails but just as we
acknowledge that it is not possible to eliminate
crime in society, it is not possible to completely
eliminate violence in prisons. By the very nature of
prisons, many of the environments and circumstances
and offenders that are sent to prison have a greater
tendency to be violent than most of the general
public. Therefore, it is the responsibility of the
people like myself and those of us who run the
prisons and detention facilities to ensure violence
is kept at a minimum.

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

However, as a result of the systemic
problems with investigations in California and
employee discipline identified by the Madrid special
master in April of 2005, the California Department of
Corrections and Rehabilitation implemented statewide
discipline measures and investigative processes
which I imagine Matt Cate will talk about when he is
here in his oversight role.
Also in 2005 we implemented ethics and code
of silence training for all employees in California.
The training outlines our expectations regarding
employee behavior, performance standards, and a
requirement that in the culture of corrections staff
come forward and report.
The Bureau of Independent Review which is
in the Office the Inspector General was created to
provide an external process and realtime oversight of
investigations in employee discipline in California.
The court recognized our efforts to the point where
Judge Henderson has acknowledged the cooperation and
support of this administration and very well, very
soon, I believe, and this is one of the dangerous
things you do as secretary, predict the future, I

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believe that he is going to report very positively
about the Department of Corrections role in that and
move towards eliminating all oversight from the
federal court and move into the oversight of the
process that rests now with the Inspector General's
Office.
So despite our history in California, I
urge the commission not to generalize that past and
to presume that it is the same everywhere else. We
have significant challenges in California. As
Michael Jacobson, the Director of the Vera Institute,
has observed, California somewhat skew its
statistics. Despite the numerous challenges facing
us in Pelican Bay and elsewhere, as well as the
complexity of reorganizing the largest correctional
system and the largest organization in California, we
have made progress in cutting violence in our
prisons. Violence in the state prisons in California
is an ongoing issue. In 2004 there were 7,170
incidents of offender-on-offender violence in
California in the adult system. While there's no
hard data available concerning the causes of that
violence, the following are some of the most commonly
recognized, contributing factors to that.

Overcrowding in California is a significant
contribution. In our juvenile justice arena, we cope with the population, not as significant, the staff-officer ward ratio and patterns do not allow the staff the time that we believe is necessary to interact with youth and to provide direct supervision, instructional activities which we believe would reduce violence and cut down on provocative and potentially volatile situations.

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

There's a cultural issue and a code of ethics that we have to talk about within the systems of California. As you alluded to, one of the things that I do as a secretary on an ongoing basis is work very, very diligently with my staff so that they understand that their culture, their ethics, their values are one of the most important things they bring with them each and every day that they walk into their rank from corrections officer, to warden, to executive director, and what impact it had on the rank upon receipt into the institution and talk about that process and the community's responsibility upon return. So there are numerous things that we're doing in California that I think are systemic and can be used as a model. The model that we currently have in California is not the model that we want to leave; the situation that we currently have in California is not the situation that we want to maintain. I think that Governor Schwarzenegger has made it very clear in his direction to me that corrections are supposed to correct and we have a responsibility to improve upon the services that we provide here in California.

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

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

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

Mr. Gary Johnson was the Executive Director of the Texas Department of Criminal Justice until his retirement in 2004. Mr. Johnson will discuss how federal oversight of the state's prison system over a 30-year period affected his work as he rose through the ranks from corrections officer, to warden, to executive director, and what impact it had on the prisons of California and supervise offenders, and that we have a responsibility to provide direction and model social behavior to the offender in our charge and not to move into another code of ethics as a result of your environment that you work in. Mental illness is a significant issue in California, as is sexual misconduct.

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

I had a chance to talk to Sheriff Baca this weekend about the significant number of prisoners that come from Los Angeles County into the California system and how one of the most important things I think we can do across the country and within the state is to have better communication and better understanding from a programmatic standpoint in California on what we're doing when people come into the system and what we're doing with communities when people go out of the system. We have pilot programs in San Diego to do just that, to talk about that process upon receipt into the institution and talk about that process and the community's responsibility upon return. So there are numerous things that we're doing in California that I think are systemic and can be used as a model. The model that we currently have in California is not the model that we want to leave; the situation that we currently have in California is not the situation that we want to maintain. I think that Governor Schwarzenegger has made it very clear in his direction to me that corrections are supposed to correct and we have a responsibility to improve upon the services that we provide here in California.

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JUDGE GIBBONS: Thank you.

MR. HICKMAN: Any questions?

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

MR. HICKMAN: Good. Thank you very much.

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there's a guy that killed a friend of mine that was a
Crip from the Rolling Thirties out here in L.A. and I
got retaliation behind that.
During my early stay in prison I had a
gangster mentality whereas there was no need for
school, there was no need for any type of
rehabilitation to crack my thinking, it was all about
me surviving inside the prison system. I had three
older brothers inside the prison system and so I was
just -- I was banged out, there was -- nothing else
mattered. I lost my mom. I didn't say that in here,
but during my stay my first year there my mom passed
cancer and that right there was enough to send me
over the edge.
I done a lot of time in isolation for my
behavior inside the prison system. Then when I got
out, it was all about learning the prison system, how
I can manipulate the prison system, and who and what
I could get away with. Drugs was the number one
thing that I learned inside the prison system. Then
after they took to tobacco, drugs didn't have that
much affect, then the tobacco did, because everybody
needed tobacco and so tobacco became a way of
survival, it became a way of making money inside the
prison system, and it is still is right now today.

I was one of the guys that was known for
fighting a lot, known for -- I was more of a leader
type of guy because I had older brothers inside there
that put me on and me being the person I was, I was
quick to fight, I was more of a leader, and when new
guys came in it was a breeding ground for new guys,
especially younger guys, 18, 19, coming through the
prison system, being remanded from juvenile to adult,
who was looking for some identity. And being the
gang member that I was, I gave them some identity,
you know, and just put them on, you know. What I
mean by put them on, you down with this right here
and this is your job, this is what you have to do,
you know.
And I have got a scar above my left eye
right where I got into -- it was almost like a
race riot with the White Supremacy, it was just me
and him, and everybody who knew what was going down
was isolated in this incident. And after that
incident right there I had to prove myself with the
White Supremacy is that we ain't going for this, you
know, because in Oregon a lot of White Supremacy runs
quite a bit of stuff out there but once you establish
yourself and your position, there is a difference.
It is all about survival inside the prison system

and my job was to look out for my crew, to lead my
crew, you know, and hook up with the people that can
make it happen, you know.
The prison system is corrupt, there's no
secret about that. I had guards bringing me in
tobacco, you know, making things happen, and it is
still going on right now today, and you can spend
$300 on tobacco and make 3,500. I mean, that's a
month's salary right there as a corrections officer,
you know. So once the tobacco was eliminated, it was
just an open market for almost everybody that wanted
to get involved.

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

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

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

I was convicted of assault with a deadly
weapon in 1989; 10 years with a five-year minimum. I
did seven years out of that 10-year sentence. I was
convicted of assaulting a Crips gang member. And
the gun I used was a 380. I had that gun in my
stocking. I got it from my cousin who was going
to Europe and was going to trade it to me.
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my eyes to a whole lot of different things, you know,
about my identity, about who I am, about my
ancestors, what they did to get me to where I am
today, you know. And once that light came on, it was hard to turn it off. And I had a different vision from their own about being a gangster, you know, because it didn't take much to be a gangster once I figured out what it took to be a gangster. I mean, a three-year-old, a four-year-old can be a gangster, can be a gang member, but to be able to walk away and to be able to do different things and be responsible in today's society, it takes a man to do that. And my father neglected me when I was younger and so I just jumped on board with my brothers about the stuff that they were doing and I thought that was the way that things was supposed to be done, but little did I know was that that wasn't the way society worked and it took some older guys inside the prison system to really teach me some of the things my father didn't teach me, you know. And I remember him saying that "You can't become a man until you've held one's hand," and those brothers inside the prison system coached me along to be a better person.

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

JUDGE GIBBONS: Does that suggest that

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

JUDGE GIBBONS: Does that suggest that

MR. BROWN: Well, the administration can only do what they can do and gangs will always be there regardless; in the institution, out of the institution, there's only so much that the staff can
1. Because I know the staff's number one goal is safety and prisoners are violent and that's just no secret and so the administration -- once it is going down, it is going down, there's nothing that the administration can do really about it. They can lock us up, put us in a hole or whatever, but once it is going down, it is going down.

2. Judge Gibbons: What recommendations would you give to correctional administrators or staff to help reduce gang-related violence in the prison or jail facilities?

3. Mr. Brown: Open up programs like the Home Program that we implement and it is just for the STGs, the serious threat groups, and we have focus on, we have Bloods, Crips, Arsenios, Serenials, Skinheads all in one group and we focus on similarities and not differences and we teach them the importance of going home instead of getting out. Getting out is just a function of getting in. Going home is you are going home to stay with your family. So we need more programs that work with all of them together and not separate.

4. Judge Gibbons: You mentioned that some corrections officers were not models of good social

5. Ms. Robinson: I'm sorry.

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7. I thought I understood you to say that gangs are inevitable in prisons. Did you say that?

8. Mr. Brown: I'm not sure.

9. Ms. Robinson: Do you think that gangs are inevitable to occur in prisons? I heard some of your testimony to say that they're always going to happen.

10. Mr. Brown: The violence inside prisons?

11. Ms. Robinson: That gangs will always occur.

12. Mr. Brown: Gangs will always occur, yes.

13. Ms. Robinson: Then why do we see many prisons where gangs are not occurring?

14. Mr. Brown: A lot of prisons are minimum-security prisons.

15. Ms. Robinson: No, I'm talking about maximum-security prisons where gangs are not occurring.

16. Mr. Brown: Well, all the prisons I have been into, there are gangs everywhere, especially in L.A. There's going to always be gangs inside of prisons, outside of prisons, and there will always be violence.

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18. Ms. Robinson: Well, I'm talking about prisons in other states. Thank you.

19. Judge Gibbons: Our next witness is Gary Johnson, a career employee of the Texas Department of Criminal Justice, advancing from corrections officer to executive director during a time when the Texas system was under federal oversight.

20. Mr. Johnson.

21. Mr. Johnson: Thank you. Thank you for the invitation to come speak to you this morning.

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

23. As a result of that lawsuit which impacted virtually all operations in the Texas, at the time the Texas Department of Corrections; health care, staffing, law library access, inmates exerting authority over other inmates, capacities, standards,
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<td>infrastructure. You name it, it was impacted.</td>
<td>oversight which ended in 2002 was, in my opinion,</td>
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<td>When the court ruled in 1978 for the first</td>
<td>critical to the success of the department over those</td>
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<td>time and found the Texas Department of Corrections</td>
<td>three decades. It was many times painful in the</td>
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<td>did have unconstitutional conditions, a special</td>
<td>short run, very critical in the short run, but very</td>
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<td>master was appointed, Vince Nathan, and for many</td>
<td>productive when you look at what happened over a</td>
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<td>years Texas was subjected to quite stringent external</td>
<td>30-year period.</td>
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<td>oversight provided by the courts.</td>
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<td>Now when I first went to work for the</td>
<td>Over that time, even though sometimes the</td>
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<td>department back in 1973 the department was -- any</td>
<td>relationship between the department and the Special</td>
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<td>kind of oversight was alien to the department. And</td>
<td>Master's Office or the plaintiffs' attorneys could be</td>
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<td>over three decades from various different</td>
<td>very contentious, quite often we might not agree, but</td>
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<td>perspectives and angles, because I took a somewhat</td>
<td>what happened over time was the development of a</td>
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<td>non-traditional route from correctional officer to</td>
<td>mutual respect for each other's professional</td>
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<td>executive director, I watched the system evolve from</td>
<td>responsibilities and knowledge of the prison</td>
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<td>one where oversight was alien, to where oversight</td>
<td>operations. They provided an important resource, I</td>
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<td>actually became somewhat systemic and even</td>
<td>think, for the directors through those three decades.</td>
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<td>institutionalized, just a way of doing business. No</td>
<td>And although external oversight in the form of court</td>
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<td>doubt that that began with the Ruiz case and external</td>
<td>oversight ended in 2002, the department today still</td>
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<td>oversight. The tensions and pressures that were</td>
<td>works in some respects with external entities for</td>
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<td>brought to bear by the external oversight was a</td>
<td>oversight, they still seek accreditation for the</td>
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<td>catalyst for the creation of an internal oversight</td>
<td>facilities, and periodically will have consultants</td>
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<td>system in the eighties, and today there are a number</td>
<td>come in and do some audits or inspections of specific</td>
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<td>of very strong internal mechanisms within the Texas</td>
<td>operational areas.</td>
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<td>Department of Criminal Justice to provide oversight.</td>
<td>But I would say to you that although, and I</td>
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<td></td>
<td>do want to make sure I make a point that over these</td>
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<td>three decades when that external oversight was first</td>
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<td>The external oversight, the court-mandated</td>
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<tr>
<td>introduced, the agency was very resistant to</td>
<td>have to continue to try to diminish polarization of</td>
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<tr>
<td>oversight and that resistance over a period of time</td>
<td>silence, we have to acknowledge that we, I think, all</td>
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<td>certainly diminished and moved from, as I said, one</td>
<td>want the same ultimate goal which is more humane,</td>
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<td>of resistance to one of a mutual respect and</td>
<td>safer run prisons in this country, and to the extent</td>
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<td>acknowledgement of the value that can be gained from</td>
<td>we can continue to develop a mutual respect for each</td>
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<td>oversight. But I would want to say to you that as a</td>
<td>other's positions, I think there can be a lot of</td>
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<td>former director, I know there are some current</td>
<td>progress made in this arena.</td>
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<td>directors in the room, that although we share, I</td>
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<td>believe, the opinion that oversight, external</td>
<td>So with that, I will end my remarks and</td>
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<td>oversight can be valuable, it could be a real</td>
<td>take any questions if you have any.</td>
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<td>resource to have eyes other than your own or those of</td>
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<td>inside your department, it could be very valuable but</td>
<td>JUDGE GIBBONS: You suggest that</td>
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<td>it can be a very complex, dicey issue for an</td>
<td>transitioning a prison facility from a culture of</td>
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<td>administrator. Administrator, correctional administrators</td>
<td>autonomy to one in strict compliance with court</td>
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<td>especially, live in a very politicized, pressure-</td>
<td>orders requires somewhat of a cultural shift on</td>
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<td>packed environment and absent court mandates or a</td>
<td>behalf of the staff and perhaps even on behalf of the</td>
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<td>legislative mandate for oversight, the directors can</td>
<td>inmates. Could you describe for us the interaction</td>
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<td>assume a certain level of risk by inviting oversight</td>
<td>between the federal oversight on one hand and the</td>
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<td>into their departments. I would hope that one thing</td>
<td>staff and the inmates on the other.</td>
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<td>that you, as you contemplate and deliberate the</td>
<td>MR. JOHNSON: Well, I'm not sure I</td>
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<td>issue, is that you would have an understanding that</td>
<td>understand your question completely but I will take a</td>
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<td>correctional administrators do value external</td>
<td>stab at it.</td>
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<td>oversight, but also acknowledge that many times it is</td>
<td>As I said earlier, there was a lot of</td>
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<td>a very complex issue for administrators. I think we</td>
<td>resistance initially to external oversight by the</td>
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<td>courts back in the 1970s especially because for</td>
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<td>decades the department had operated without any</td>
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<td>oversight and the prisons generally around the</td>
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country had operated without very much federal court intervention, so it was really viewed as an intrusion into the domain of prisons to have others coming in providing that oversight, so it took culture which we talked about a lot, I guess, but culture takes a long time to change, to make that shift. It is a mistake for people to believe you put out a memo and change the culture, it doesn't work that way. It takes a lot of small steps, a lot of leadership for a sustained period of time for people to change the way they see the world. So for a number of years it was a matter of changing the way the employees of the system were currently there saw how they did their jobs, saw the value of changing the way prisons were operated, and you have to also remember that the inmate population has a certain culture that has to be changed over time.

And then what happens over a period of decades is you transition out employees who had been there before the federal lawsuit, inmate population turns over, so at some point, like today, for example, the vast majority of employees that work for the department in Texas, at least, have only known the system under the current system, they weren't even aware of the system that existed prior to court intervention, and in a

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made in the Texas Department of Corrections it took court intervention to be the catalyst to move that forward. Now the reason I asked the question earlier, 2006 is a different -- we're in a different place. The department that exists today has no resemblance to the one that existed in the 1970s, so I think you have to take into consideration those kind of factors. You can't do this, I don't believe, make the jump that because it required court intervention in 1978, to make that movement that that would necessarily be the case in today's world.

JUDGE GIBBONS: And when you say there's different structures in place, what in the Texas system furnishes the oversight from outside the wall that the federal monitor was furnishing before the federal court stepped aside?

MR. JOHNSON: When you say outside the wall, do you mean --

JUDGE GIBBONS: Outside of the given institution.

MR. JOHNSON: Of a given institution?

JUDGE GIBBONS: Yes.

MR. JOHNSON: Well, of course, we are seeking ACA accreditation in Texas but beyond that, the agency has an entire division that their mission is oversight and routine, periodic audits are conducted in every institution in Texas. Not only is there a division that provides operational oversight, but there's also an Internal Audits Division that reports not to the director but to the Board of Criminal Justice, and there's an Office of Inspector General that reports not to the director but to the Board of Criminal Justice, so there are several entities that exist within the department that either report to the executive director directly or to the chair of the Board of Criminal Justice directly, in addition to some of those external mechanisms that we have in place.

JUDGE GIBBONS: And what are the, in your view, are the characteristics of an effective oversight system?

MR. JOHNSON: Internal, external or just any oversight system?

JUDGE GIBBONS: Any oversight system.

MR. JOHNSON: I think that the persons that are involved in oversight need to have a clear vision of what they're trying to accomplish with a particular correctional department. I think there has to be, as I said earlier, some mutual respect between the administration of the department and the
group providing oversight, I think there has to be a recognition of the complexities of operating large prison systems, I think there has to be integrity between both groups. And when I talk about mutual respect or cooperation, I'm not talking about co-opting, I'm talking about each entity doing their jobs with integrity with the vision of wanting to help that agency become more safe or more humane. I mentioned in my remarks that I gave to you that I think there are sometimes problems if you engage in oversight where there's a single agenda in mind. Not more comprehensive where you are trying to help the department move forward or to become a better department, but that's more single-issue related. I think that would be a detriment to oversight.

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

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

MS. SCHLANGER: You mentioned that your statement talks more about the risks of unmandated oversight and I assume, from reading your statement, you don't mean the risk that something that's going on that's bad will get discovered, you are not saying about the political risks of oversight but an actual operational risk in some way, and I'm really interested to hear you spell that out a little more. I mean, you say in your statement so I don't mean can you tell me whether this has happened, I'm not asking for that, I just want to understand what your concern is about -- there are so many kinds of oversight, about how those might work in a way that is counterproductive rather than productive.

MR. JOHNSON: Okay. The internal mechanisms that exist in most states to provide oversight work for or with the director usually or a board or commission, whatever they're called, and
more a situation where you have a contentious relationship that develops with the entity and the department and instead of that department then wanting to or having a desire to proliferate external oversight, they will truly start putting up more walls and so that's sort of what I'm referring to. The risks that are associated is if you have a group that comes in and instead of working with the director, the legislature or the agency has an agenda of just pure exposure, no intent for partnership but just pure exposure, then that director is going to certainly have some risk associated with you, now, why are you doing this absent a mandate to do it. Does that clarify it at all for you what I was referring to?

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

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

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

MR. RIPPE: Should remain voluntary.

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

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question.

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

MR. JOHNSON: For external?

MR. GREEN: Yes.

MR. JOHNSON: Based on my experience testifying for the legislature, I will give you a sort of a two-part answer to this. Can an agency operate effectively with internal oversight only. Yes. I think, now, that goes to the whole definition of what is effective, but I would say yes, they can operate effectively.

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

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

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

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

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

JUDGE GIBBONS: I think we have another question.

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

Like I said earlier, I just believe, maybe, I hope after 30 years I'm not in the business of, I'm not overly naive, but I just believe that if we can find ways, and I believe that we have much more in common on this issue than we have differences -- we
do have differences, there's going to be differences
in approaches, differences in philosophies -- but I
think our ultimate vision of safer, humane, better
run prisons is common. I think we share that. I
think if we share that and we have a real commitment
to that, we can find ways to diminish the
polarization and move forward.

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

MR. JOHNSON: That's correct.

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

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

I was married for 33 years to Jay.

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

MS. WRIGHT: I will just read this off.

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

The doctor told him that they did not have

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

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

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

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

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

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

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

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

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

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

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

The doctor told him that they did not have
the Norvas and that they would just increase the
Procardia to 10 milligrams rather than the Norvas
which was five and it was not, the Norvas wasn't
available.

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

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

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

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

On Monday I called to see if he had been
transferred because every day he was supposed to be
transferred. I didn't even know he was going to be
in the county jail for the three and a half weeks he
was there. In your mind you think you are doing a
plea bargain, everything is set, he would be moved
immediately to San Quentin. 30 days he would be
there; I would see him. That's what I had hoped.

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

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

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

The man ended up getting upset with Jay for
Jay asking to be moved and, in fact, attacked Jay and
Jay defended himself. Well, my understanding is that
you don't defend yourself in prison, you -- because
if you do, then you are just as guilty, you have now
committed a crime also. So Jay was put in the hole.
I didn't receive any letters from Jay, I
didn't know where he was at at that point because my
letters from him I got regularly. Well, when the
letters stopped I panicked, I thought -- and I always
worried that Jay would have a heart attack because of
the stress.

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

But for at least that 30 days or 45.
Jay was transferred to San Quentin on -- we
was bitten by a spider in the county jail and got
very ill. His leg, I went and saw him, was just
enormous and he said he filled out a form prior. I
guess you have to fill out a form to see a doctor
while you are in the jail system, in the prison
system, and no one acknowledged that. He said he
filled out two forms. His knee was so swollen that
he got a guard to look at his knee and then the guard
immediately got someone to come in. Jay was given an
antibiotic shot and a scraping to see if it was some
kind of a staph infection.

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

I went home. I live in Arizona so I would
fly to California, stay in a hotel, visit him in
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this particular man for two weeks, almost three, he
was going out of his mind and he said he didn't sleep
because Jay was afraid.
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
did talk to a psychiatrist, he explained what had
happened, and she said she would look into it.
4 Jay went before the committee after the
five days. I have the paperwork. He was released
and moved without any reprimand because he was found,
5 I guess, not guilty for defending himself, so he
didn't -- apparently when you fight or have a problem
your time is added on to you because you've gotten
yourself into trouble, so Jay didn't end up with any
more time for that.
6 Jay spent about 70 days in San Quentin. So
much for the 30 to 45 days that he was supposed to be
there. The reception time should have been 45 days.
7 During the time Jay spent in San Quentin it
became clear that Jay was not receiving his mail. I
would consistently receive letters from Jay
requesting that I write and asking why I hadn't. All
the while I was writing. And I overheard the
approval form for the visitation which -- so you have
to be approved to show that you are not a criminal
yourself in order to visit someone in prison. And I
finally got that back and I was able to see Jay on
October 15th. August 15th, excuse me. I still called every
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The next day I called again and was told
Jay was transferred but they wouldn't tell me where.
So there is a group in California that's called
Friends Outside. They're not at all the prisons from
what I understand, but they are at San Quentin. And
in my time, from the first, when Jay first was
incarcerated at San Quentin I was told about Friends
Outside from another outside source and began to talk
to Bill Klein, who happens to be the representative
in San Quentin, and what his -- what he does for you
is I would call him and he would go in and check
because I was so concerned with Jay's health.
And when he was transferred from the
county jail and because he was ill I was worried so I
called him and he actually went in and looked at Jay,
sat with Jay and talked to him and came back and
called me, which I was very grateful for, told me
that Jay was doing okay and that he looked good and
that he was a nice man which was kind of nice for me,
because when you are talking to people, when you tell
people your husband is in prison they always assume a
monster, they do. People assume monsters, prison.
That was one of the things that I had to learn to
live with, that -- and I'm just as guilty as some of
the public realizing that they're not all monsters;
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that there are people in there that just need help, people in there that --

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

Jay would write and tell me about the different circumstances that he would view. Most of the time Jay was in lock-down because the prisons are in constant fighting, a lot of gang problems, and I guess it is just safer to keep everybody in lock-down from what he said to me. Jay was moved. I thought that Jay would be moved closer to Southern Cal, not farther. He actually ended up being moved from San Quentin to Susanville, California, which is up in the northern, Northern California area, closer to Reno, actually. So he was on a bus a minimum of what, eight to 10 hours in shackles being moved to Susanville.

I found out Jay -- where Jay was at. At that point he -- I did not -- he did not know that I knew that he had been moved so I called the High Desert State Prison on August 16th and verified that Jay had been transferred there and then I was able to make arrangements for the visitation.

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

Jay did look bad but I attributed that because he had not been outside. One of the things at San Quentin, he said when you do go out, you really are not -- it is very racial there and in the letters Jay said that there was a lot of -- the whites stay with the whites, the blacks stay with the blacks. The Mexicans have two groups; the non-speaking English and then the Chicanos, and they had these rules. If you have a problem you go to the head man and that head man talks to that group, to that group. You don't ever talk or socialize, you sit at -- the showers are segregated, the tables are segregated. You don't ever talk to another outside of your race, you stay with your own, you have no choice. Jay was in the woods because he belonged to no group, that's what he was told. He was an old G, old guy. He didn't belong to a White Supremacist group, he didn't belong to anything, so he was in the woods. And in his letters he explains all that to TSG Reporting - Worldwide 212-702-9580

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

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

On Sunday I saw Jay again, and standing in line I got to hear the sirens go off and firing, the shots being fired in the air, everybody on the ground. The way it was, the gates you could see through because you are outside standing in line to go inside to be checked in, and then that was quite an experience. Everybody in the line, you hear them say, "Oh, my God, we won't get to visit" that day and "What unit is that? Is that the B?" "Oh, that's the B Building." Because then you know that there's a problem and you are not going to go in TSG Reporting - Worldwide 212-702-9580

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

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

So when Jay walked back to the particular guard that sent Jay over there asked him, "Did you get your heart medication?" And Jay said no, and that particular guard said that that guard was not a nice person. They don't talk like that, though. TSG Reporting - Worldwide 212-702-9580
So Jay asked again for the meds. And I was told that somebody came by on Monday and said that Jay would receive his medicine either that night or in the morning. Jay died and was gone in the morning so he didn't receive his medicine.

When it says I allege he didn't have his heart medication, Jay did not have his heart medication. The toxicology report, the coroner -- I'm still waiting for the reports on that because they did not do a cause of death on his death certificate because they were waiting for the toxicology report because I did in fact call the prison and told them "You killed my husband, you denied his heart medication." So I am still waiting.

I have not had any answers from anyone. I have written my statement, I don't know if you have a copy of my statement, and one of the first things I started to do as soon as I could think straight was I began to write to anyone and everybody that I could possibly think of that could tell me why Jay died.

I received -- I wrote to Governor Schwarzenegger twice. On the second time I actually did get a response. He sent it to the California Department of Corrections and Health Department and I already read about the prison's law office. They won a case in California and they're still negotiating on how to fix the problems in San Quentin. My husband is gone, they won in 2002, they are still negotiating on how to fix the problems. Why write them again and go back to them, they won. They didn't change anything; Jay is gone.

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

MS. FIGUEREDO: Not be accountable is not right. Jay had to be accountable, why doesn't the State of California have to be accountable. Who has to be accountable?

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

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

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

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

MS. FIGUEREDO: Retaliation.

MS. WRIGHT: One of the other inmates that I was talking about, in his letters, he writes to me, and I asked him if he would speak to my attorney. He doesn't want to; he is afraid. He just wants to do his time and go home, you know. He doesn't want to
insulin. They have to have it. The State of
California is in a very poor state as far as taking
care of their inmates. I don't know about the other
states.

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

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

MS. WRIGHT: Thank you.

JUDGE GIBBONS: Thank you for coming.

(Recess)

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

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

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<td>DR. BYRNE: Thank you.</td>
<td>prison gangs use violence to maintain control and</td>
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<td>I want to start with just kind of picking</td>
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<td>up on one of the comments earlier about gangs</td>
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<td>being -- whether they were inevitable or not and</td>
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<td>sentence gangs are inevitable, but I would say</td>
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<td>they're an inevitable consequence of a myriad of</td>
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<td>problems individuals face in community settings and</td>
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<td>to the extent that we have a prison gang violence</td>
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<td>problem more at one institution than another, I think</td>
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<td>in those communities and so I just want to start with</td>
<td>Dr. James Byrne is a professor of the</td>
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<td>that because that would be my take on it. An</td>
<td>Department of Criminal Justice at the University of</td>
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<td>interesting way to think about it is from where I</td>
<td>Massachusetts-Lowell and has conducted research on</td>
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<td>take it, start off from, is to think about what</td>
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<td>exactly do gangs provide to individuals, both in</td>
<td>violence and disorder. Daniel Alejandrez is the</td>
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<td>institutional and community settings; why do you join</td>
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<td>a gang in the first place. I think you heard a</td>
<td>based peace movement targeting at-risk youth involved</td>
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<td>little of that in some of the earlier presentation,</td>
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<td>and I have a by line by Mark Rydell and one of his</td>
<td>Group Investigation Coordinator at the Ohio</td>
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<td>colleagues that I think highlights it.</td>
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<td>Basically he argues that gangs' most</td>
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<td>important role is to provide a source of identity to</td>
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<td>young males and to a less extent female. Traveling</td>
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a lot of community research into restorative justice, I think it is fairly positive, and I would like to see that kind of approach considered. It is one that empowers inmates in terms of alternative problem-solving mechanisms, alternative to either giving into gang threats or harassments or challenging that situation directly as you heard earlier today, so that's kind of an inmate-centered response that I think should be put on the table when we talk about this.

The second is the staff-centered response and I'm involved as an evaluator for the National Institute of Corrections of the program that they have been running for several years now, but certainly they have taken off in the last two or three trying to change staff culture. Based on an assumption that I put in the testimony I gave to you, if you change staff culture, inmate culture will follow. When you cut to the chase on this, you say what are you trying to change about staff, I think you are talking about not only staff attitudes but staff behavior towards inmates, and that's a very difficult thing to change and we're trying it in community settings with a variety of strategies like proactive supervision models that emphasize the wished we had even better empirical research, but we're starting to get data on that, I wish we had even better empirical research, but we're

starting to get that right now and that research suggests very specific things managers can do. One of the most obvious is to reduce the scale of the institutional system. People a lot smarter than me have suggested this. "If you want to deal with the drug problem in prison, one thing you can do is stop putting drug users in prison," kind of basic. And that's a quote from Jim Austin, I wish it was mine, but it is his, and he thinks I'm wasting my time on this evaluation research, why don't I focus on essentially sentencing alternatives, put your energies where we really need to. If you did that, then you would be talking about drug users, the mentally ill, and probably the biggest problem in terms of the churning of offenders in and out of the institutions and that's probation and parole failures.

The reason I mention that scale as a management strategy is that when you compare the United States to other countries, particularly the size of the staff and institutions, say, to England, you can do very different things with restorative justice and informal social controls when your staff-to-inmate ratio is 10 to one. When it is a hundred to one, it is a whole different ball game.

It is not surprising that we rely on the technology of control, formal control mechanisms in institutional settings with that type of strategy. So this scale issue is one that I think can be addressed, should be. If you say what kind of things would really reduce violence and disorder in prison, I think you would see that fairly quickly if you did the kind of things that people have talked about in the area of sentencing reform and also probation for the violators. So obviously institutional and community control are inexorably linked, I guess that is the point I would make.

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

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

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

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

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

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

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

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

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

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

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And I brought also some photographs that I thought would speak the truth to the best I can because I am here and I would try to speak the truth. I was able to generate some letters from individuals that I worked with, individuals that I have seen change their lives around completely, and I am blessed, I am blessed to be part of that, to see that change in these human beings. And I am going to talk specifically men because that's the group that I work with, men of all races have changed when we go into these institutions.

To talk about gangs and why people join gangs, and Willie, Willie says, "When I first went to Pelican Bay, you are so fascinated by, oh, here is all these guys you've always heard about, all these guys running everything, just fascinating." All you hear is the way they talk, Aztec language, all this knowledge, philosophy from reading all this stuff. "I want to be like that, I want to be smart and educated like he sounds." Well, unfortunately, some of the individuals that get grabbed by that don't make it outside or some of them realize that's not really what they were looking for in the first place, you know.

So when we talk about alternatives and we talk about what it is we're going to do to bring our relatives back home, what we found in working in several institutions in California is the culture of spiritual transformation. What I mean by that is if I know where I come from, who I am, who Nane is, Nane will not return to prison, Nane will try to take himself, transform himself to be a better human being; that I as a man have a responsibility back in my community, but also in that community I ask that community for forgiveness and I ask the community to take me back and to allow me to be a productive citizen in that community. But this all starts within the institutions.

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

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

And I brought also some photographs that I:

MR. MAYNARD: Mr. Delgado.

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

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

Today's gangs are growing stronger as their membership increases and through alliances they are...
strengthened also. Gangs today, in my opinion, have basically replaced the Mafia of yesteryear, that old Mafia that we had seen before with the Costa Nostra and the alliances and basically working together at times in order to accomplish things even though they may have actual differences within their particular groups and we see that. However, the problem is that we as a society, in my opinion, haven't recognized that shift, the change in the attitude, and we tend to look at gangs as neighborhood groups and we tend to look at gang activity as something that is juvenile. The challenges we face today are extremely complex. For example, popular culture through music, television and video games often glamorizes gang membership and gang activity. The media, you know, is continually reporting the gang activity that is plaguing our communities and as a result, the benefit to the gang is that they get the notoriety that they're looking for. A common example that you could see today, probably one of the most publicized gangs there is would be the MS 13. However, probably one of the biggest problems that we see today is, that we face, is the general view that gangs are youth-oriented and that we don't look beyond the fact that adults do participate within gangs and that they continue and it becomes generational in a matter of speaking.

Gangs inside prisons, as well as outside prisons, also tend to take the form of a criminal enterprise that focuses on business growth and operations. This has been seen, for example, in the Black Gangster Disciples, the Growth & Development. And you look at a lot of different gangs that have been established in 20, 30, 40 years, you start to see a shift in actually creating political action committees and things of that nature. In Ohio, our approach was basically reactive in the past and what we chose to do is we chose to look at creating more of a proactive type of approach to two main issues; one being the investigative enforcement side and then on the other side, the inmate programming component to be able to deal with the problems that we face. Now, Ohio is a large correctional agency with approximately 45,000 inmates, 32 correctional facilities, and our department also is responsible for parole supervision which has probably 35,000 offenders on parole. And in the past, as I said, they're basically reactive. We approach the things reactively. We profile, we conduct an investigation, things that are at the local level, and through our new proactive approaches we decide to basically refine some of the elements of our STG program. These added goals are defined as reducing the flow of drugs in the correctional facilities, because it is our belief that the gang activity is responsible for the drugs coming into the prison as a part of gangs controlling the prison economy. And, you know, people tend to argue saying well, it is not all gangs that are actually bringing those drugs into our facilities. However, if you look at the amount of people that it takes to actually accomplish that, whether they actually have a gang name or colors or not is really kind of irrelevant when you look at the problems themselves.

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

Briefly speaking, on the refined investigations, when we did our research and we looked at an investigator process we realized that one of the elements that we were missing was the parolee on community piece. One of the panel people said earlier, people are often afraid to speak, they're often afraid to say anything, especially when they're incarcerated. If you've got drugs coming into your prison, you've got different types of activity coming in there, you tend to run into problems with people saying anything. We found it was easier to actually approach it from the outside, work the investigation from the outside in, to be able to gather the information and then also identify the players on the street that are involved in the drug trafficking that's going on inside. Our unit, which we call the enforcement unit, has been established for approximately three years now and has been extremely successful. On the programming side, we want to provide education showing the negative effects of gang memberships, strengthening family bounds, and provide continuing support through incarceration into the community. That's one of the components that through our research we found that we couldn't find.
Those people that -- we want to make sure that this is a voluntary program so that we're not taking the reactive approach and just forcing the program on them to do their time in segregation. We want to be able to focus on programming such as cultural diversity, anger management, how it relates to hate, life choices, and also some limited drug and alcohol education, not just as a user, but also from a seller perspective, and also some include some other vocational skills.

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

When we started this process of creating the COPE program we realized that it was necessary that we include many community partners and also look at other state agencies. We worked with the Ohio Department of Youth Services which controls the juvenile facilities within the state to work on the process with us, we have a seamless program that runs between youth and adult facilities, and also the Adult Parole Authority in conjunction with the Ohio Attorney General's office. We are currently looking at different vendors to be able to, and community groups to be able to provide some of the services not just on the community piece, but to also bring the community into our facilities and to help with strengthening family ties through our visiting component to be able to reintegrate the offender back into the family.

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

Thank you.

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

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

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one of you, if you don't mind?

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

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

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

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

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

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

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

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

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

Also I just want to mention to you, I have been involved in several national peace summits throughout the country and we brought some of the members family, I'm not talking about the gang relationship stems from a couple different issues. I think that the family dynamic has broke down within the actual inmate's family, organic members family, I'm not talking about the gang family. It gets confusing at times. And I think one of the components that we were looking at is actually the family strengthening component to the COPE program where we actually through supervised visitation actually tried to reintegrate the family back into the inmate's life to provide the support. And then also in the community piece, one of the things that we're looking at is being able to offer assistance through independent housing which currently exists within the department to be able to basically relocate them to a non-gang area because part of the recidivism that happens with the gang activity tends to go back to -- I mean, you have a guy that goes into a prison who is a gang member on the street, he may have done nothing while he was incarcerated, and then upon release he is going back to the same gang neighborhood and he has got the peer pressures in participating. And it doesn't start off let's go out and do this or that that may be a criminal act, it goes to hanging out with his friends. And really the entire culture -- I remember years ago when I started off as a corrections officer and I used to bring guys in that were new loads that were coming into the prison and there were guys that this was the first they were in prison and as we walked up from Point A, B, C as you are going through the process, guys knew half the population. I mean, it is just the culture that's ingrained. So one of the things that we really tried to focus on in developing the program was actually to get into the cognitive behavioral therapy of actually trying to change values and change how they process and look at other people and to break down some of those barriers that have been established for years and, you know, generations in some cases. So I think that it is important that you look at both together when you are looking at prisons and community because if you are only working on one side of the issue, you are not going to be able to accomplish it from a holistic approach.
DR. BYRNE: Yes. The current example is the research in the British prison system right now and the results of that evaluation of his model, which is what I just very briefly described in my statement, I will describe it to you in a little more detail, an inmate-focused restorative justice model, that research hopefully will be available fairly soon, but right now this is the problem you have in our field where there's really just a need for a whole evidence-based practice approach. We typically don't do Level 3 or above evaluations, we don't do experiments or quasi-experiments in institutional settings, so what you are left with is a lot of observational research, a lot of what is considered fairly low-level, non-experimental research. So even if you have a good program and there is a nice description of it, we don't know if that program would be the one certainly that you should consider.

DR. BYRNE: That's an excellent suggestion and we are very interested in those suggestions? if they are receptive to some of those obstacles if they are receptive to those suggestions?

DR. BYRNE: That's what you need.

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

DR. BYRNE: That's an excellent question. I think a lot of what NIC is trying to do right now on a very small scale in terms of changing staff and management culture is about resistance to change. Everybody says it all comes down to culture. We're really talking about resistance to change in organizations and how we get people to start thinking differently about it.
of it is the transparency. I think the Prison Rape
Elimination Act, opening the doors to institutions,
and having to provide information, opening the discussion
on how extensive the violence and disorder problem is
in prison, that helps, that's the -- I think
information is empowering. It is not only
information, but certainly that's one aspect of it.
But, you know, it is not easy and I think just
developing initiatives that focus specifically on why
people think the way they do about offenders helps.
You are all excellent active listeners up
here, I'm looking at you, for the most part you are
active listening. A lot of prisoners, when they walk
into a prison they're not facing a group of people
that are saying hey, let's figure out how to change
you, they're saying there goes Jimmy the sex
offender, the pedophile, the guy who murdered Joe,
the corrections workers, they can't stand those
people, and you have to put that on the table in
terms of talking about how you are going to change an
institution. There is a lot of resistance in part
because of attitudes about certain offenders groups
so if we can't change it in the general society, how
do we expect to change it within line staff and
midlevel management in corrections facilities. So

Bay Prison specifically to deal with gang membership.
So you look at the millions of dollars that are spent
yearly on the institution specifically to deal with
gang membership. So we have to look at that and say
is that really where we want our resources to go, so
we have to look -- and the resistance to change. We
have to have the laws come in there to change some of
that resistance.
I'm hopeful that at some point we would
definitely be looking at restorative justice. We
have gone into the juvenile justice facilities and
looking at that in terms of the county where I'm
from, Santa Cruz County, through the Annie Casey
Foundation looking at restorative justice and other
community organizations, but there's always
resistance with these institutions.

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

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

DR. BYRNE: Typically they will be --

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<td>internal, you can't let the people running the</td>
<td>What do you want us to do between the time</td>
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<td>programs do the evaluation, and we have that in the</td>
<td>they walk in and the time they walk out to change</td>
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<td>rehabilitation literature right now. It is a</td>
<td>what is perceived as a gang culture that is there,</td>
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<td>question of whether some of the programs really show</td>
<td>and why as a culture or a prison culture or</td>
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<td>the effects they're supposed to show because the</td>
<td>administrators do we tolerate gangs being allowed in</td>
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<td>people who ran the programs are the people who</td>
<td>our jails and prisons. Why can't we sit down when</td>
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<td>evaluated them and we know what the problem will be</td>
<td>individuals walk in and say, and this is my naive</td>
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<td>there, so that's an excellent question. I mean, I</td>
<td>side now, why can't we sit down and say that activity</td>
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<td>think you do it by tying the initiatives, new money</td>
<td>is not tolerated in this facility, this prison, this</td>
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<td>initiatives in particular. There's going to be</td>
<td>process that you are in; stop it, don't have your</td>
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<td>support for new model program development with</td>
<td>flag hanging out of your pants, don't have all of</td>
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<td>external evaluation and funding.</td>
<td>those types of things, we will not tolerate that and,</td>
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<td>in fact, if you proliferate in some fashion some sort</td>
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<td>of gang activity you will end up in the special dorm</td>
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<td>down south and you will stay there for your entire</td>
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<td>period of time because we do not tolerate that</td>
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<td>behavior here. We can't fix the before and sometimes</td>
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<td>we can't fix the after, but we do have some control</td>
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<td>in between the walls. What should we be doing to</td>
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<td>make it safe, secure if gangs are considered bad,</td>
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<td>which it sounds like they're bad, what do we need to</td>
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<td></td>
<td>do to fix it?</td>
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<td></td>
<td>DR. BYRNE: Well, I don't think more</td>
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<td>control and segregation and those type of stick</td>
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<td>approach strategies work real well and they just put</td>
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<td>an incredible strain on resources of institutions</td>
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<td>because it is harder to manage offenders like that,</td>
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<td>but the short answer to what you said is to do what</td>
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<td>you and I are doing now, we're looking at each other</td>
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<td>one-on-one, and I think relationships that are</td>
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<td>developed within institutions are probably the best</td>
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<td>way of reducing the power of gangs in the sense that</td>
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<td>you develop a relationship with a staff worker or a</td>
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<td>counselor or whatever that essentially provides an</td>
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<td>alternative to that person to what he gets which is</td>
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<td>positive within the gang which is support, identity.</td>
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<td>So the first thing you ask what you would do. I</td>
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<td>guess it is, it is that interaction, trying to</td>
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<td>make a connection to somebody, and I don't think we</td>
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<td>do that just by reading me the rules and telling me</td>
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<td>where I might go if I do something, that's probably</td>
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<td>not going to do it. What would make more sense, I</td>
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<td>think, is to improve informal social control</td>
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<td>mechanisms and think about how you might do that,</td>
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<td>that's where restorative justice models come in, and</td>
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<td>that's certainly where culture change models come in</td>
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<td>because you are talking about changing the staff's</td>
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<td>approach to offenders as opposed to one where I'm</td>
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<td>simply telling you what to do and another where I'm</td>
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<td>essentially using motivational interviewing</td>
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L.A. County, the last uprising that happened there.
They had a program called AmeriCan run by some brothers on the street and stuff, and all those individuals who were there, it was mixed, multicultural, all those individuals who were in that AmeriCan program did not participate in the riots. Now, to my knowledge, that program is not there anymore. So sometimes we have effective programs. Take Tracy Prison. Tracy Prison had tremendous vocational programs that allowed the lifers there to manage the gang situations, to bring the youngsters into the vocational and guide them and instead of being out in the yards, let's go to vocational, let's go to this, get involved in this, preparing them to leave the institution. I mean, that's working within, that's what I was saying earlier about utilizing the resources that we have in there. Those programs are all closed now and that side of the prison is like a ghost town. So I think that we have eliminated some of the programs that have worked. The word "Rehabilitation" is back now in the corrections system, we'll see what that means. One of the reasons that I really wanted to be here is because I really would like to push that we look at restorative justice, we look at rehabilitation and what rehabilitation really means.

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 prison systems where they will, a guy locked up, but when you talk about 15, 20, 30 years, be sure you'd probably have a whole different take if you had to go stand up like the lady said when she was standing outside that prison yard waiting to see her husband and seeing that. You know, when I see elders, the way they're treated in the visiting room in Pelican Bay Prison and make them walk like a duck sideways and their elders holding their pants up, it is the most humiliating thing that I have ever seen. We got to change that system. When individuals are treated with human dignity, they themselves start to change. The reason there is rioting, we have not -- we have not done that in these institutions and I think everybody knows it. We just go around in circles.

MR. RYAN: Thank you, Dave.

Mr. Delgado.

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

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

And one of the things that we wanted to address within our program was not just -- one of the things you run into when you look at correctional...
programming is that, okay, here you go through this
program, and at the end of however long time period
it is, here is your certificate. And, of course,
that certificate is as good as whatever the parole
board wants to make of it and that goes into their
file folder and then they present that to the parole
board when they come up. But the problem with that
is that there's very little aftercare, very little
followup, and being able to help them manage that
change. You know, the fact is they're going to have
to make that decision if they want to do the right
thing or not, but what the system should be doing is
be able to foster it and allow that change to occur
and then to be able to support those positive
decisions and that's the reason why we want to take
the approach from not only having the six-month
program end with three-month step-down and then
continuing type of aftercare, kind of like what is
seen with the models of drug and alcohol counseling,
to be able to go to those meetings, kind of have your
A.A.-type meeting where you are going to something on
a regular basis, you are seeing your counselor, and
then you are working through and even upon release
you've also got community support there as well.
I think that that is -- you know, the
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tracking processes?
MR. BRIGHT: Yes. What do you tell the
person, you can't anymore? What Mr. Ryan said here,
you can't wear any insignia, blah, blah, blah, or
what do you do?
MR. DELGADO: Well, basically when they
come in -- and the easiest form of identification is
usually their tattoos and also through self-
admission, you know -- they're asked the question are
you a gang member, have you been part of any type of
organization, and we kind of break it down from there.

On the profiling portion of that, what ends
up happening is that they get profiled as being a
member of a security threat group or an unauthorized
group, and what we do from that standpoint is that we
check up on them, and by policy we have to check up
on them at least every two years and that may include
shaking their property down, making sure that they're
not possessing gang-related materials, and that would
also include within that two-year review talking to
the security threat group investigator at that
facility just to interview them to find out what's
going on, allow them to look back through their
record, try to look at what their behavior has been,
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and then just to see what's going on with them so we
can make sure at what level. We utilize a
participation-based system as far as STG
identification. Some systems use a validation
system. California, my understanding, uses
validation where they have to acquire a certain
amount of points to even be validated. Anybody that
exhibits any type of behavior, participating in an
unauthorized group through whatever means, mainly
through self-admission, we profile them and we track
them. And this is to kind of give them the, you
know, the belief that we're continually watching them
and to help them kind of correct their behavior.

MR. KRONE: Excuse me. You are
familiar with the term "blood in, blood out"?
MR. DELGADO: Yes.
MR. KRONE: If you would, explain that
to the group panel what that means and then explain
to me how, if those gang members want to get out,
take advantage of the programs you are offering, how
do you protect them then from the rest of the
inmates?
MR. DELGADO: The term "blood in, blood
out" generally means that you shed somebody's blood
to get into the gang and they shed your blood to get
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<td>1 out of the gang, so basically you are kind of in for</td>
<td>1 Within the early stages they're not necessarily,</td>
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<td>2 life-type mentality. We looked at that issue when we</td>
<td>3 they're not segregated, they just have different</td>
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<td>3 were developing our program because we wanted to make</td>
<td>4 recreation time and things like that to kind of allow</td>
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<td>4 sure. And one of the reasons that we were also</td>
<td>5 them to clear their heads, see where they're at,</td>
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<td>5 looking at other inmates that have affiliation-type</td>
<td>6 they're not dealing with the outside pressures.</td>
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<td>6 issues, those people that when they commit those</td>
<td>7 They're not locked in their cells or anything,</td>
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<td>7 crimes, they are doing it with others, they tend to</td>
<td>8 they're within the housing unit, they're going out,</td>
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<td>8 be followers. We want to be able to hit them too</td>
<td>9 they are going to recreation, going to commissary,</td>
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<td>9 because later on down the road they could also be a</td>
<td>10 food service, all that. We just wanted to be able to</td>
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<td>10 more full-fledged gang member.</td>
<td>11 kind of segregate them a little bit from the</td>
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<td>11 But we wanted to take some of the emphasis</td>
<td>12 population, from the pressures, and then slowly</td>
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<td>12 off it being called a gang program and for particular</td>
<td>13 reintegrate them back into GP because they're going</td>
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<td>13 reason. Because if Inmate Smith is going through</td>
<td>14 to have to go there at some point, you can't keep</td>
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<td>14 this program and it is the gang program, well, then,</td>
<td>15 them completely. And the important part of that is</td>
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<td>15 the entire population is a gang member. And then,</td>
<td>16 that when they have -- if integration is successful</td>
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<td>16 also, they also get the outside pressures from inside</td>
<td>17 they will be able to deal with the pressures that are</td>
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<td>17 the facility for even taking the program.</td>
<td>18 coming at them when they finally do get released, so</td>
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<td>18 You know, one of the things that we wanted</td>
<td>19 to speak, and they do have to deal with those people</td>
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<td>19 to kind of safeguard against is, one, having</td>
<td>20 that are coming out, and that's the reason why we</td>
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<td>20 disruption within the program which is why we screen,</td>
<td>21 thought aftercare was extremely important because if</td>
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<td>21 which we will be screening the inmates that go</td>
<td>22 you are dealing with the challenge, you know, and the</td>
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<td>22 through there, but we wanted to at least during the</td>
<td>23 inmate goes out in the population and he is getting</td>
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<td>23 initial six months, that step-down phase that I</td>
<td>24 these pressures to do certain things or be hanging</td>
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<td>24 talked about, was actually to be able to reintegrate</td>
<td>25 out with certain groups of people, then this way the</td>
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<td>25 them somewhat into population on a full-time basis.</td>
<td>aftercare portion where they have to see their</td>
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<td>1 counselor in their peer support group, which I think</td>
<td>1 MR. DELGADO: We don't segregate as far</td>
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<td>2 is an important understanding, peer support is</td>
<td>2 as separating --</td>
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<tr>
<td>3 important to be able to help them, you know, overcome</td>
<td>3 MS. SCHLANGER: I don't mean segregate,</td>
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<td>4 those challenges that they have.</td>
<td>4 isolating, I just mean separate the one gang from the</td>
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<td>5 MR. KRONE: Thank you.</td>
<td>5 other gang.</td>
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<td>6 MS. SCHLANGER: I have a question that</td>
<td>6 MR. DELGADO: Yes. We don't do that,</td>
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<td>7 comes from a couple of conversations with folks who</td>
<td>7 and the reason for that is, again, it gives -- if you</td>
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<td>8 run different kinds of facilities, and one of them</td>
<td>8 are going to have activity going on and you've got</td>
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<td>9 from a person running a pretty tough jail said, &quot;If I</td>
<td>9 all the players together, then that's not going to</td>
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<td>10 separate inmates based on what gangs they're in on</td>
<td>10 create, in my opinion, it is not going to create a</td>
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<td>11 the outside, I've just declared one housing unit for</td>
<td>11 safer prison.</td>
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<td>12 this gang and one housing unit for that gang, I have</td>
<td>12 One of the things that we do as an</td>
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<td>13 created a gang problem in my jail.&quot; He said, &quot;I</td>
<td>13 administrative function is that we actually every</td>
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<td>14 would never do that. I manage the inmates in housing</td>
<td>14 other month print out a list of the facilities,</td>
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<td>15 where that's not one of the principles.&quot;</td>
<td>15 facilities are responsible for this, looking at the</td>
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<td>16 And then a guy who ran a prison, &quot;Of course</td>
<td>16 list and seeing where the groupings are in housing</td>
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<td>17 I separate them by gang, otherwise they're going to</td>
<td>17 and also in jobs. We want to make sure that you</td>
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<td>18 kill each other.&quot;</td>
<td>18 don't have too many Crips working in a particular</td>
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<td>19 These are both pretty well-intentioned,</td>
<td>19 area or too many White Supremacist or Arian</td>
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<td>20 experienced corrections guys, and I wonder your</td>
<td>20 Brotherhood members working in a particular area,</td>
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Professor Byrne here funded through his pocket and program that was the AU basketball program that old 24 Police, and when my kids were in high school I ran a 22 don't ask me exactly what they were, but Junior 21 positive gang, right? 20 to negative gangs, is put together essentially a 19 summer and they did the World Congress on Criminology 18 on this commission went to Graterford I think last 17 MS. SCHLANGER: Do either of you have a 16 different perspective on that or does that pretty 15 much sound like what you think is the way to approach 14 it? 13 DR. BYRNE: I would like the proactive 12 orientation. I guess my view would be to think more 11 about incidents in prisons, not only in the 10 community, hotspots for crime, maybe looking at 9 incidents in that respect in particular to see which 8 subgroup of the population seems to be responsible 7 for the majority of the incidents that come to light 6 the biggest thing that we get are racial 5 separation requests and basically from White 4 Supremacist-type inmates that don't want to cell with 3 anybody other than another white person and we deny 2 them on a regular basis because we don't believe in 1 that approach.

DR. BYRNE: I think if you look at the 10 MR. ALEJANDREZ: I think also we've had 9 examples already like the Impact Program in Soledad 8 Prison, POPs in Solano, Straight Life in Tracy, there 7 are those programs already in place but they need 6 support, they need to be able to survive. Friends 5 Outside definitely is a group, and then there's 4 cultural and spiritual groups inside the institutions 3 that the individuals themselves try to look out for 2 the youngsters that are coming in so they can direct 1 these underlying problems are that lead to the 0 conflict, so that's kind of a variation of a 19 restorative justice model and it is a conflict- 17 centered approach they're trying in at least one 16 British prison right now, and so my orientation would 15 be to look at hotspots like we do in the communities 14 and try to figure out why we seem to be getting the 13 pattern of behavior we do in certain areas of certain 12 facilities and then to apply a problem-oriented 11 response to those areas and sometimes which might 10 break down to this. Well, gee, let's take a look. 9 We have 15 people responsible for 20 percent of the 8 incidents last month. Okay. These 15, we profiled 7 them all, have significant mental illness problems; 6 what does that suggest. Maybe we need to deal with 5 the underlying mental illness problem here, maybe 4 there will be a gang affiliation. I think more 3 likely you are going to see more general categories 2 of conflict in the areas. You are probably going to 1 talk about conflict resolution. Obviously gangs 0 could part of it but I think it could be something 1 like looking at underlying problems like mental 0 health problems, for example, that might explain why 0

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

JUDGE GIBBONS: The inmates you are 4 dealing with are, the men and women, are social 3 creatures who need social interaction and maybe 2 belonging to groups that they can interact with. Has 1 anybody in the corrections profession considered 0 making available alternative organizations that might 0 be a competing force for gang membership? 0 DR. BYRNE: I think if you look at the 10 work at Graterford Prison, for example, the lifers' 9 programs that have been set up in many institutions, 8 that's the obvious example that comes to my mind for 7 me and this whole idea of the transformation they 6 talk about, so I know at least a few people that are 5 on this commission went to Graterford I think last 4 summer and they did the World Congress on Criminology 3 in Philadelphia, so to me that's one obvious solution 2 to negative gangs, is put together essentially a 1 positive gang, right? 0 When I was a kid it was the Junior Police, 22 don't ask me exactly what they were, but Junior 21 Police, and when my kids were in high school I ran a 20 program that was the AU basketball program that old 19 Professor Byrne here funded through his pocket and 18

and maybe develop some type of strategy. It is a 17 conflict resolution strategy that deals with what 16 these underlying problems are that lead to the 15 conflict, so that's kind of a variation of a 14 restorative justice model and it is a conflict- 12 centered approach they're trying in at least one 11 British prison right now, and so my orientation would 10 be to look at hotspots like we do in the communities 9 and try to figure out why we seem to be getting the 8 pattern of behavior we do in certain areas of certain 7 facilities and then to apply a problem-oriented 6 response to those areas and sometimes which might 5 break down to this. Well, gee, let's take a look. 4 We have 15 people responsible for 20 percent of the 3 incidents last month. Okay. These 15, we profiled 2 them all, have significant mental illness problems; 1 what does that suggest. Maybe we need to deal with 0 the underlying mental illness problem here, maybe 0 there will be a gang affiliation. I think more 0 likely you are going to see more general categories 0 of conflict in the areas. You are probably going to 0 talk about conflict resolution. Obviously gangs 0 could part of it but I think it could be something 0 like looking at underlying problems like mental 0 health problems, for example, that might explain why 0
the population is really, really high. I was at a
meeting a couple weeks ago with the sheriff of
Salinas in Monterey County and he was saying
something that there's been a stronghold for a
particular gang there and that he was almost trying
to open up a whole unit because there are so many
dropouts coming out of that particular gang there and
so there is happenings. My concern with that is, and
then the briefing process, is the followup. The
followup to that is how are those individuals going
to be supported to be able to continue. We don't
have a very good track record in supporting those
programs, so, again I would support a lot of inmate
programs that are in there now.

JUDGE GIBBONS: Mr. Delgado.

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

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

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

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

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

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time for a new approach. It is a difficult problem, but I don't know if
I want to use good or bad in terms of the affiliation
because for the individual, if you are seeing it through their eyes, they're gaining something that we're not giving them.

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

DR. BYRNE: But part of affiliation is how long are you going to stay in the gang. I think if you look at the research on desistance through a life course, what they are saying is people essentially grow out of gangs. I don't know if you want to comment on that, but they get married, they have things, they get relationships, so they can't go out over here tonight, they have to be at home here, and that's a change in terms of just basic activities that translates to stability. So to the extent that we can work on things in institutions that will lead to a more stable person leaving the institution, then you might have an impact on desistance down the road independent of what's going on in the community because maybe they will get involved in more stable relationships as a result of some of the things you work on in an institutional setting.

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

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

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

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

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

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

(Lunch)
American Correctional Association and was formerly the Director of the Division of Youth Services of the North Carolina Department of Human Services.

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

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

We would like to begin with Professor Dickey.

MR. DICKEY: Thank you.

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

I think if you ask most wardens of prisons what the purposes that they have were I think the first one they would say is the maintenance of order. I think we would like to begin with Professor Dickey.

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

Now I guess to sort of return to my question, if agreement to play by the rules is important, the question is how do you get people to agree. Again, I think the lessons of ordinary life often apply with respect to prisons. I think we agree to play by the rules because we think the rules are fairly and legitimately made, we understand them, we understand why playing by them is something that we ought to be doing, we think they're factually necessary for a civilized and civil sort of life.

And I think without legitimacy, without that sort of agreement because they're fairly made and because they're factually based and well understood, it is very hard to expect people to comply because they agree. And, secondly, if you don't have programs, whether they're schools, jobs, factories, whatever

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business, for example, in this country today, if you
look at the sort of competitive environment that we
have, I think what you see are companies that are in
a sense constantly scanning the environment, trying
to figure out better ways to make money because the
environment is a competitive one that's changing and
therefore they have to be on top of their game in
order to be profitable.

Unfortunately, that competitive environment
doesn't exist in prisons, there is not that incentive
certainly to be reviewing what you do, yet I would
say because the facts and circumstances of life in
prison are also changing, that also needs to be
continually under review by leadership in those
institutions because I think without that sort of
continual review, you can't have rules and a way of
life that is, in a sense, legitimate and responsive
to the environment in which people live. All of
that, as I said, would require, I would say,
basically compliance with the rule of law because it
is through the rule of law that we get compliance,
accountability and visibility. The rules fairly made
are rules that are made according to the rule of law.
That requires legislative interest and oversight,
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which is through the rule of law that we get compliance,
accountability and oversight really aren't
operating.

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

Let me just say one or two more words about
this question of oversight here and also one thing
about gangs because I listened to the discussion this
morning and I didn't hear at all, but there was one
thing that I felt was absent from this that I thought
was very important in understanding this question of
gangs, and that is we tend to talk about intervention
and all that sort of stuff to try to deal with gang
problems. When I was running the Wisconsin prison
system and we looked at this problem and we thought a
lot about it and we tried to figure out what to do to
not have it, one of the things we quickly realized
was that gangs can find a foothold in any institution
when the institution isn't doing business the way it
should. That is to say, if the institution doesn't
have safety and protection of the people there, the
inmates are going to look for it somewhere and if it
comes from group activity, they're going to go to the
group activity. Now safety is one thing they may
look for but if you ask who has control of the jobs
in the institution, if it is the staff and you can
look to the staff making the job decisions in
legitimate and lawful sorts of ways, I don't think
you are going to go to trustees or other inmates to
try to influence those kind of decisions. But in a
sense when the institution abrogates its
responsibility, I think that is the moment at which
it is possible for the gangs to sort of take over.

Finally on this question of oversight, let
me just say this. I worked with a lot of people in
corrections and one of the things I have always
started out my work with, I think it has always been
confirmed in my work with the folks I work with, is
that the people want to do the right thing. You may
may disagree with them about how to get there, but
they invariably want to do the right thing. And I
think if you enter into any sort of partnership in
which you are going to bring oversight or involvement
or engagement of any kind, I think to approach it in
any way other than on the assumption that they're
trying to do the right thing and that you are in a
partnership with them to find out what that is and
how best to get it, it is likely to end in failure.

Just think about it this way. Suppose it was you
that was going to be the subject of oversight and the
approach we took was we're going to assume you want
to do the wrong thing, we're going to assume your
motives are lousy, you want to hurt people, whatever
it is. If that was the assumption that one started
with, that is hardly the sort of engagement that is
going to bring any kind of a positive partnership,
and so I think oversight takes a lot of forms and a
lot of shapes. It really is circumstantial, whether
it is special masters as I currently am, or boards or
visitors or whatever the heck it is. But I think
unless it is entered in that spirit, it is likely to
turn out to be so contentious as to really end up
being largely ineffectve and, quite honestly, run
the risk of making things worse rather than better.
And these are fragile sorts of endeavors and I don't think you should ever forget that interventions, well intentioned as they may be, have the risk not only of success, but also of failure.

DR. DUDLEY: Thank you.

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

Number 1. Corrections leaders are generally assumed to be guilty before any findings of fact, and what I mean by that is that generally we are assumed to be people who enjoy meting out harsh punishment and punitive sanctions. Nothing could be further from the truth. The reality is that prison growth and development of persons who work in this field. I thought my time might be better spent if I gave you a few reasons as to why it is difficult to cultivate a transparent system. I am particularly aware of the clock over here and I'm going to do my best to sort of move through this so I won't elaborate as much as I might. I will just urge you that if there are things that I don't cover that you would like to hear me talk more about, that you will feel free to do so during the question and answer.

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

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

Well, certainly evidence would suggest that that is not true. They're coming back faster than we can take them in.

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

What offenders get in terms of dispositions is often a function of who they are and what they're able to pay. Truth in sentencing went a long way to help improve that situation, but we still have had work with disproportionate minority confinement for a long time. To hear this morning that one out of three African-American males can expect to be a part of the system is one thing. When I started 20 some years ago, the ratio was not quite that high. And so we see a situation that is getting worse and worse and now including brown people as well, so that the problem is exacerbated and we still continue to say in so many words, "Ain't it awful," but we're not doing a lot to intervene in that process.

Many people such as myself who came out of a background that had nothing to do with corrections, those folks after a point began to say somebody in the country must be doing this better, let me find out where the resources are that will help me to be a better manager in terms of corrections. And so it is important that you have a person of character, a person who has commitment, a person who believes that...
you are capable of change because the bottom line
right now is there are no incentives for you to do a
good job. If you don't hold it in your heart, nobody
is saying to you you really need to go out and make
sure that the system is transparent; that you have
some integrity, it is authentic.
So one of the things that I would like to
see this commission consider is the importance of
providing some incentives. And, folks, that doesn't
always mean money, but it doesn't also mean that we
can't have money, it simply means that sometimes we
need priority. We know, for example, that substance
abuse problems, mental health problems, have plagued
our systems for years. Most of us can't afford to
buy those services. So if we could even get some
priority from federal agencies and from state
agencies, that could go a long way in making the
difference.
I continue to applaud what we have done in
the American Correctional Association because
accreditation has been the only avenue for one to
guarantee that what you see is what you get, and in
that regard I think we have gone the extra mile
in making the difference.
DR. DUDLEY: Thank you.

confidential information such as court files, police
files, you name it, whatever it is, secret files.
So this is a rather extraordinary mechanism
and it doesn't obviously translate to other settings.
However, there are some features which might be of
use in other settings to think about and to at least
consider, not least some of the misconceptions that
have arisen and some of the problems that we have
faced might also be faced in other settings.
The preventive approach is extremely
important. We are looking to the future, not to the
past. Some of the interlocutors; that is, ministers
of state or heads of prison systems or prison
governors or prison staff on the ground or prisoners,
some of the people we are working with, think that
we're trying to build cases in order to pursue
individuals who have been ill treated. That's not
so. We are building a dialogue basis, a basis of
dialogue for change. In prisons we speak to many
people, staff and prisoners, so it is not possible to
attribute what we report to any particular
individual. That's important. We cross-check, we
corroborate. We have forensic medical experts on our
team, we have forensic psychiatrists on our team and
lawyers and we assemble data from various sources.

We would never proceed to fact-finding without
verification. And we do this not to, as I say,
pursue cases, but in order to have a basis of fact to
get over the first hurdle which is that people don't
want to be inspected and the first reaction is
defensive. If we can get over the defensiveness in
order to demonstrate that we know that there are
weaknesses in this system, we have found ill
treatment, we know it exists, it often does in many
systems. Even if it doesn't exist, we have found
that there were gaps in the safeguards that protect
persons.
When I say ill treatment, I don't
necessarily mean physical ill treatment. We monitor
police facilities also and there we do find torture,
but in prisons we rarely do. What we find instead is
basically conditions that are substandard and
omissions. We give negative and positive feedback,
we want to give credit where credit is due, and we
find often that the positive examples are ones which
are not pursued by the prison system so that where we
have found good practice, it may depend on an
individual whose initiative will cease to have effect
when that individual moves on because the prison
system doesn't recognize the practice necessarily,
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<td>and we as a monitoring body can help to point the way to good factors and try to convince the managers to apply that good practice elsewhere.</td>
<td>number of issues which we may wish to return to in discussion. That is independence, expertise, impartiality, the powers of enforcement and persuasion, cooperation and confidentiality, and the values that underpin the European prison models.</td>
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<td>We work with layers of oversight and we don't think that they are mutually exclusive. Layers of oversight at monitoring board level, the oversight prison services conduct for themselves internally are not, they do not run counter to independent scrutiny. Independent scrutiny is necessary in systems so that, Europeans would say, because we are talking about exceptional powers of the state; powers which have been delegated by the people to the state in order to carry out one of the most extreme uses of power against the individual.</td>
<td>DR. DUDLEY: Thank you. Each of you had said in somewhat different ways why having transparency may be important or not be important. I’m wondering just as a starting point for our discussion, I suppose, assuming that transparency is something that's good or necessary, if each of you could kind of summarize why, what you think could be gained from having a transparent correctional system.</td>
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<td>In Europe the most extreme power against the individual is the deprivation of liberty since we do not have the death penalty in our 46 countries. And so we feel that if that delegated power is to be exercised rightly, that it must be open to independent scrutiny in the interest of the public, the public which has delegated that power in the first place, and we proceed on the basis of shared values about which I have talked in my written summary.</td>
<td>MR. DICKEY: If transparency means visibility in decision making in policies and procedures, it is very hard to have accountability without visibility and it seems to me accountability is a highly desirable quality. Without visibility and accountability, I don't think you have that legitimacy I mentioned, and it seems to me in the most utilitarian sort of way you want legitimacy because it is going to make it easier to run the institution the way it should be run, fairly and</td>
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<td>effectively and the like. The second thing about it is that all institutions require public support. Now prisons, people may not care, but one of the disincentives here is people don't seem to care that much. But the fact of the matter is if we're going to have any confidence in the stewardship of these places we have to know what's going on and I think when the public loses its confidence in its institutions that's a bad thing, so I would say legitimacy is important not only for the consent of the government, of the institution, but also because the people on the outside need to feel or have some level of confidence that this is being done in the right way and without visibility and accountability how can they have that belief; they have to take it on faith.</td>
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<td>MS. CHUNN: I think it is a matter of integrity and morality. I really believe that this is one of the greatest countries on the face of the earth. I only say &quot;one of&quot; because of my esteemed colleague here. If she were not here I would say the greatest country in the world. She says I can say that, that's okay.</td>
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<td>I think that we have been founded on principles that speak to integrity, that speak to a quality of</td>
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<td>life issue that has not been diminished over time. Even myself as a former, as a descendent of a slave family knows the importance of what can be done when we decide to make a difference. I see this as being no different. These people can be reclaimed, they can be reintegrated into communities, they can become part of the solution rather than part of the problem. Will that happen for everybody, no. Not everybody who goes in the hospital comes out alive; not everybody who goes into a university comes out educated; not everybody who does anything will ever get the absolute response, but can we do more than we're doing now? I believe that we can and I believe we have the know how.</td>
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<td>I think what we have demonstrated already in the American Correctional Association speaks to a process where we can find some agreement among 50 states and six territories about what we collectively see as being responsible, professional behavior. And so with that in mind, I think it is a matter of integrity and it is a matter of reflecting what the society is all about.</td>
<td>DR. CASALE: I think transparency is part of the instrument that I use in order for a democratic society to reassure itself that it is</td>
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<td>MS. CHUNN: I think it is a matter of integrity and morality. I really believe that this is one of the greatest countries on the face of the earth. I only say &quot;one of&quot; because of my esteemed colleague here. If she were not here I would say the greatest country in the world. She says I can say that, that's okay.</td>
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<td>I think that we have been founded on principles that speak to integrity, that speak to a quality of</td>
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In large, if we don't hear about it from a
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witnesses comparative questions on that subject.
First a specific one to you, Dr. Casale,
and then a general one to you, Professor Dickey.
In the European Union where you've had in
the past, at least, problems with terrorism in
Ireland for the British and in Algeria for the
French, did either of those two countries ever
establish prisons which were secret and could not be
visited; for example, by the Red Cross?

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

MR. DICKEY: Well, I think, first of
all, it is important to be mindful we have 51
distinct territories and there's variation in practice and
variation in visibility of transparency, whatever you
want to call it, and there's also variation,
therefore, in legitimacy and other things that I have
mentioned. But I think by in large what you have to
say about the American corrections systems is that
they're more characterized by the absence of the rule
of law as we ordinarily know it. Now I don't mean to
say there are lawless institutions, but if you look
at the processes that we use for most governmental
agencies or institutions, how they have to operate by
way of information gathering about their practices,
how they operate by the way of rule making,
visibility, opportunity for public comment, what we
do by way of accountability and the like, I think you
have to say prisons really sort of stand out as
places to which rule of law as we ordinarily think of
it just doesn't apply.

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

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

One of the things, again, I just think
about in coming from a state, I didn't grow up there
but I lived there at one time, Wisconsin, the
Department of Natural Resources, big deal; deer
hunting, how many deer you can kill and fish you can
catch and all that is a big deal. Do you know how
much public interest, attention there is to that?
The idea that the Department of Public Resources

MR. BRIGHT: I want to follow up on
that, but I want to ask a question of what we mean
exactly by transparency and accountability and I want
to say I'm a big supporter of the American Prison
Association, but it has not been my experience that
what you see is what you get. The American Prison
Association says you have to have a policy with
regard to fill in the blank, and the institution has
policy after policy after policy and you go to the
warden's office and they're all piled up in there and
then you go into the institution and none of those
policies are being followed, so my question is this.

When we talk about transparency and those
sorts of things, are we talking about the media? It
used to be that newspaper reporters and television
people and all that could come to these institutions,

see what was going on, interview inmates, take
telephone calls from inmates. The prison in
Louisiana printed a magazine, still does, uncensored
prison magazine that won numerous journalism awards
because the inmates there wrote stories that were of
award-winning quality and all that. Today that
magazine is censored. Most departments, as far as I
know, do not let the media in, do not let the media
in to interview inmates, so that's one of the
guardians for a free society, is the media.

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

Go ahead.

MS. CHUNN: Thank you.
I ask you to remember what I said to you
about the average tenure of a director of
corrections; about three years. It takes the first
year to understand where you are and what's really
going on because invariably what the governor's
office tells you and what is really going on are two
different things. You have to then begin to build

some trust. In those places where facilities have
been accredited and they have policy after policy, as
you put it, stacked up, the problem --

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

MS. CHUNN: Please, I'm not suggesting
that either.
I'm just saying that if you look at the
person who's leading the agency, if they have been
around for a number of years the chances are those
policies have been implemented. If they have been
around as in the case of California for only a couple
of years, the chances are that they're still trying
to figure out where are the problems in this system
and where are the places that will get us in trouble.
You learn quickly as a corrections administrator it
isn't what you know, it is what you don't know that
will get you in the press and get you eaten alive,
and so you spend a lot of time trying to find out if
what you think is going on is in fact going on.

I have seen a number of commissioners, both
adult and juvenile, who have been relieved of their
job primarily because they thought staying in the
capitol, finding out what was going on in the

would have visibility and accountability about how
they make those decisions? It is unthinkable, they
would never be able to get away with that. Compare
corrections. There's no comparison, right? There's
not anything like the public demand for visibility
and accountability in that area of life as opposed to
this other one. So if we're looking for reasons why,
one of the reasons we don't have what we're talking
about, is because at some level we don't want it.
1. governor's office, was more important than knowing
what their people are doing.
2. These places are out of sight and out of
mind by design and if you have ever tried to build
one you know how difficult it is because nobody wants
one in their backyard. However, they want you to be
tough on crime which means that it is very difficult
to strike a balance between what the governor's
office wants and what the political entities need in
order for you to get the support, particularly before
the legislature, and what you need to do in terms of
what I call your mission and that is the
rehabilitation of the people. So I would ask you to
be thoughtful about those policies where they have
been implemented and where they have got good
leadership that's committed to this.

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

MS. CHUNN: I would like to see it
1. a whole lot more trappings that generally begin to
consume not only your time and effort, but also begin
to compromise what you are able to do somewhere else
because there are opportunity costs that go with
this.

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

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

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

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

MR. DICKEY: Let me take inmate
discipline, the transfer from one institution to
another, who gets to visit, three matters that are of
vital interest and importance with people in

institutions. I guess it is hard for me to imagine

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

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

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

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

What about their application? If you are going to be accountable, I don't see how you are going to have it unless you know how things are being administered. And so, again, stated that way, as a matter of principle it is very hard to argue about the idea that in a democratic society we should keep all those things a secret. Now how do you develop mechanisms that permit visibility, legitimacy and the things that I was talking about and have, I think as the other speakers have mentioned, responsible review of how those are actually being operationlized. Again, I don't want to be riding this horse too long, but I think what we usually think is that's the job of the legislature, that is what the oversight is supposed to be, but I think, as I said, I don't see very much of that. So now you are groping around, trying to find ways that make for visibility and accountability about those very important decisions, in a sense a default position, because the way we think the first do-no-harm principle is very much at the degree of sensitivity that I alluded to is one that is brought to in many of those inspections and reports. It is not contentious, it is not you are bad and we are good, that sort of stuff, that tone, but I really think that is the spirit in which this sort of engagement has to come, because otherwise I think the first do-no-harm principle is very much at work here.

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

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

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

But what we do is we spend a lot of time talking with staff because in that example I just gave you that is a health risk for staff as well as prisoners, and we need to know how the staff are
trying to deal with that. Why is it that they push
the food through the hole at the bottom of the door
and don't go in? Well, it is obvious why they do it,
because they're not sure what risk they're exposing
themselves too. We will go in and spend a lot of
time talking to the 14 people even though the
temperature recorded by my thermometer, which goes
with me everywhere, is, say, 36 degrees. But it is a
process of demonstrating by what you do that you are
prepared to understand what's happening in the most
practical and concrete sort of way. And then we -- I
mean, if there's an issue that the prisoners seem
maltreated, we will look at the medical records to
see if any weighing has occurred, we will do timed
studies of what people weighed when they came in
because everybody gets weighed on admission and what
they are weighing now. We do surveys, we do in-depth
interviews, we do corroboration because if some
allegations are made we want to know whether they're
ture or not and we will pursue to find out that
they're not as hard as we will pursue to find out
that they are and we will present conclusions without
giving names.
I mean, we have a lot of technical staff on
our teams, people who know how to deal with vermin
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approach to doing it that I don't think would work in
country. Corrections has been born in the
cradle of politics and I don't see how with an
average tenure of three years we could ever build
enough trust to get to that point. However, I do
believe that it would be a very interesting internal
mechanism and, as a matter of fact, when I was
Director of Youth Services in North Carolina I used
it, I used it with a group of my central office
staff. We would hit unannounced every institution
and before one could call another everybody was in
different places, but you would know then we only
talked to kids on those days. You were accompanied
by a kid who would generally tell you what was
happening or what, rather, wasn't happening.
I think it is an interesting idea for an
internal procedure, but I think even then there has
to be enough trust so that people believe that you are
going to help them to remedy the problem rather
than to point them out as incompetents which further
then makes people close ranks because they feel under
attack. I like to think of myself as the poster
child of new corrections. I am all the wrong things;
I am black, I am female, I spent my career in
juvenile corrections, but I was elected by some
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or -- I mean, the whole gamut, really, anything that
puts the staff and the prisoners at risk in one way
or another, and the best of all methods is to know
how to interview, to let people tell their stories,
and then afterwards, of course, as we all know, you
go over and you check on the details until they
either match or they don't and if they don't, then,
of course, you start wondering and you pick the
uncertainties and it is just standard police
procedure, but I won't go any further because I'm
taking up too much time.

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

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

MS. CHUNN: That's an interesting
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20,000 members to be the spokesperson of this
organization. We are better educated that we have
ever been before, and I think to do this externally
would suggest that there is no confidence which we
already feel because we have been marginalized. And
so I believe that while it might have some usability
for internal monitoring, I do not believe we are at a
point yet where we could do that externally without
feeling like we have been manipulated and misjudged
and actually betrayed.

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

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

Now we spent an enormous of money on health
care in the prisons in Wisconsin, though look at the
state of health care of the country and you see lots
of people that have insurance don't get health care
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either. We spent a lot of money on health care, but
1 I made decisions about what we were going to do and
2 not do, we're not going to perform those kind of
3 operations, and if it was me I would want it, let me
4 tell you, and the facts of life are we didn't have
5 the money or the capacity to do it. And we did a lot
6 with people, dental work and stuff like that as well
7 as we could but, again, were we providing the level
8 of dental care we would like for ourselves? Not
9 close.
10
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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of the momentum to make things better, then I think
1 folks by in large would welcome that, but they're
2 mindful of the risks.

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

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

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

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

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

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

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

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

DR. DUDLEY: But the mental health
commissioner would say the fact we don't have enough
money for outpatient mental health services and there
are people who are mentally ill on the street and
when one of those commits a crime I get all the
blame, I'm not quite sure what --

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

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

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

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more power over where they are, what they can do. I
think that's part of what's been implied here,
there's no denying that, that many facilities are out
of sight, out of mind, and many people are not that
sophisticated. Your average inmate is not reading
according to the level, nor does he understand often
the process that he has been through that got him
there. I mean, not only that, but the families don't
understand it either. It becomes a very difficult
ting to administer when you are thinking about the
11  person, being the person in charge and trying to be
during and efficient, rather let us do it in a manner that
realistically predicts some forward motion.

Professor Dickey.

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

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

DR. DUDLEY: Saul.

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

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trying to move people who would rather not even see
or understand what's going on until we've got to do
it in a way that has impact, but the impact could
affect members of the profession in a way that
they -- is part of what the message is for us to be
very careful in how we communicate our findings and
recommendations? I actually wasn't going to ask that
question but I just kept listening to what I was
hearing, I was really worried.
And then I guess I wanted to ask Ms. Chunn
about the issue of leadership. You talked about how
important leadership is in effecting change and in
accomplishing the greatest good in institutions and
you talked about incentives.
MR. DICKEY: Let me just say when I was
at the prison system I had the luxury of tenure at
the University of Wisconsin Law School so getting
fired wasn't a big deal. You know, it would have
hurt my pride and all that sort of stuff, but in a
sense I had the luxury of being able to worry about
the inmates in the way that I just mentioned and not
have to worry about my job all that much.
Now that's a way of saying you need to be
sensitive to the people to whom you are going to be
speaking. If what you want is acceptance by people
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next steps are because, as I said before, good
leadership wants to also, more than anything else,
have the satisfaction of knowing I made the
difference, I made some difference, at least. I
 liken this to a relay race where you take it to a
certain point and somebody else picks it up, nobody
does it alone. But I believe that as members of this
commission you also want a feeling of having given
this some careful scrutiny, to have heard what we
have to say that explains, that also identifies some
of the problems that are perennial problems that have
always been there, and that you have made
recommendations and suggestions that can be used by
us in addition to what we are already doing to make a
difference.
Now I believe conscience leaders -- let me
drop back and say it this way. Most of the people
who have bristled with this whole notion of this
commission have done so because they have stabilized
their systems, they have tried to be good leaders,
and they routinely go out to make sure what the
quality of life is. Now those people who aren't
involved in any kind of accreditation process, any
kind of professional development process, will feel
like I must know it because the governor appointed
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in corrections, some of the ideas that we're talking
about, the steps toward implementation, you need
legitimacy, right? I mean, because one question is
why the hell should we pay any attention to what you
say, right? And I think the answer is because we
have considered and reflected and we have heard a
little bit about walking in your shoes and what that
all amounts to and we have a kind of an understanding
that we think can help us advance the endeavor.
In that spirit it seems to me there would be far more
acceptance of this than, as I said, if you approach
it we're going to tell you what to do. So, yes, my
point is, as with anything, one has to be careful and
cautious about how one presents one's self if one
wants to be effective because you don't want your
report standing on a shelf somewhere, you want it to
be effective; therefore, you've got to be careful
about how you frame it and who it is addressed to and
how you say it. It just seems to me that too is a
fact of life.
MS. CHUNN: I don't think that implies
that we only hear what we want to hear, that all of
this is for nothing, that's not it. We want to hear
what you think we can do to improve the system, we
want to be able to dialogue about what the logical
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the duration, their average life expectancy, if you
will, is three years. That means that some of them
serve five years but some of them only serve one year
which is in that area where you said they even don't
know what they're doing yet. How are we going to
implement policies, practices and stuff that we are
going to have to deal with people in a revolving
door, such a floating morass, how do we deal with
that problem and why is this happening.

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

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

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

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

Set the stage with almost 25 years ago,

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more than that, probably, there was a decision by the
Supreme Court, KQED versus Houchins, which is a
California case, which told the media that
correctional administrators could restrict the access
of the media to correctional facilities. Now I have
been working under that all my life, in essence, in
this business and so I thought how do I open it up,
how do I make it more transparent and yet still keep
my defenses where I needed to have more, felt more
comfortable so we can put things together.

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

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

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on.

Every new legislator that gets elected, I
send them a letter and say by the way, I'm in your
district, do you want to come and visit what's there.
I had one in four years decide to do that.
I have been in the business 35 years and at
this point, and bless all judges, I've had less than
five of them that actually have come out to find out
what happens when they sentence a guy to a year in
the county jail, actually walk out there and see
where they go. Now I know that's not in this room,
but in my world out there, that's what happens.

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

I recently had one of my T.V. reporters
come out and sneak pictures of then jail when all he
could do is call my office; you want some pictures,
come out and look. I guess reacting to that, I want
my wardens to be open about the things, I want
sally port and let everybody in the world come in and
do whatever they want to do. It is a jail and we
have security.

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

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

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

DR. DUDLEY: Last question.

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Judge Gibbons.

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

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

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

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Thank you for the opportunity to appear before you. Thank you very much. Professor Deitch.

I want to thank all three of them for being with us this afternoon. DR. DUDLEY: I'm sorry, we're out of time, but thank you very much for taking your time to be with us this afternoon.

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Senior Justice Fellow and teaches criminal justice at the University of Texas's Lyndon B. Johnson School of Public Affairs. Her research is focused on the issue of independent prison oversight. Bill Yeomans is the director of programs at the American Constitution Society in the area of law and policy, and I think, very importantly, he served for 24 years at the Department of Justice in the Civil Rights Division holding a series of important positions there, including acting as an assistant attorney general.

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

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

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

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

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

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

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

When we talk about prison oversight, the problem is that we tend to merge all those concepts and we assume that they're somehow in competition with one another or mutually exclusive or they're in competition with each other as to which one is most effective. What we have, what each of us has in mind is a different one of those functions. It makes communication about oversight very difficult because oftentimes we're talking at cross-purposes; one...
person has regulation in mind, another person has inspection in mind, for example. We need to begin talking about these as separate functions and we need to figure out how to make each one of them stronger and more effective. There's no one entity that can meaningfully serve every one of those functions. There are different constituencies that are served by them. In a nutshell, let me try to mention some of the differences.

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

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

The accreditation function is yet another function that is served by other entities. Independent monitoring and inspection provides an opportunity for dialogue, it is not another layer of management. As both Gary Johnson and Walter Dickey indicated earlier, it is best seen as a partnership between the agency and the monitoring entity. Again in the last minute I have I would like to stress that it is important that we not try to compare and contrast these different functions, the different mechanisms, but rather encourage a wide range of oversight mechanisms, both inside and outside of the agency. We need to look for ways to strengthen each one of those critical functions.

MS. ROBINSON: Thank you.

Bill Yeomans.

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

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

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

The most common type of prosecution is the use of excessive force by a member of, staff member in a prison or jail, and can frequently, it can sometimes involve battery, sometimes sexual assaults, frequently results in bodily injury. Generally the FBI serves as the lead investigator under very tight reporting deadlines that apply only in civil rights cases. In part that comes out of history and tradition, these are not popular cases, it is necessary to have reporting deadlines to keep the
bureau moving forward. It is also important to remove a cloud of suspicion from a corrections officer as quickly as possible. It has been a long-standing practice to require an investigation whenever the facts, if true, would make out a civil rights violation. That means there are thousands of potential cases every year that comes to the Civil Rights Division. There is a preliminary investigation. A vast majority of cases are disposed of through a preliminary investigation. It is necessary to have a preliminary investigation to winnow out the non-meritorious cases from the meritorious cases. That's a difficult thing to do because of the situations in which these cases arise. Generally the victims are powerless, they have difficulty acquiring and communicating the facts, and so it is necessary to have an outside look to determine what's really happening. The cases are prosecuted under very difficult standard. It is necessary to show that a corrections officer acted with the intent to use more force than was reasonably necessary in the situation. That means that the corrections officer had to know at the time that he or she used the force that it was more than what was required at the time, so these are

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

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

To provide you with a little bit of background of who I am, I was a career prosecutor at the county level with the state attorney general's office focusing primarily on issues of corruption and wrongdoing by police officers and public officials when I was plucked from obscurity two years ago and plopped in this job. I obviously had a lot to learn about corrections and being an inspector general and I think I'm still learning. What I found was that at the time I was appointed the inspector general was an at-will position who was hired and fired by the governor. The audits conducted by the inspector general's office were confidential, they were not available to the public. Staffing at that time was minimal. The inspector general's office funding rose and fell with other agencies depending upon the state coffers, and at the time I began we had only about eight auditors and investigators in the office and as you recall, in California we have 160 some -- five, 6,000 inmates and 50,000 staff members, and we began to see change immediately. In part it was due to cooperation between the California legislature and the governor but -- and I think that was in part due to the fact that the conditions at the prisons at that time were recognized to be poor, overcrowded, little programming, health care, both mental health and physical health care was determined to be broken by federal courts, and the courts also deemed the system unable to police itself, so part of the idea of addressing those issues was to invigorate the office of the inspector general.

I came in with the following priorities. The first was to rigorously audit and investigate to the extent that my resources would allow. The second was to be transparent in everything we did which
meant advocating for all of our reports to be a matter of public record. The third was to collaborate with the correctional officials. This isn't always as easy as it sounds because there could be a natural tendency towards conflict, as you might imagine, between an inspector general and the appointed correctional officials. And the fourth was accountability. In that I hoped that when we found things wrong and made recommendations for change, that those changes would actually occur rather than the problems just continuing to proliferate. And, finally, we hoped to do all of this with independence.

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

As you know, I was appointed by the governor. After my appointment as an at-will employee the law was changed and now I was reappointed with a six-year fixed term so I can only be removed for cause. Secondly, I'm responsible only for the California Department of Corrections and Rehabilitation so I don't have oversight authority over any of the other agencies in California. We're organized as a separate agency, I'm not a part of the

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investigations of misconduct which don't include the officer's name but does provide the basic areas that the misconduct occurred.

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

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

And then I see I'm at zero but in the last 30 seconds I will tell you that we also have a new function called the Bureau of Independent Review which was, frankly, stolen from the Los Angeles County Sheriff's Department, and what that function involves is we have hired attorneys with expertise in criminal law, employment law and civil rights, and as

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

MS. ROBINSON: Let me step back as we
start questioning and ask the three of you to reflect
back on the last panel that we had and, in
particular, the concept that I think Walter Dickey
and really all of them talked about on the question
of kind of a partnership between an oversight or
monitoring person or persons and the agency, to what
extent does that, should that play a part. And I
suspect, Professor Deitch, that you might say it

"If you ever believe everything is okay you shouldn't
be in this job, there's always ways that we can
improve," and that's what I think an inspector and
monitor can do and why it is such a partnership.

MR. YEOMANS: I certainly would never
come out against partnerships and cooperation, but it
does seem to me that it is, in the world in which I
function, sometimes important to maintain an
adversarial relationship, to maintain leverage, and
that can happen during an investigation. It is
important at times to insist that you are getting
what you need. It is sometimes important in
negotiations, in trying to develop a remedy for a
situation, to maintain an adversarial relationship.

MR. CATE: This is a touchy point.
I've had a good relationship with Secretary Hickman
who has been the only secretary since I have taken my
position, and I think that's been helped by the fact
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<td>that he knows that I'm required by statute to publish every audit that I conduct and so we can on one hand say on a collegial basis, you know, here is what I think is wrong and here are my ideas for fixing it and he tells me, you know, you don't understand the complexities of X, Y and Z and we have a good give and take in that respect, but I think because he knows I have to publish in the end, that we maintain, I think, enough independence. It is always the push and pull. On one hand you want to collaborate and help improve the system and, on the other hand, you don't want to be co-opted by someone because you get to know them and like them.</td>
<td>there are approaches that other states are using that you have been able to pick up ideas from and model some of your approaches on?</td>
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<td>MS. ROBINSON: Matt, do you find that there is a couple ways I can talk about things that are good and bad about them. But if you are looking for a way to strengthen each one of those functions and I can point out good examples of each one of those functions and we can talk about things that are good and bad about them. But if you are looking for a way</td>
<td>MR. CATE: Yes. To some extent there's, in some respects this system, this model has been put together through the political process and either the governor's office or myself will implement change and that would be codified by the legislature or the legislature would implement change and we would execute that change. Each system is so different. For example, most inspector generals work inside of the agency but have dual reporting to the agency head and to the governor's office or to a statewide inspector general, so it is hard to put those together. There are good enforcement tools that people are using to try to ferret out fraud and abuse and I have learned from those and, thanks to Professor Deitch, I started reading about what the British inspectorate is doing and the tone of their reports is terrific as far as using what I would call least force necessary, they don't embarrass the officials but just point out the problems in a constructive way, so try to learn as we go. But really this is kind of a new area of public administration and so we're learning it as we go and</td>
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<td>I think the same is true for other stakeholders. Whether they're plaintiffs' lawyers or advocates for reform or labor, each group has their own agenda that they would like to see go forward for what they see is the betterment of the system and so I try to listen to those groups when they want to talk and, again, because of resource or a difference of agreement over what we should be looking into we don't always agree, but I think it is having an open door and an open phone and I think that's very important.</td>
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<td>MS. ROBINSON: Matt, do you find that there is a couple ways I can talk about things that are good and bad about them. But if you are looking for a way to strengthen each one of those functions and I can point out good examples of each one of those functions and we can talk about things that are good and bad about them. But if you are looking for a way to strengthen each one of those functions and I can point out good examples of each one of those functions and we can talk about things that are good and bad about them. But if you are looking for a way</td>
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<td>certainly don't claim to have all the answers because we're just starting here in California.</td>
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<td>MS. ROBINSON: Professor Deitch, as you see this kind of emerging feel around the country, are there any kind of suggestions that you could make to us as a commission as we're kind of thinking about recommendations that we can be including in our final report.</td>
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<td>MS. DEITCH: How long do we have?</td>
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<td>MS. ROBINSON: I would say not forever, we have a dinner tonight.</td>
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<td>But, I mean, in terms of general principles, I mean, obviously we're thinking about kind of on the broader scale, but in terms also of balance of trying to achieve objectives and recognizing our goals, but recognizing also the need for kind of the operational side and management concerns.</td>
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<td>MS. DEITCH: There's a couple ways I could answer that question. My first point is to go back to what I said before which is the need to strengthen each one of those functions and I can point out good examples of each one of those functions and we can talk about things that are good and bad about them. But if you are looking for a way</td>
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<td>MS. ROBINSON: Bill Yeomans, let me go back to what I said before which is the need to strengthen each one of those functions and I can point out good examples of each one of those functions and we can talk about things that are good and bad about them. But if you are looking for a way</td>
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<td>to structure some kind of entity, I can't tell you there's one way to do it. I think that every state has its own culture, every country has its own culture, and you need to look at what are the options in that state, what kind of entities exist there that we can strengthened in some way.</td>
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<td>When I started doing my research I assumed there was going to be an ideal way to structure some kind of entity. There isn't. I have seen it work in ways as varied as a nonprofit organization doing inspection work, to a legislative inspection entity. The Ohio Correctional Institutions Inspection Committee is based at the legislature but they have inspectors that do work that looks a lot like what the British inspectorate does.</td>
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<td>You can have a body like what Mr. Cate was describing. There are regulatory agencies such as in Texas there's the Texas Commission on Jail Standards which inspects every jail according to various standards. It has the ability to decertify a jail if it doesn't meet those standards. I can go on with various other examples, but the point is there's no magic way to do it, you just need to find out if each of those functions is being served.</td>
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<td>MS. ROBINSON: Bill Yeomans, let me go back to what I said before which is the need to strengthen each one of those functions and I can point out good examples of each one of those functions and we can talk about things that are good and bad about them. But if you are looking for a way to structure some kind of entity, I can't tell you there's one way to do it. I think that every state has its own culture, every country has its own culture, and you need to look at what are the options in that state, what kind of entities exist there that we can strengthened in some way.</td>
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back to you and your comments about the kind of
changing function of the Civil Rights Division in the
Justice Department and the degree to which the Civil
Rights of the Institutionalized Persons, the CRIPA
Act, is to a great degree being used to a much lesser
extent than it was in the past.

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

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

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

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

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

MS. SCHLANGER: This is a direct
followup.

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

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

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

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

Ms. Deitch: Can I just add on to that one point.

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

Ms. Robinson: Other questions from the panel? Tim.

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

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

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

Mr. Yeomans: No, certainly I didn't

Suggest there that should not be sensitivity, there should be sensitivity. Obviously there needs to be sensitivity as to the needs of the institution and to the continuing safe function of the institution, but I do think there also needs to be sufficient independence that the investigators can get to the facts and that's, as you point out, a very delicate situation that needs to be managed carefully.

Mr. Ryan: Thank you. I got that off my chest now after 25 years now.

Mr. Yeomans: I'm glad I gave you the opportunity.

Mr. Rippe: A question for Matthew.

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

Mr. Cate: Primarily we base our standards on either the California Penal Code or Title 15 of the California regs and then, third, the department's own operating manual. And so our view

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

Mr. Rippe: Thank you.

Mr. Krone: In our criminal justice system, if you are investigated by the police and it goes to prosecutor and they believe that you are the one that did it, from what I have read and understood from you it sounds almost like they tell the guy you better change your ways or we're going to put your name on the Internet. I'm wondering, is there a step that we can go farther to further enforce that rule?

From what I read it sounds like you do your auditing, you find problems, you identify it to the warden. He may or may not implement that and there's no system where he has to with the exception of public ridicule by your website. Is that true?

Mr. Cate: Well, you have your choice. You either are going to be a part the system, meaning I would work for the secretary, and then have some authority with the secretary to make change that way but lose a degree of independence, or I work outside the box of the administration and I have great
in the issue and others appear to be interested in

24 with one role. As you said, some are very interested

23 was a positive. And I can't cast the legislature all

22 and so from time to time if I find something

21 that merits his attention I can go all the way to the

20 top and make my pitch and then the people that are

19 elected then decide whether they're going to

18 implement that or not.

17 MR. KRONE: To maintain that little bit

16 of independence or what independence you have so that

15 you don't kind of make waves for the groups that

14 don't have any further enforcement except passing it

13 on to higher-ups that can then take the proper

12 action; is that correct?

11 MR. CATE: I think so.

10 MR. KRONE: It is hard for me to

9 understand a system where you just say look, I wish

8 you would do this and if you don't, nothing is going

7 to happen.

6 MR. CATE: Well, that's the nature of

5 an outside auditor, there's no other way about it.

4 And I think the most -- again, it is early, and so we

3 may look back in five years and say you know what,

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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,

5 Matt, and just kind of follow up on that.

8 We've had discussion off and on throughout the

7 course of the commission's life and today about the

6 importance of public attention to corrections and how

5 oftentimes the public isn't very interested. Do you

4 find that the public is interested when you issue

3 reports and is the legislature interested? We know

2 Gloria Romero, who is a member of our commission, is

1 interested, but generally are legislators interested,

2 is the public generally interested?

1 MR. CATE: The media, you would be all

2 surprised to hear, is more interested in the bad news

1 than the good it seems, but there was coverage

2 recently when the federal court announced that he had

1 seen, that Judge Henderson had seen progress in

0 health care, that made the newspapers, and so that

2 was a positive. And I can't cast the legislature all

1 with one role. As you said, some are very interested

1 in the issue and others appear to be interested in

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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

5 think that's better than the alternative.

4 MR. KRONE: As to your initial figuring

3 out how to work that system, do you project down the

2 road that you will make changes, the asked for

1 changes, more power, strength to cure your findings?

2 MR. CATE: It is a Titanic-sized system

1 and I'm a little rudder, but it is my hope that we

2 are going to start, we will turn in the right

1 direction, and the think that the correctional

0 administrators are earnest in their desire to do

1 that. They have been forthright with me and I have

0 leveled 10 different broadsides into their ship and

2 they're still nice to me when I come in. I think one

1 of the things that was mentioned is that you have

0 this high turnover rate and that's another area

1 where, frankly, you look at the pros and cons of the

0 California system. On one hand I've got an at-will

3 employee in Mr. Hickman that I have oversight of and

2 so rapid turnover of that position probably isn't

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1 other issues, I guess, to be generous.

2 MS. ROBINSON: And the public

1 generally, or do you have any sense about that beyond

0 the media?

1 MR. CATE: I don't have any more

0 insight than anybody else except that people always

2 ask me what do you do what is that, and it seems to

1 me that the general public just wants to be safe.

2 And there seems to be a rising tide of people who are

1 interested in making sure that everyone in our

2 society is treated in a humane way, even those that

1 are incarcerated, at least I hope so, but I don't

2 think we're anywhere near the majority and most folks

1 just want to be safe.

2 MR. SCHWARZ: This is to Mr. Yeomans.

1 You have, I guess, just recently joined a

2 really important organization and in terms of what

1 the public interest is in these issues, I wonder if

2 the American Constitutions Society has taken

1 positions on prisons, a yes or no. Indeed if they

1 have, what they are.

2 MR. YEOMANS: We have not simply

2 because the society as a society does not take

1 positions, we work through our members who speak out

0 on various topics, so we have not taken any positions

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of privately run facilities, the most important thing
we have going right now is control over the contract
and monitoring process, contract monitoring process,
which means you have to have contracts that deal with
all of these issues. Most of them don't. Texas
actually has really a model system for writing
contracts and then for monitoring compliance with the
contract but that's all they have the right to do is
to monitor compliance with it. So most privately run
jails in particular and prisons in most parts of the
country do not have that level of specificity in the
contracts and, as a result, there's really very
little knowledge about what's going on in those
facilities.

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

MS. ROBINSON: So are there examples
now of states where, I gather Texas is an example,
where it is including private prisons and other

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

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

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

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

MS. ROBINSON: Are there further
questions?

Let me then, let me shift the topic to
maybe a large extent. We really haven't raised this
subject today of privately run prisons and jails.

What do we do about government oversight there?

Obviously we have, you know, oversight of contracts
in contracted facilities generally, but does that
really do it as far as private prisons are concerned?

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

First of all, when you talk about oversight

facilities in those kinds of oversights or models?

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

MS. ROBINSON: I see.

Bill.

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

MS. ROBINSON: Is that settled law?

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

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

MS. ROBINSON: Right.

Matt, how do you deal with that here in
California?
inmates and staff and so you'll see that raised
oftentimes if there's a large fight or riot in an
institution and that will get legislative attention.
And then sometimes the funding issue comes into play
and you will see that grab the legislature's
attention because the question is always raised is it
truly less expensive to run a private institution
versus a public when you look at the level of inmates
that are there and long-term costs, et cetera, so we
see those kinds of issues come up most often.
Conditions of confinement we don't see come up that
often.

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

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

DR. GILLIGAN: This is for Mr. Cate.
A few years ago I was invited by a
committee in the California senate to work with them
on formulating a law which the legislature and state
assembly passed to monitor violence in the California
prison system, particularly, of course, lethal
violence; homicides, suicides and so forth, to really
have a comprehensive summary of these sort of year by
year, how many occurred, who were the perpetrators,
who were the victims, what were the circumstances,
which institutions seemed to be most dangerous,
best practices out there, what could you do to educate me to be a better correctional administrator today, tomorrow and in the future?

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

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

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

MR. YEOMANS: I think the reasons are broad and they go well beyond this specific area. I think that we have seen doctrinal shifts obviously in the law, we have seen a changing political climate that has contributed to those shifts, and so that there is at this point simply far less tolerance for structural injunctive litigation than there was in the past. Part of that is because the bench is more conservative, part of it is that there simply is not...
they certainly had results in the past, and so you activities if we didn't think they were reported and 24 that we wouldn't have been all engaged in these 23 consequences have been. I think we can speculate 22 that we have very little way to know what's going on, 21 otherwise I think we have very little way to know what's going on, we rely on what was reported in the 20 newspaper or an individual lawsuit, but to how much 19 what is necessary to make it effective. MS. DEITCH: I would agree with all of 18 that and I would just add, I was a court monitor in 17 the Ruiz case, the big Texas prison reform case, and 16 so I have a personal sense of the extent to which 15 there was tremendous resentment among legislators, 14 among corrections officials, among really many 13 different layers of government, about the intrusion 12 of the courts into correctional affairs.

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

MR. YEOMANS: I would second that. We haven't talked much about jails.

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

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

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

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

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

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

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

MS. DEITCH: Sure.

I think that jails in particular, specifically smaller jails, more rural jails, a lot of them fly under the radar screen, frankly. They're not regulated and we get very little information about what's going on, and these are jails that are more likely to have people at the helm that are not trained, they're not brought into national associations, et cetera, et cetera, and the state in
In many cases has very little control over what's going on in these places; they're not brought before the legislature. They're accountable typically only to, say, in Texas the Board of County Commissioners, whatever the county body is that funds them, but those bodies don't have any expertise in jails. They know they spend a lot of money on it but typically their concerns are do we need a new jail, not what's in fact happening in the jail. Those inquiries just plain don't happen. So I guess the short answer is we need to think of mechanisms that would allow those jails to come under some body, some entity, whether it is a state governmental entity or something else, to find out what's going on, to ask the hard questions.

MR. YEOMANS: I think it is important to distinguish among jails and obviously there are the kinds of jails that Michele was just talking about that are rural, small, generally run by one guy that has a lot of power, and those tend to be less professional. They tend to produce for us a disproportionate percentage of our criminal prosecutions simply because they're not professionally run and because a person who is there is basically unchecked and is more likely to resort to force and more likely to inflict unlawful punishment. Obviously other jails, large, the L.A. County jail, these are large institutions that are much more professionally run and much more like prisons.

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

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

MS. ROBINSON: Anything to add, Matt?

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

MS. ROBINSON: And you are not

State of California   )
County of Los Angeles )
I, SUSAN A. SULLIVAN, CALIFORNIA CSR No. 3522, RPR, CRR, do hereby certify:
That the aforementioned hearing was taken before me at the time and place therein set forth, and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision.

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

SUSAN A. SULLIVAN
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