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

DATE: February 9, 2006
TIME: 9:02 a.m. to 5:05 p.m.
PLACE: St. Robert's Auditorium
Loyola Marymount University
Los Angeles, California
BEFORE: Susan A. Sullivan
California CSR No. 3522

Volume II
Pages 246 - 536

1 COMMISSION MEMBERS:
 2 The Honorable John J. Gibbons (Co-Chair)
 3 Stephen B. Bright
 4 Richard G. Dudley, Jr., M.D.
 5 James Gilligan, M.D.
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 7 Ray Krone
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 12 Timothy Ryan
 13 Margo Schlanger
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1 Los Angeles, California: Thursday, February 9, 2006
 2 9:02 a.m.
 3 -oOo-

5 MR. MAYNARD: Good morning everyone.
 6 We're going to go ahead and get started.

7 I want to thank everybody for being here
 8 today. First I would like to welcome, introduce Jody
 9 Kent, who is the ACLU Jails Project Coordinator in
 10 L.A. County.

11 Ms. Kent.

12 MS. KENT: Thank you. My name is Jody
 13 Kent. I'm the Jails Project coordinator. I monitor
 14 the L.A. County jails.

15 The ACLU of Southern California has been
 16 monitoring the L.A. County jails since the Rutherford
 17 versus Pitchess decision in the late 1970s. The
 18 Federal District Court held that certain conditions
 19 in the jails violated the Eighth Amendment and
 20 entered into an order requiring conditions be
 21 improved to meet constitutional standards. The ACLU
 22 staff field information from inmates via phone
 23 messages and letters daily and during jail visits
 24 several times each week. We hear from over 1,500
 25 inmates each month about living conditions, medical

1 services, and other issues from all the different
 2 county jails. I also meet regularly with sheriff's
 3 department staff to address these issues and others.
 4 The continuous ACLU presence in the jails
 5 is essential. Inmates rely heavily on the ACLU
 6 having access to the jails which allows us to
 7 expedite medical treatment for inmates, provide
 8 comprehensive responses to inmate complaints, and to
 9 advocate for improvements on a systemic level. Daily
 10 we are contacted by the inmates, some needing insulin
 11 for their diabetes, others seeking psychiatric
 12 medications and for other illnesses, and often we
 13 receive calls from inmates needing special diets so
 14 they can eat without being sick. Most of the 20,000
 15 inmates in the L.A. County jails are locked down
 16 nearly 24 hours a day in the overcrowded and
 17 understaffed housing areas. Approximately 3,500 to
 18 6,000 inmates are housed the Men's Central Jail in
 19 Downtown L.A., which is the largest jail in the
 20 country. It is overcrowded, understaffed, and its
 21 physical structure is outdated. Inmates are forced
 22 to stay in cramped cells all day and all night
 23 because there are not enough deputies to supervise
 24 daily exercise or recreation. As a result, tension
 25 is high, which we have seen this week.

1 In addition, the inmate population in the
 2 jails has shifted so that the county jails now are
 3 facing more serious charges than those for which the
 4 jails were built. It is a demoralizing environment,
 5 but inmates are reminded that they do have rights,
 6 they must be treated humanely, and deserve basic
 7 services such as showers and exercise due to the
 8 ongoing ACLU presence in the jails. Inmates have
 9 also told me they feel safer knowing that the ACLU is
 10 there consistently, and throughout the riots this
 11 week family members and loved ones have called the
 12 ACLU seeking information and help as a trustworthy
 13 alternative to calling the sheriff's department.

14 Extensive ACLU monitoring works because we
 15 also learn to develop a firm understanding of the
 16 challenges that custody staff face daily such as
 17 staffing shortages, outdated technology, and the
 18 risks of supervising an increasingly high-security
 19 population.

20 I spend eight-hour shifts in the jails
 21 shadowing custody staff, working on the front lines
 22 and in supervisory roles. I also meet regularly with
 23 the sheriff's department staff to address inmate
 24 complaints and systemic issues. At these meetings we
 25 receive additional information about the challenges

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1 facing deputies in the jails. Such opportunities
 2 allow ACLU monitors to better understand the
 3 day-to-day tasks required for custody staff working
 4 in very grueling conditions.

5 ACLU monitoring works because we come to
 6 understand why when the sheriff's department's budget
 7 has doubled from \$1.1 million to \$1.9 million and the
 8 jail's budget has grown 75 percent in the last 10
 9 years, there are still not enough deputies in the
 10 jails. The L.A. County Sheriff's Department is
 11 structured in such a way that when deputies are
 12 graduated from the academy they're assigned to work
 13 in the jails for several years before going out to
 14 work patrol. Due to a recent hiring freeze that came
 15 about because of budget cuts, deputies often spend
 16 five to seven years in the jails rather than just two
 17 or three. As a result, deputies who join the
 18 department to become patrol officers are years later
 19 being drafted and pulled away from their families to
 20 work long overtime hours in order to keep the jails
 21 running. Deputy morale is low. It is reflected in
 22 jaded attitudes and sometimes the quality of their
 23 work, making conditions even more dangerous for both
 24 the inmates and the staff.

25 Due to our extensive monitoring, county and
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1 state government officials often call on us to give
 2 us information about conditions in the jails.

3 After a series of homicides in the jails
 4 OIR, Miracop and the ACLU have asked the necessary
 5 questions about how these incidents could occur and
 6 what was going to be done to avoid them in the
 7 future. Following the riots this week, if they ever
 8 do end, these organizations will seek out answers to
 9 their questions and make recommendations to ensure
 10 that racial violence in the jails does not continue
 11 to escalate.

12 Monitoring and oversight works. Without
 13 our involvement, many questions go unanswered and
 14 problems are overlooked. Oversight is essential to
 15 ensure the safety of the inmates and even deputies in
 16 the jails. ACLU monitoring reaches individual
 17 inmates daily, identifies and advocates improvements
 18 for systemic problems, and maintains a level of
 19 accountability in the jails that would not exist
 20 without our presence. Each of these elements is
 21 imperative to the oversight of correctional
 22 facilities.

23 MR. MAYNARD: Thank you, Ms. Kent.
 24 Does anyone have any questions of Ms. Kent?

25 JUDGE GIBBONS: Ms. Kent, who pays for
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1 the ACLU monitoring?

2 MS. KENT: Our monitor is paid for by
 3 attorneys' fees from our contract with the county.

4 JUDGE GIBBONS: So payment is imposed
 5 on the county by the federal court.

6 MS. KENT: Yes.

7 JUDGE GIBBONS: Thanks.

8 MS. SCHLANGER: We heard yesterday
 9 about ways in which people coming into a dangerous
 10 facility or facility that might be dangerous can
 11 really create its own danger and I wonder how you
 12 think about that issue, whether or not your access to
 13 the jails destabilize what's going on there and what
 14 do you do to make sure that doesn't happen, that kind
 15 of thing.

16 MS. KENT: Well, the only thing we can
 17 really do, none of us can control who is actually
 18 creating the dangers in the facilities, but we can
 19 control the conditions in which they live and I think
 20 that because of the understaffing and the overcrowded
 21 conditions that exist that require inmates to be
 22 locked down 24 hours a day, tension is inevitable.
 23 Obviously inmates are under regular stress as it is
 24 fighting their cases. Being housed in overcrowded
 25 cells where they're forced to sit on their bunks all

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1 day and all night only exacerbates things.
 2 I think in terms of what our monitoring can
 3 do is try to advocate. We recently got the court's
 4 modification of our judgment to make sure that
 5 inmates weren't sleeping on the floor, something that
 6 basic. You add a sixth person to a five-person cell
 7 or a seventh person to a six-person cell, that means
 8 there's literally no room for anyone to move around
 9 at all and in those conditions people become a lot
 10 more agitated than they would be otherwise, and so it
 11 is those kind of things that the monitoring can do to
 12 try to improve overall conditions.

13 During these riots we make recommendations
 14 that long-term solutions must be creating a way for
 15 these inmates to be able to be in productive activity
 16 settings throughout the day. Locking them down 24
 17 hours a day isn't going to allow for inmates to
 18 relieve any of their tension, they're lucky to get
 19 their three hours a week minimum of recreation or
 20 exercise, and so we really are trying to emphasize
 21 the need for more productive activities.

22 MS. SCHLANGER: How many folks at the
 23 ACLU, what's the staffing of the oversight piece of
 24 the ACLU? How many people at the jail would you
 25 think kind of -- how many hours a week does the jail
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1 spend dealing with you and how many hours a week do
 2 people spend dealing with the jail?

3 MS. KENT: You are looking at the staff
 4 right here. I am the staff person, the only staff
 5 person who works full time on this project, but I try
 6 to ensure that the sheriff's department is spending a
 7 great deal of their time working with me as well.
 8 I'm in the jail several times a week and if I'm not
 9 there, I'm certainly on the phone with them quite a
 10 bit and in meetings probably three or four times a
 11 week as well, so I try to do everything I can to keep
 12 them busy.

13 MR. GREEN: Would you describe the kind
 14 of access you are given and also how the oversight is
 15 provided? The monitoring that is done by Merrick
 16 Bobb, how is that done?

17 MS. KENT: Our access is unfettered
 18 access, I can go in at any time, anywhere, with only
 19 a few exceptions, which are basically when they tell
 20 me it is not safe for me to go somewhere. I am
 21 always escorted by a deputy wherever I go, when I'm
 22 talking to inmates I ask for confidentiality which I
 23 generally receive, and as far as working with other
 24 monitors, a lot of it is done informally. I mean, I
 25 think that we are, Merrick Bobb's office and mine,
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1 are doing things separately but with the same end
 2 goal which is to improve conditions over all, so we
 3 will touch base every couple months. Obviously with
 4 issues like the riots, we have to kind of put our
 5 heads together to try to come up with what kind of
 6 solutions would best work.

7 MR. RYAN: Another model is one of the
 8 ombudsman. Have you had some experience with that
 9 and what is its success?

10 MS. KENT: I have met the ombudsmen, I
 11 have never seen them in jails. I have a task force
 12 organization that I put together in L.A., we do
 13 advocacy for inmates, and there's a staff person from
 14 the ombudsman's office on my task force. But aside
 15 from that, I have very little contact with their
 16 office. I know that they do get some complaints, I
 17 think they get about as many complaints each month as
 18 we do each day, and so I think our office is much
 19 more accessible to the inmates.

20 One thing I should say is inmates can call
 21 us collect from the jails, our phone number and our
 22 address is posted throughout all of the L.A. County
 23 facilities, so we get calls constantly, messages, a
 24 thousand of calls every day, so we are probably the
 25 most successful monitor advocate.

1 MS. ROBINSON: Ms. Kent, I guess I have
 2 kind of a broader question. What is the longer term
 3 ways to be addressing these questions. I mean,
 4 clearly it sounds to me, especially with the kind of
 5 volume of issues that you are dealing with, it
 6 doesn't seem as if litigation or this kind of thing
 7 is the most productive way of dealing with issues, so
 8 contentious confrontation does not seem as if it
 9 would be the way to be achieving change over a longer
 10 term.

11 MS. KENT: I think it is important to
 12 be developing trust, both among the inmates and among
 13 the staff. I think somebody spoke yesterday about
 14 how we have to have legitimacy and I think that's the
 15 case on both sides, you know what I mean? In order
 16 to be a productive monitoring body, in order to see
 17 systemic change, you have to convince both sides, the
 18 inmates and the staff, that you are there to make
 19 things better for everyone and that you are
 20 developing these relationships so you can get the
 21 information that you need in order to be a good
 22 advocate, but then you can also use that to advocate
 23 at the county and state level when necessary. And to
 24 have those relationships, to have somebody that's in
 25 there regularly that people recognize and trust, I

1 think that it strengthens the legitimacy that's
 2 required in order to bring about systemic change.
 3 MR. MAYNARD: The media reported that
 4 the segregation of the inmates was approved by the
 5 ACLU. Is that your understanding?
 6 MS. KENT: Emergency circumstances,
 7 yes.
 8 MR. MAYNARD: How long do you think
 9 that will be in effect?
 10 MS. KENT: The latest I heard is that
 11 the sheriff does not plan to segregate the entire
 12 population. I think they segregated what they call
 13 the affected areas of the facility on Saturday. I
 14 think the goal is to identify the people who are
 15 so-called shop callers. One thing I don't think
 16 people understand or realize is that the majority of
 17 the inmates in there don't want to participate so if
 18 those people are identified who are instigating or
 19 disrupting the peace, you know, once they're
 20 identified and rehoused, I think the racial
 21 segregation will be irrelevant.
 22 MR. BRIGHT: Based on the experience
 23 that you've had could you talk about the racial
 24 tension that's there quite apart from the media
 25 situation and what, if anything, you and others have
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1 been able to try to lessen it?
 2 MS. KENT: You know, obviously racial
 3 tension exists on the streets so as a result, it is
 4 going to be there in the jails.
 5 I think, again, the bigger issues here are
 6 what kind of conditions the inmates are living in and
 7 because the conditions are so bad the inmates are
 8 living in extremely tense conditions and, you know,
 9 inmates will fight over things like who gets the
 10 toilet paper and those things are not about race, but
 11 once a black person tells a brown person they can't
 12 have toilet paper, it becomes about race. Inmates
 13 that are locked up 24 hours a day, it is easy for
 14 these minor things to be interpreted as racially
 15 motivated and that just, you know, lets things go out
 16 of proportion.
 17 DR. DUDLEY: Is the intervention of
 18 segregation coupled with any other intervention?
 19 MS. KENT: Right now, you mean?
 20 DR. DUDLEY: Yes.
 21 MS. KENT: I was told this morning
 22 they're sending clergy up to the facility to meet
 23 with the inmates to try to get a sense of what's
 24 needed in order to calm things down a little bit. I
 25 was also told that it sounds like the inmates who are
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1 fighting are a little bit less enthusiastic about
 2 what they're doing but they feel like they kind of
 3 have to, they're in a condition where they have to
 4 keep it going for their own respect and dignity. I
 5 mean, the bigger issues are why are these inmates
 6 turning to these kind of things in order to gain
 7 respect and dignity.
 8 DR. DUDLEY: That's my question. Is
 9 the intention segregation and some other
 10 intervention?
 11 MS. KENT: Right. As of right now.
 12 MR. MAYNARD: Thank you very much for
 13 being here today. I appreciate what you are doing.
 14 I will turn it over to Senator Romero.
 15 SENATOR ROMERO: Good morning. I
 16 apologize for having missed you yesterday but I had
 17 legislative duties in Sacramento and I apologize for
 18 arriving late this morning but that was pure
 19 old-fashioned traffic in Los Angeles. But welcome to
 20 California.
 21 I'm very proud to serve as a member of this
 22 commission, I'm excited that you are here in
 23 California, my home state. I have, for those of you
 24 who are participating with us today, I've had a real
 25 opportunity to serve on this commission, to work with
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1 these commissioners, and we have met throughout the
 2 country exploring the conditions of the nation's
 3 jails and prisons and much of what we heard has been
 4 quite disturbing, certainly quite daunting and very
 5 challenging, but we're in California.
 6 I would like to give you quick snapshot as
 7 we entertain and discuss what is occurring here.
 8 California has one of the largest prison systems in
 9 the world. We've got about 167,000 inmates, another
 10 115,000 on parole. The prison budget itself has
 11 skyrocketed. It is now over \$8 billion. In the last
 12 two years alone the prison budget has gone up by \$2
 13 billion. Right now in California, approximately one
 14 out of every \$10 paid by taxpayers is going to
 15 corrections. And yet as I look at the situation
 16 lamentably, the prison system is in crisis. The
 17 juvenile facilities I would declare to be an utter
 18 failure. We have, of course, been taken over by a
 19 federal judge into receivership, actually a move that
 20 I supported and I applauded given the lack of
 21 leadership to attend to the health care needs of
 22 inmates. Even while incarcerated, inmates are
 23 protected by the United States Constitution, and as
 24 was discovered in this process, one inmate was dying
 25 per week in the California state prison system,
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1 preventable deaths. This was something that Judge
2 Henderson declared was simply a neglect of leadership
3 in the conditions of confinement of inmates.

4 There are so many issues. I did
5 participate with Governor Schwarzenegger this past
6 year, we did successfully bring about a
7 reorganization of the state prison system, but we all
8 know that reorganization is not the form but it can
9 provide a powerful template from which we can
10 emanate.

11 In that reorganization we also reintroduced
12 another part of corrections and we called the
13 department the California Department of Corrections
14 and Rehabilitation. I was very proud to have worked
15 with the governor to restore that arm into the state
16 prison system. It is about rehabilitation. The jury
17 is still out, but much of the evidence coming in this
18 year, however, shows a very dismal response to
19 reinserting the "R" into corrections. "R" is not
20 about rhetoric, it is about rehabilitation, and at
21 the end of the day when we look at the challenges we
22 face, whether it is violence or health care, reentry,
23 it is about population management and what we do.

24 Out of the 167,000 inmates in California,
25 there are approximately 38,000 who are assigned to
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1 rehabilitation programming. 38,000 out of 170,000,
2 it is no surprise then that we end up with a failure
3 rate, a recidivism rate of over 70 percent, so we've
4 got many challenges.

5 I look forward to the testimony today. I'm
6 very excited in particular to hear from my friend,
7 Merrick Bobb, in terms of the conditions at the L.A.
8 County jails.

9 Certainly the landmark case that went to
10 the United States Supreme Court was filed by an
11 African-American inmate incarcerated at Corcoran who
12 challenged this administration on the practice of
13 housing inmates on the basis of race. Issues of
14 racial tension certainly are national issues, of
15 national importance and significance, but it was made
16 very clear, though, that we have opportunities to
17 house on the basis of gang membership but should not
18 be looking solely at skin color when an inmate walks
19 in the door, so these are continuing challenges.
20 Right now California is facing how to integrate its
21 prisons. This is 55 years after Brown versus Board
22 of Education, something that I was stunned about when
23 I first learned about the Johnson case in the Supreme
24 Court.

25 There are many other issues we can discuss
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1 but I'm glad to be here, I thank you all for coming
2 out to look at the work we are doing on the
3 commission, we look forward to participating with you
4 as we endeavor to prepare reports that won't just sit
5 on the shelf but reports that can be utilized by
6 legislators, by oversight officials, by prison
7 authorities, by the community and by inmates and
8 families and victims themselves in order to truly
9 advance the safety of the public and the community as
10 we discuss incarceration. So thank you so very much,
11 it is a beautiful day, we planned it just for you.
12 You won't get this kind of weather in February
13 throughout the nation, only in California and in my
14 hometown of Los Angeles, so thank you so very much.

15 MR. BRIGHT: Thank you very much.

16 The next panel, we have a very
17 distinguished and interesting panel which we have
18 asked to discuss how meaningful reforms can be
19 implemented. I would like to introduce and welcome
20 Scott Harshbarger, Merrick Bobb, Director Dora
21 Schriro. We have asked them to identify some of the
22 main areas of consensus with regard to culture and
23 attitudes of corrections practice.

24 Scott Harshbarger is a former Attorney
25 General of Massachusetts, recently the chair of both
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1 the Massachusetts Governor's Commission on
2 Correctional Reform, as well as the Department of
3 Correction Advisory Council.

4 We are going to hear from Merrick Bobb, the
5 court-appointed monitor for the past seven years of
6 the Los Angeles County jails which is the largest in
7 the nation, and he is also President of the Police
8 Assessment Resource Center.

9 And, finally, Dr. Schriro is the
10 Commissioner of Corrections for the State of Arizona
11 and is there after having served also in the State of
12 Missouri.

13 I would like to welcome you here. Start
14 with Mr. Harshbarger.

15 MR. HARSHBARGER: Thank you very much.
16 It is a great honor to be here with so many
17 distinguished elected and appointed officials,
18 experts in law enforcement and corrections, academics
19 and advocates.

20 To say what I have to say in seven minutes
21 is one of the great challenges of our time. I will
22 attempt to comply with that because I want to focus
23 on three things beginning with my theme in the
24 statement that I presented to you.

25 I want to talk briefly about my experience
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1 as Chairman of the Corrections Commission for the
2 last two years, as well as focusing a bit on the role
3 of the independent oversight committee, and then
4 hopefully at that time talk about what I think is the
5 real issue here which is the politics of corrections
6 and how we could deal with that issue far more
7 effectively than we have to date.

8 Let me just start by mentioning within the
9 records of the commission's report, the lessons are
10 set forth in a very detailed corrections report which
11 we issued in June of 2004. We then did a preliminary
12 report on the progress that Kathy Dennehy and others
13 in the corrections department had made and we
14 completed a final report just this fall, set forth
15 our recommendations for priority nationally. I will
16 not detail these except it is important to my other
17 themes perhaps about the politics of the public
18 policy issue.

19 From the first GCCR report there are 18
20 recommendations, and you will recall just as a
21 footnote, we were appointed following the murder of
22 the defrocked priest, Father Gagan, in Massachusetts.
23 We had the benefit of many, many people, including
24 the exceptional independent investigation led by
25 George Camp and Mark Delaney, to find the facts and
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1 obtained a mandate for top to bottom review of the
2 department and that's what we attempted to do. We
3 focused our recommendations government, leadership,
4 culture, labor/management contracts, budget
5 allocations, the serious deficiencies of
6 classification, discipline, grievances, appeals, and
7 procedures of policies generally, the need to change
8 sentencing practices and regulations within the DOC
9 to give priority in preparing serious long-term
10 offenders for reentry, and the serious deficiency in
11 caring for female offenders with mental health and
12 health care issues. This independent, nonpartisan
13 commission, the majority of whom had come from
14 prosecutorial backgrounds and corrections
15 backgrounds, as well as the justice system, focused
16 our entire effort on trying to ensure that the major
17 criteria was public safety, accountability and fiscal
18 responsibility rather than other values.

19 As we went through this over a two-year
20 period our final report focused on six key areas that
21 the Department of Corrections could not achieve
22 alone, whatever else they were supposed to do, and
23 these recommendations were set forth in our final
24 report. The legislation needed to ensure
25 post-release supervision, comprehensive statewide
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1 plans for reentry, change the sentencing legislation
2 and initial practices, restructuring of the labor/
3 management relationships, restore managerial rights
4 and capacity, as well as budget reallocations, the
5 creation of an independent inspector general and
6 independent advisory council with staff and
7 resources, as well as multi-agency partnerships for
8 dealing with female offenders' mental health and
9 health care which DOC simply could not do alone.

10 My second mission is to offer you very
11 brief thoughts about these independent, the
12 effectiveness of the independent advisory council,
13 and they have been discussed and debated a great deal
14 of time, but my experience was that they are very
15 important for helping implement internal and external
16 reform. They play a vital and invaluable role,
17 particularly in corrections, as well as we have seen
18 in almost every other institution in our society that
19 is potentially secret, closed, secure and immune for
20 whatever reason from external accountability,
21 disclosure, advocacy and transparency, whether it is
22 the church, whether it is corporate America, whether
23 it is non-profits that hide behind that veil or
24 whatever, this is not an exception.

25 No commission, however constituted, can
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1 replace effective leadership in corrections, strong
2 support by executives, and implementation of
3 capacity. It cannot be a micromanager, it must be an
4 overseer, a sounding board, that is what we learn and
5 that is what we know going forward. However, this is
6 where I encountered my first disillusionment,
7 perhaps, with the system which as we proposed to play
8 this more independently in the third phase of this
9 work, we found we were not supported by the governor,
10 the secretary of health and safety. We were
11 supported by the commissioner of corrections, but the
12 reality was people were not overly interested in us
13 playing a role that might be interpreted as being I
14 think political, but would have been focusing on how
15 do we get other agencies, how do we get the
16 legislature, how do we get the executive agencies to
17 play their role, how do we get sentencing reform, how
18 do we achieve budget reallocation, how do we tackle
19 the labor/management contract and deal with that.
20 And at this big point, that's when I resigned from
21 the commission.

22 But the point about that was that these are
23 things that the commissioner cannot do alone; this
24 area of media, public media pressure and public focus
25 on these things.

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1 The major task is education and this is my
 2 segue to the politics of that. Every day in
 3 Massachusetts, 10,000 inmates, it is not California,
 4 Senator, but 10,000 inmates with a budget of half a
 5 billion dollars are being held for our protection and
 6 for some purpose of punishment. That reality is that
 7 the public is entitled to now how we spend that money
 8 and with what results, and the reality is 97 percent
 9 of these serious offenders are coming out of prison
 10 at some point. They should be prepared to reenter in
 11 ways that will ensure they're less dangerous than
 12 when they went in and less likely to commit new
 13 crimes in the communities in which they go to.

14 I learned many other valuable lessons which
 15 I have referenced in here, particularly for those of
 16 you in corrections, including the fact that even
 17 though I had been in this system for 30 years I knew
 18 very little about the corrections system, how it was
 19 run, what the pressures were, and I learned a great
 20 deal about two major things; the consensus of this
 21 among correctional leaders for how we do this job and
 22 do it well and, secondly, I learned how difficult it
 23 is to be a correctional officer. Even though I have
 24 critiqued the union in this regard, I think it is
 25 important for all of us to understand this is a

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1 dangerous, difficult job with very few rewards and we
 2 are lucky we have as many good people doing it as we
 3 do, but I believe that reform is in the interest of
 4 correctional professionals as much as it is inmates
 5 and the communities.

6 Let me then turn to the third piece, and
 7 I'm glad to answer questions on all of these other
 8 issues if you would like to discuss them with me.

9 I want to focus now on my experience as a
 10 district attorney, attorney general, four-time
 11 elected official, a two-time loser. I am the former
 12 President and CEO of Common Cause in Washington,
 13 D.C., an independent, non-partisan citizen's watchdog
 14 group, and now I'm with a law firm of Proskauer Rose,
 15 who, by the way, I'm very proud of the firm, they
 16 brought the Johnson case here in California in the
 17 last year.

18 Since my time is up, let me just say these
 19 three things. The reforms you recommended in
 20 Massachusetts are crucial if we intend to be serious
 21 about reducing recidivism, reducing repeat offenders,
 22 and the reduction of urban crime. It may not sound
 23 tough and far too many people have built political
 24 careers of accusing people on being soft on crime,
 25 but these are very effective crime reduction tools.

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1 My major question to you and challenge to
 2 you in my written statement is how do we, since we
 3 know what works, we know how to do this, we failed to
 4 do the work necessary to implement good public
 5 policy, we failed to show people what we stand for
 6 and why they should care about what we stand for as
 7 opposed to only what we oppose and criticize. So the
 8 challenge is, and perhaps the hardest question you
 9 pose to us is, how do we develop a constituency for
 10 the kind of reform that is real in terms of public
 11 policy, it is the issue of homeland security in my
 12 view, and the common causes and the common ground
 13 involved here, it can bring us together rather than
 14 polarize us, but it won't happen overnight, but I do
 15 believe that we have a responsibility to take what we
 16 know works, make a good public policy, and find a way
 17 to implement, not just talk about these kind of
 18 reforms.

19 Thank you very much.

20 MR. BRIGHT: Mr. Bobb.

21 MR. BOBB: Thank you very much for the
 22 opportunity to appear before you all. I'm delighted
 23 to be here today. I'm delighted to see as many
 24 friends as I see on this commission. And, Senator
 25 Romero, it is particularly good to see you.

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1 Some 14 or 15 years ago when I first got
 2 into this business with the Los Angeles County
 3 Sheriff's Department Senator Romero was right there
 4 by my side and of tremendous assistance.

5 What I would like to talk about today in
 6 the brief time that I have is the Los Angeles County
 7 jail system. I serve as a monitor of that system for
 8 the Los Angeles County Board of Supervisors. The Los
 9 Angeles County jail system, as I'm sure you know, is
 10 the largest urban jail system in the United States.
 11 It has houses some 20,000 inmates on a daily basis.
 12 It is also an extremely active place. There are 500
 13 inmates entering into the system on a daily basis and
 14 500 released on a daily basis on average. There are
 15 7,000 inmates of that 20,000 who are transferred from
 16 one jail to another, taken to court, taken back from
 17 court, and so forth. The jail is spread throughout
 18 Los Angeles County which, as you may know, is as
 19 large as the State of Rhode Island, so that we have
 20 jails in the northern part of the county which are
 21 some 40 or 50 miles from Downtown Los Angeles, as
 22 well as jails in the Downtown Los Angeles area.
 23 This amount of movement, this amount of people coming
 24 in and out, presents very unusual challenges for our
 25 Sheriff, Lee Baca.

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1 What I do is not to resolve or look at
 2 individual inmate complaints, that job falls to the
 3 Office of Independent Review which Jody mentioned
 4 earlier. Their responsibility is to assure that the
 5 investigations of individual complaints are fair,
 6 thorough and complete, and they certify in a way that
 7 those complaints are thoroughly and are fairly
 8 resolved. They do not dictate in any way the result,
 9 they cannot, but they can make recommendations to the
 10 sheriff.

11 Jody and the ACLU have had a valuable
 12 presence in the Los Angeles County jail system for
 13 many years and they act as a contact point and a
 14 facilitator for inmate services that have not been
 15 provided or are lacking. So, for example, if a given
 16 inmate has not been able to get to the doctor or the
 17 conditions of confinement are particularly
 18 problematic, the ACLU will use its good offices to
 19 intervene and try to facilitate a decent resolution.

20 My role is different. As monitor, I look
 21 at the system as a whole, the jail system, and try to
 22 make an assessment whether they're working or not and
 23 what could be done to improve those systems, so I
 24 will take each stage of the confinement process.
 25 Okay. I will look at intake. I will ask myself how

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1 does it happen, how well is it done, how well are
 2 inmates, health or medical health problems dealt
 3 with, are they segregated out early, where do they
 4 go, what kind of treatment do they get. Then I will
 5 look carefully at the classification system and try
 6 to decide whether the Los Angeles County jail system
 7 has a functioning and correct classification
 8 mechanism. It does not. We have found over time
 9 that there have been many, many classification
 10 errors; that there is a lot of confusion over what
 11 system of classification to use. It is complex, it
 12 is cumbersome, it is internally inconsistent, so I
 13 have worked to try to think of ways to make that
 14 classification system more rational.

15 Housing conditions within the Los Angeles
 16 County jail system are difficult and also have failed
 17 significantly from time to time. The current riots
 18 or disturbances we're experiencing is a direct result
 19 of that. The Los Angeles County jail system was
 20 built to house misdemeanants serving sentences of a
 21 year or less. The operating assumption behind the
 22 jails was that 70 percent of the inmate population
 23 would be misdemeanants serving short sentences. At
 24 this point, 80 percent or more of the inmates are
 25 either felons awaiting trial or sentenced prisoners

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1 post-conviction who are awaiting transfer to the
 2 state prison system. Indeed, in the Los Angeles
 3 County jails today there are some 3,000 state
 4 prisoners who are awaiting transfer and I would hope,
 5 I would suggest that the state help out in this
 6 particular situation by giving those people to the
 7 state prison and reducing that condition.

8 There's talk in the current circumstance of
 9 segregation by race or ethnicity. I think that may
 10 be necessary as a very temporary measure but what I
 11 would rather see happen myself is a classification
 12 and segregation by security risk. On the North Point
 13 System I would very much like to see the eights and
 14 nines not mixed with five and sixes and ones and twos
 15 and threes. Because the system was set up, as I say,
 16 for misdemeanants, there are lots of dormitories in
 17 the Los Angeles County jail system and very few hard-
 18 locked cells. That presents a great challenge to the
 19 sheriff, of course, in terms of getting people out of
 20 the dorms, into hard-locked cells to quell the
 21 disturbances.

22 My time is up but I would be delighted to
 23 answer any questions you have and to talk further
 24 about the role that a monitor can play in helping to
 25 assure safe and secure institutions.

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1 MS. SCHRIRO: Good morning, ladies and
 2 gentlemen. I'm Dora Schriro, I'm the Director for
 3 the Arizona Department of Corrections, and I have
 4 been a jailer for some 30 years or so. I think this
 5 is extraordinary work. I came to the field looking
 6 to make a difference with my colleagues and I'm ever
 7 so pleased to be able to talk to you this morning
 8 about some of the ways in which we make change
 9 happen.

10 For us, the conversation is really about
 11 how one creates public value in the public sector and
 12 how do you use that, particularly in the environment
 13 as difficult as corrections can be.

14 I would like to talk to you briefly about
 15 the method that we developed first in Missouri where
 16 I served and is substantially improved here in
 17 Arizona and continues to get better with time, but
 18 then to spend the bulk of my brief comments on the
 19 kind of characteristics of an organization that is
 20 really positioned to make and sustain that positive
 21 change happen, that's some of what we need to be
 22 doing for ourselves, and looking to the academic
 23 community and others to help us in that regard.

24 For us, our approach to problem solving is
 25 what we call a parallel universe. We recognize that

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1 virtually everyone who comes to prison is going to be
2 discharged at some point in time, so no matter how
3 tough we are with sentencing, sooner or later
4 everybody comes home and we look at the data, it is
5 really quite surprising because the average length of
6 stay is not nearly as long as we would expect.

7 When we also looked at our population we
8 discovered over a third, really, is a jail
9 population, they're with us for less than six months,
10 so we needed to develop a strategy that would fit a
11 traditional term sentenced prisoner, as well as those
12 who are going to be with us for ever so brief of
13 time, just enough to have their lives disrupted and
14 then have to go back to the community.

15 Parallel universe is our approach to
16 problem solving. It is a simple, integrated and
17 comprehensive approach which recognizes that
18 everyone, virtually everyone is coming home, and so
19 we attempt to use every moment of the time of the
20 sentence in ways that are much like the real world to
21 which the offender population is going to return
22 because for many of them, when they came to us they
23 failed at many things. They not only broke the law,
24 but they hadn't completed high school, they were
25 involved in drugs and alcohol, they had violence in

1 their family life or were unemployed, so it is a lot
2 of stuff to fix in a short period of time.

3 To give them skills alone is great but,
4 quite frankly, it is not really enough. You have to
5 teach them how to use those skills so as to apply
6 them to the underlying values and mores associated
7 with literacy and employability, and so we have been
8 on a search for ways to revisit all of our core
9 assumptions, rearrange our operational practices and
10 our programming strategies to accomplish those
11 important roles.

12 The paper talks in greater detail about
13 parallel universe and I would be really happy to
14 answer questions, but I want to move on fast to how
15 you create environments in an organization to sustain
16 that kind of sweeping, indeed, and comprehensive
17 change. In my experience, there are five kind of
18 characteristics and you need to have all of them to
19 some extent so as to support those kinds of important
20 reforms.

21 First and foremost there must be
22 leadership, and leadership is not only the
23 traditional leadership in the form of a director or
24 senior staff, one of my colleagues is here with me
25 today, but creating a community of leaders, not only

1 within the organization but with your partners who
2 have a stake in your success, so that would be family
3 and friends of the offender population, the crime
4 victim's community in particular, and others in the
5 public sector.

6 Second, that staff must really be empowered
7 to make change happen. We seek and we cultivate a
8 staff who has very high expectations for themselves
9 and very high expectations for the offender
10 population of which they work, very high expectations
11 that the work that they do will have long-term,
12 positive impact on the community.

13 Third is that prisons must be a safe place,
14 and when I talk about safe place I'm referring not
15 only to the physical safety, but psychology safety.
16 Staff and inmates alike are at risk of great
17 criticism, and in a paramilitary organization anybody
18 can pull up anybody else and so it is kind of a
19 precarious place to be. And so creating an
20 environment in which practice does make purpose and
21 where the attempts to get better are rewarded and
22 recognized, as well as those deliberate missteps are
23 addressed as well.

24 Fourth, that there must be press, and I
25 don't mean the kind in the back of the room, but that

1 there is this singular focus on what I call the
2 capital "J", job, getting the big job done. It is
3 running your prison safely today, but far more
4 reaching is preparing the population to go back to
5 the community so that there is no further negative
6 impact of any of those folks as they return.

7 The fifth of the factors is there must be
8 wide use of scarce resources. We come to learn
9 quickly in our business that we have to get really
10 good at making stone soup. There's never going to be
11 enough money to do the things that need to be done,
12 and yet we can do so much more wisely with what we
13 have, and some of the resource development that I
14 consider in my leadership capacity and that I
15 consider with my community leaders is how do we use
16 our time well. Well, from the first day to last day,
17 every moment is focused on this tedious preparation.
18 The second is the money is used wisely and so based
19 on evidence-based practices, zero in not on the
20 lowest people who literature says are going to screw
21 up if you mess with them, let's focus on the mid- and
22 higher-ranked folks in terms of needs and risk and
23 level our resources there with enough time to get it
24 done. But staff is an extraordinary resource and
25 what they really want to do is to be a significant, a

1 group of significant contributors. All of our scarce
2 resources, even though they're in short supply, is
3 public support and public respect and the way in
4 which we cultivate that important support is to have
5 measurable outcomes, to publish those measurable
6 outcomes on a routine basis and share them with
7 others, whether it is good or bad, it is still our
8 responsibility, and through this we achieve
9 transparency and accountability with the public that
10 we serve. I'm all done.

11 MR. BRIGHT: Great views on the part of
12 all three people.

13 I would assume, though, that everybody
14 tries to do the most they can with the very limited
15 resources they have but when you talk about sweeping
16 and comprehensive change, we need resources to do
17 that and I will come back to the question for Mr.
18 Harshbarger.

19 Everybody agrees reentry is a critical
20 issue today or one of the critical issues today.
21 Yesterday we heard that right here in California a
22 disproportional number of people are coming from very
23 hard up communities that contributes to them coming
24 in and then going back to those same communities when
25 they get out, and I guess the question is everybody

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1 will talk about those things but how do you actually
2 make it come about, particularly with regard to the
3 resources that are needed.

4 MR. HARSHBARGER: I'm not sure. I wish
5 I had the answer.

6 I think one of the greatest challenges here
7 is how we talk about this and how we discuss it
8 generally because, for example, in Massachusetts,
9 which is a blue state, the reality is that there is
10 no constituency now for any of the reforms that we
11 have proposed. We have a Republican governor. The
12 governor is the governor. So the governor is there
13 and it is a democratic legislature. These entities
14 are not talking about these issues, and yet the
15 question I go to with my common cause hat is this.
16 Where are the fiscal conservatives on this. I mean,
17 here is half a billion dollars that we cannot measure
18 and the outcome is simply not producing what it
19 should. Who ought to be caring about how we deal
20 with this efficiently. Where are all the district
21 attorneys, where are the mayors, where are the
22 people -- they're coming back to communities and
23 causing many of these community safety problems.

24 Now we talk about reentry but what I found
25 is there's no money allocated for this purpose,

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1 there's very little to be gained, and sometimes maybe
2 our problem is how do you measure prevention, how do
3 you measure what we prevented from happening as
4 opposed to the results see when there has been a
5 crises, there's been a tragedy in this area, but I
6 think that's why there is the need for a broader
7 discussion.

8 But the fact is, there is no, right now in
9 my view of this last couple years has been, and
10 probably in my career has been within corrections no
11 news is good news is the best way it is done, no news
12 is good news and that's how you are measured and if
13 we don't hear you, you are doing fine, and all of you
14 know what occurs with that situation. As opposed to
15 what was just recommended and what I heard from many
16 of you which is being more public, talk about why
17 this is important issue, why it matters, how we deal
18 with mental health, health care in prison, because
19 people are coming out.

20 One other fact that I just want to mention
21 is this. In Massachusetts, a corrections
22 commissioner, for example, we discovered that 85
23 percent of the inmates in the prison, 85 percent of
24 the inmates are restricted by either statute or
25 regulation to be stepped down from levels of security

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1 because of rules relating to how you deal with
2 homicides, how you deal with dangerous offenders, how
3 you deal with sexual offenders. 85 percent are
4 actually restricted in movement. And the second
5 piece is 50 percent because of minimum mandatory
6 sentencing which many of us as prosecutors supported
7 and believed in and felt were important, now wrap up
8 and go right to the street with no supervision
9 whatsoever. I guess my answer is I don't know the
10 answer how we get there except there has got to be a
11 public discussion and debate about this in turn. But
12 it is a public safety issue, it is a fiscal
13 accountability issue, it is a fiscal responsibility
14 question, not whether this is, you know, being soft
15 on crime or this is good for the inmates only. I
16 mean, I think we failed to talk about the end result
17 here and most of us talk to each other rather than
18 trying to get out of the debate with the public in
19 general.

20 MS. SCHIRO: We have the right people
21 and they're hard working but we found a lot of waste
22 and we continue to find places where we can make
23 changes for the better. Just a couple examples.

24 There were hundreds of state inmates backed
25 up in county jails throughout the State of Arizona

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1 when I came. It wasn't good for them, it wasn't good
2 for us. We took a hard look at our intake process
3 and streamlined it and we cleared up all of our
4 backlog and now we take every state-ready inmate the
5 day the sheriff is ready to transport them to us,
6 whereas we used to spend several million dollars a
7 day paying bed days to the counties. That's now
8 money that I have recouped that I can re-deploy to
9 some of my other initiatives because it is not being
10 spent in that way.

11 We made the commitment that our goal would
12 be in the first five years that we came together as a
13 team that every programmable inmate would be employed
14 full time. Employment means work and treatment,
15 activity during the day plus meaningful, evidence-
16 based leisure activities and meaningful family
17 development activities. We found that while we had
18 many classrooms and vocational training programs that
19 they were half full, and sometimes a big class was
20 assigned to small rooms so we put our restraints on
21 ourselves. There were all sorts of little places of
22 waste but in the aggregate we were able to rearrange
23 those basic program resources and without any other
24 appropriation create sufficient capacity to clear up
25 the backlog of the hundreds of people waiting to get

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1 into the adult basic education. We have a 300
2 percent increase in the GED graduates last year with
3 over 3,000 having graduated. Everywhere we look we
4 find places to make improvements and that doesn't
5 mean at some point you don't need more, but it is not
6 in as many places as you would expect and where they
7 are, we can speak with so much better data about the
8 urgency and the necessity for that support and in our
9 system, quite frankly, it is really just limited to
10 three, really three important areas.

11 We need a significant pay increase for our
12 staff. We are losing them like crazy and we need
13 them. And, secondly, that we need to expand our air
14 treatment capacity, but it doesn't cost a lot of
15 money to do that. There are any number of really
16 effective interventions out there that are not
17 expensive to adopt. And that third, we need health
18 care.

19 MR. BRIGHT: You are aware many systems
20 don't have what you have, don't have classes, don't
21 have GED programs, all of that.

22 MS. SCHRIRO: I don't know, I guess my
23 very best resource is I have a terrific governor who
24 when she appointed me directly to put the corrections
25 back in the trenches, that's where it started.

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1 MR. BOBB: I would like to briefly
2 address the reentry problem again from the
3 perspective of Los Angeles County.

4 I told you there are about 500 inmates
5 coming in and going out of the jail on a daily basis.
6 There is no real discharge planning at this point for
7 those inmates coming out of the system, albeit the
8 sheriff's department does have a small unit that
9 attempts to do some of that. But what happens in Los
10 Angeles County is that they're released, they're not
11 taken back to the communities from which they came,
12 they wander over to skid row or are dumped in skid
13 row. There are instances sheriff's departments and
14 other departments in the county are just taking
15 inmates down to skid row and dumping them, hospitals
16 are dumping people on skid row, and what we're doing,
17 and this is switching hats, I'm switching now to my
18 position as the president of the Police Assessment
19 Resource Center, PARC, in conjunction with our parent
20 organization, Vera, is proposing and is generating
21 support for an administration project that will
22 provide that kind of resource, discharge planning for
23 the jail itself, providing them with services before
24 they get out of jail, examine their benefits to see
25 whether they qualify for Medicaid and other benefits

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1 when they get out, figuring out ways to transport
2 them to their communities of origin, locating
3 services in those communities of origin to which they
4 can go. I think, and I hope, and we need some help
5 from the state level on this too, is that this kind
6 of focused discharge planning will ultimately impact
7 significantly on the recidivism rate.

8 MR. SCHWARZ: I think we're talking
9 about what's really the most important issue for this
10 commission which is how do we make our
11 recommendations that are surely going to be good,
12 ones that are going to affect the public debate.

13 By the way, before I hit a followup
14 question I want to recognize Chris Stone who was the
15 director of Vera and the idea for this commission.

16 But obviously this is a core issue and I've
17 got an observation that's sort of a question. One
18 observation is I think one of our contributions will
19 be to come forward with the best practices like your
20 idea of the virtual, the virtual inmate or the
21 virtual environment, that are working in one place
22 and, therefore, could be adopted in others and work
23 well there also. And also as Scott said, new allies,
24 fiscally conservatives, or as in yesterday's story
25 about faith-based people coming out against global

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1 warming, you know, that's a whole constituency that
2 ought to be on our side on some of these issues here.

3 But ultimately we get down to the question
4 of is our society going to again be focused on
5 rehabilitation and can we make the case, is there
6 proof, and I would love to hear from any of you. Is
7 there proof that actually working on rehabilitation
8 with people who are incarcerated does make a
9 difference in the recidivism rate. I mean, it
10 should, but I think we've got to prove that. And
11 what other ideas do you have to be able to convince
12 the public that overcrowding is part of the reason
13 for lack of rehabilitation and lack of rehabilitation
14 is part of the reason for recidivism and, therefore,
15 for hurting public safety, so I'm trying to get all
16 of you to continue to comment on this most important
17 issue.

18 MR. HARSHBARGER: I have dealt with the
19 external reality of this for 25 years. I have never
20 seen a time when, and perhaps in the mid-seventies at
21 best, when we seriously talked about rehabilitation
22 being a meaningful goal even for our juvenile system,
23 let alone for our adult system. We had models that
24 showed the work. We had the Massachusetts Experiment
25 in juvenile corrections which to this day remains a

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1 successful example of preventing and limiting
2 juvenile delinquency and juvenile crime that is still
3 not adopted in most states. So the challenge I think
4 from my perspective is not how do you improve the way
5 you are doing it but if we look at any other area we
6 would say the present thing we're doing is a
7 disaster, it is simply not working. That is, the
8 burden ought to be on those who say we need to be
9 tougher, and tougher does not include corrections,
10 rehabilitation, and all of things we're talking
11 about. Maybe it is a language change that we ought
12 to adopt.

13 But today you do not get a counterpoint.
14 If you are a public official, you are running for
15 office, you are a media person, there's nobody who
16 stands up repeatedly and says you are wrong about
17 your position that we ought to be tougher, that we
18 ought to doing something about rehabilitation,
19 programs in prison, reentry, supervision in the
20 community as being soft. And I think, it is very
21 basic, in the time that I have been involved I have
22 been fortunate to have a constituency that has
23 supported me in standing for many of these positions
24 that I consider to be top priority.

25 One example. I look at the police

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1 department over the last 20 years and they made
2 dramatic changes in the culture, in terms of talking
3 about the best way to be tough on crime is
4 prevention. It is the cheapest, the best form of
5 public protection. Prevention programs,
6 partnerships. Nobody accuses Bill Bratton or Paul
7 Evers or Cathy O'Toole of being soft on crime because
8 they have adopted an entire new approach to this area
9 and in terms of people that they promote and hire.

10 But in this area the thing I find to be the
11 strongest public point is you are seeing what can be
12 done, you are talking about best practices. It is
13 not a mirage, there are people in every jurisdiction
14 who have done this very, very well, and the question
15 is, why is there not a way to convince others. If
16 you actually had every governor who took seriously
17 the job of corrections, who said this is a fiscal
18 issue, it is a public safety issue, it is a question
19 of community safety, not anything else, within that,
20 though, people like the commissioner will tell you it
21 is about safety, it is about humanity, it is about
22 fairness, it is about equal justice, it is all those
23 pieces that are a part of it, why haven't we been
24 able? I don't know the answer, but you are
25 challenging how do you make it possible to talk and

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1 insist we talk about this. Not just make it
2 possible, but how do we start to insist that this is
3 how we got to be talking about an expenditure, a
4 budget that dominates most local and state budgets,
5 continues to rise, is the second largest provider of
6 mental health services right now, is going to be the
7 leading provider of care for older Americans, but yet
8 why is corrections being asked to deliver mental
9 health services when we have departments of mental
10 health. Why not through a major health care
11 provider, why aren't we figuring out these
12 partnerships. So the thing that frustrates me is
13 that some of us who believe that this is the way have
14 got to be prepared to, as John Gardener said, to come
15 out of the boardrooms and get into the fray and to
16 say we challenge you, we're going to challenge you to
17 talk about this in a much more positive and effective
18 ways.

19 JUDGE SESSIONS: Mr. Harshbarger, you
20 mentioned in your final report of the advisory group
21 in October of last year, you said there was need to
22 swiftly pass legislation to improve reentry and
23 expanded supervised release amendments. That was in
24 bright big letters. Did you produce with that report
25 the proposal for legislation and what the legislation

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1 would be, did you write it? What did you do with it?
2 MR. HARSHBARGER: We did. We planned
3 in the next phase to focus on that and if others
4 didn't pick it up, we felt one of the roles of the
5 independent advisory council would be to propose
6 these specific legislations.

7 JUDGE SESSIONS: You know they're not
8 going to pick it up, that's underlined, that's a
9 punch in the nose. You are a former attorney
10 general. Could your group possibly produce proposed
11 legislation that might be acceptable for this group
12 to say as an appendix this is legislation proposed in
13 Massachusetts, they're having a practical problem,
14 other states have practical problems. Director
15 Schriro has talked about how they managed better to
16 do with what they've got. I don't know if you have
17 proposed legislation, but that is where it is if
18 we're going to do it. It is something the judge can
19 deal with if there's legislation, it is something
20 that litigants can deal with if there's legislation.
21 If you could favor us with some effort in that
22 regard, it would be helpful.

23 MR. HARSHBARGER: I would be glad to
24 but to some extent, I'm not trying to be apologetic,
25 I hoped we established credibility.

1 The great thing about an independent group,
2 I would argue, was not, I think we supported it to
3 some extent, probably, not by paying Kathy Dennehy as
4 Commissioner of Corrections but we gave her a huge
5 buffer benefit because we were there. But the next
6 phase, we were going to become, I felt, an annoyance
7 to others in the system who were not doing their job.
8 And, unfortunately, in the state, the nature of
9 politics, the press wanted to make a contact with the
10 governor as opposed to the question why was no
11 elected official, why was the legislature not
12 addressing this very issue as well. So I think my
13 challenge on my side is to try to figure out how do
14 we mobilize from an advocacy community an effective
15 response if we don't have the official position to do
16 it. Your point is well taken. It is very
17 frustrating that these things that seem to make good
18 common sense and everybody seems to agree upon simply
19 don't get proposed or are --

20 JUDGE SESSIONS: Well, there are people
21 who oppose.

22 MR. HARSHBARGER: There is, with all
23 due respect, a corrections industry which we ought to
24 accept that likes the things the way they are.
25 There's a lot of money in it, there's a lot of vested

1 interest in it. Change is threatening, change is
2 scary. If you happen to be the first one changing
3 you can never tell, if you are the elected official,
4 if I go through this process of change are they going
5 to stand with me or are people going to oppose me.
6 Who is going to stand with me if I'm willing to take
7 on this challenge. I know they will stand with me if
8 I say I'm tough on crime, they will be with me all
9 the way, even if it doesn't work. But if I take on
10 the challenge of change is the governor going to be
11 with me if there are a couple of riots? Is A.T.
12 Wall --

13 JUDGE SESSIONS: The question is
14 whether you might provide information, proposed
15 legislation that might deal with the release and what
16 happens in the next reentry problem.

17 MR. HARSHBARGER: I should have
18 answered your question more direct, I apologize.

19 MS. SCHRIRO: Just in response to Mr.
20 Schwarz's question, and it is nice to see you again.
21 Years ago I was in New York City Corrections.

22 First, I think in any field there's a
23 temptation to exceed one's reach but in our field it
24 is important that we know those things that we can or
25 should control and those things that need to be in

1 partnerships with others.

2 I see some trends with governors, one
3 perhaps worth cultivating, and that is where they are
4 adopting an interagency or an inter-cabinet approach
5 to problem solving so they don't look to me to say
6 fix this and then look to mental health to fix that,
7 kind of as you were suggesting, so a lot of that
8 collaboration can occur at the state or the county or
9 the city level based on the inclination of those
10 elected officials, but increasingly I think what's
11 happening, I think it is important for us to remember
12 that crime doesn't start in the prison, it starts in
13 the community, and so those things that corrections
14 should address versus those things that should be
15 considered by others as the primary initiators is a
16 worthwhile endeavors.

17 The one piece that I hear missing is the
18 offender's involvement in reform because, for
19 whatever the reasons, they were the one who broke the
20 law or pled guilty and I think one of the
21 cornerstones of the reforms that we undertake and one
22 of the reasons why there is wide acceptance for it is
23 because we talk about what is our accountability and
24 what is our responsibility as corrections
25 professionals, but what is the offender accountable

1 and responsible for throughout the course of their
2 incarceration and as they prepare for discharge and
3 reentry as well. And of all the partnerships, of all
4 the sharing of responsibilities, for me, I think
5 that's one of the most important, and so focusing on
6 that population as well is critical.

7 One of the fundamental weaknesses to both
8 the retributive and the rehabilitative approaches is
9 that it is us doing something to them, whether it is
10 us doing treatment to them or us doing punishment to
11 them, and the real question is what are they doing
12 for themselves and their families and their
13 communities and then how to support them in that
14 endeavor. It may be wordsmithing at the end of the
15 day, but I think it is more than that.

16 Last, I think there is a terrific amount of
17 evidence-based research out there. Every
18 organization in our correctional system has the most
19 modest of research units but those one or two people
20 prove some really phenomenal stuff and I think if you
21 were to solicit recidivism studies from virtually any
22 state correctional system, they will have something
23 to share with you. And there are any number of
24 university folks who are also doing recidivism
25 studies and other studies about what works and why it

1 works, and so perhaps when you are at the end, that's
2 a next chapter or some other addendum very worthwhile
3 pursuing and adding to your valuable work.

4 MR. BOBB: I would like to respond a
5 bit more to Fritz's question.

6 I think what one of the things we need to
7 look at, and I'm heavily influenced in my views by
8 Mike Jacobson's book Downsizing Prisons, is figuring
9 out how to reduce prison population. I think I would
10 look at three strikes laws across the country and see
11 whether they are putting in jail people that should
12 not be there. I would look at the power of diversion
13 programs, I would look at sentencing to see whether
14 we are in an era of over-sentencing and therefore
15 putting too many people into our prison system. What
16 are we doing with the physically and mentally ill;
17 should they be there. We need legislation to, in
18 essence, decriminalize poverty. We need to look at
19 problems not so much as criminal law problems but
20 social problems, get legislation to do that. If we
21 can downsize the prison system, get a prison
22 population under control and in hand where we don't
23 have 167,000 inmates incarcerated in California, then
24 I think that generates money, it generates savings in
25 terms of prison construction, in terms of daily costs

1 for inmates and the like, then that money and those
2 savings should be channeled into reentry efforts and
3 programs, both during the course of the inmate's stay
4 and then to make sure that there is adequate planning
5 to discharge them to maximize the opportunities that
6 this person has some semblance of a network, some
7 ability to, if he or she chooses, help themselves get
8 out and not come back.

9 MS. ROBINSON: Scott Harshbarger, I
10 think, has really framed some very important themes
11 for us with this whole issue of developing
12 constituencies and I know, Scott, you and I have had
13 this conversation over a decade or more about how to
14 build constituencies broader than the criminal
15 justice system itself for bringing change and how the
16 public, the country deals with crime. And harking
17 back to Fritz Schwarz's question, I agree, as the
18 commissioner raised, that there really is a great
19 body of evidence-based research available on the
20 question of whether a rehabilitation program really
21 can be successful in helping prisoners change their
22 behavior and become the law-abiding citizen back in
23 the community and change their behavior in terms of
24 using drugs and alcohol. And one of the things that
25 really strikes me is that there is such a wonderful

1 growing body of professionals in the corrections
2 field, and you see that reflected in the NIC's work,
3 et cetera, around the country who are doing the kinds
4 of things, you can see what they're doing in Arizona,
5 and maybe one of the things that the commission
6 itself can do is try to think about how do you bring
7 together the kind of other allies that Scott is
8 talking about to try to bring some juncture and
9 gather together people who can give support to that.
10 Isn't that really the key? And I would like to have
11 some brainstorming further on the part of the panel
12 about how you bring to light and spotlight the kind
13 of experimentation that is going ahead in states like
14 Arizona, to show that kind of experimentation, it is
15 terrific to hear this kind of work. And, Dora, I
16 have to say as a comment, I love the kind of work you
17 are doing in having prisoners renew their own
18 prescriptions and use alarm clocks. I did think,
19 gee, we can use that on our own teenagers, have a
20 side industry going here.

21 But, seriously, the kind of successful or
22 we think successful models that are underway to give
23 more attention to this kind of thing, I think
24 legislators, Scott, would be fascinated to learn
25 about that in other parts of the country and I would

1 love to get some of your reactions on that. Couldn't
2 people be excited about this kind of thing?

3 MR. HARSHBARGER: I will say that,
4 Laurie, in the last two years, and I have mentioned
5 this to several of you, I repeat, as somebody who is
6 in the justice system, cared about corrections even
7 in these other roles, I really think I learned so
8 much in the last two years and I, therefore, I look
9 at the public education gap. What I saw worked, the
10 things that you seeing now; how good, how established
11 the best practices are, how good some of the people
12 administering these systems are, how they find ways
13 to balance these issues that we deemed as impossible
14 to balance in secure settings and how they go about
15 doing this, and it strikes me as well this is a
16 worthy political discussion because it is one of
17 those times if you get people to understand this, to
18 see this, you will have success in building it. But
19 the problem, I think, is, and I know to Merrick's
20 point, with all due respect, I came out of the
21 sixties myself and believe all these things, the
22 social safety net is gone. I mean, we let government
23 walk away from so many responsibilities and this is a
24 part of the issue. We have let government advocate
25 on so many fronts and what's happened is the police

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1 and corrections are willing to take these jobs on. I
2 mean, we are mental health providers in corrections
3 because nobody else is doing it. We are having
4 problems with housing in the community on reentry
5 because nobody is providing any kind of housing
6 programs. It is that social safety net in every
7 state that has sort of been eroded away is why this
8 problem comes up.

9 If I were to talk about rebuilding
10 alliances, we need to build an effective coalition
11 because the interest of advocates, the interest of
12 the communities, remembering that the vast majority
13 of victims of crime are also poor and powerless and
14 people of color as well, we can't go ahead and say
15 gee, it is too bad. That's why this is a civil
16 rights issue, that's why there's a coalition to build
17 and support, but the question is going to be how are
18 we, Leslie Walker, Mike Ashe and I, going to support
19 those legislators or those political people who are
20 willing to take this on and will we give them the
21 kind of support they need.

22 I happen to think that the argument made on
23 the basis of public safety, fiscal accountability, in
24 the same way we did community policing, the same we
25 did those other things, it won't happen overnight.

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1 But, remember, we're still being governed in crime in
2 this area by Willie Horton.

3 Now some of us ought to be able to figure
4 out other ways to counter that because we did in the
5 other work, we saw simple solutions, simplistic
6 solutions don't work. People will support complex
7 solutions of the problems if they believe you are
8 really trying to solve them, and I don't have any
9 answer for it, but I think to come out of this
10 without building a coalition from what you see and
11 try to find players that haven't been a part of this
12 would be a serious mistake.

13 MS. ROBINSON: It seems to me some of
14 the experimentation going on, some of these new
15 approaches cut through some of the ideology, that's
16 what's exciting about it.

17 MS. SCHIRO: I think first that in
18 some ways I'm going to encourage us to strive for
19 more than reducing recidivism. That's always been
20 the traditional measure of success in corrections,
21 what separates us from other social service
22 organizations and how they may succeed. We set our
23 standards really high and what we have asked of
24 ourselves, the making a commitment to safety now and
25 later, is that we look to the population to develop

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1 the skills not only to be civil, which is to be law
2 abiding, but to be productive, and that's the part of
3 the conversation that grabs the public, that's what's
4 in it for them. It is not just whether or not they
5 may be affected negatively if this individual commits
6 a new crime, they can calculate the probability of
7 that happening, but that if all we do is succeed in
8 releasing the population that never got into trouble
9 anymore, we would still have a lot of things that
10 needed to be fixed because we have this burgeoning
11 population who have stopped doing bad things but that
12 doesn't mean they necessarily acquire the skills to
13 start doing good things. And what's in it for us is
14 if they aren't out there working and taking care of
15 themselves and their families, then what we have done
16 is perpetuate a welfare system that's out on the
17 street and we're still paying for it, so having
18 conversations about the urgency as well as the
19 necessity of the kinds of reforms and how it benefits
20 us not just in terms of our personal safety but our
21 fiscal solvency which is a little bit different than
22 the fiscal argument about running efficient and
23 effective prison systems I think is worthwhile.

24 The other thing that I would encourage is
25 if we could take this conversation and keep it real

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1 and make it normal. If on a routine basis Time and
 2 Newsweek and the New York Times who episodically will
 3 feature reforming corrections did more in this area,
 4 covered it with the depth that a weekly could do, if
 5 there was more conversation on some of the public
 6 networks, not that anyone watches them but they have
 7 more time to deal with these things, these are not
 8 your three-minute or three-second news clips, it is
 9 not nearly enough to inform. And I guess if I could
 10 really wiggle my nose, it would be a wonderful for
 11 real T.V. program and it would be about all the
 12 people who come together in a correctional
 13 environment and how they struggle to be good people
 14 and how they struggle to be better people, whatever
 15 uniform they happen to be wearing that day.

16 MR. BRIGHT: We have many people that
 17 want to ask questions and three minutes in which to
 18 answer them so keep that in mind.

19 MR. KRONE: About reentry on public
 20 safety, we talked about quite a few things but we
 21 haven't addressed the physical health aspects of
 22 prisons and specifically the fact that our prisons
 23 are breeding grounds for a lot of contagious
 24 diseases. I would like to know what recommendations,
 25 policies and procedures that you would recommend as

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1 to how we identify, treat, prevent this spread of
 2 contagious diseases, not only in our prison to other
 3 inmates, but also when they're released to the
 4 public; HIV, AIDS and hepatitis.

5 MS. SCHRIRO: It starts with a good
 6 intake process where there is a comprehensive battery
 7 of physical examinations. There has to be increased
 8 effort to provide health and education initiatives
 9 and get the offender population more actively,
 10 directly involved in their own health and healthy
 11 habits. Our focus on leisure, development of leisure
 12 time, as well as work skills, is really critical to
 13 that. In fact, it is good sense for us as a system
 14 to encourage that population to be physically active,
 15 it is important to eat healthy, it is important to
 16 have your routine checkups. From our perspective we
 17 also need to rethink how we deliver health care. I
 18 think there is positive value for the co-pay system
 19 that many systems are adopting, but there's some
 20 unanticipated consequences associated with that as
 21 well. If an inmate is scarce on resources, are
 22 straining their moneys and so waiting until the
 23 situation is such that it is far more difficult to
 24 treat, then those are perhaps practices that we need
 25 to reconsider. So like everything else I've said, it

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1 is really a partnership, but it is us enabling and
 2 empowering them with better education and
 3 opportunities to live that healthy lifestyle that's
 4 necessary to live on the outside.

5 MR. HARSHBARGER: Let me just say from
 6 the outside, the two pieces of our report, that's not
 7 the bible, but it is not bad.

8 The two task force reports we did on female
 9 offenders with the second, this last round which is
 10 the shocking problem in Massachusetts because there's
 11 such overcrowding, but the -- and the one on mental
 12 health. And what was most interesting was the
 13 correctional people, the first ones to identify a
 14 whole range of issues with, for example, 65, 60
 15 percent of the female offenders who present either
 16 for jailhouse health, serious mental health or other
 17 kinds of issues, they didn't get it at prison, they
 18 came in with it, but then the issue is where are the
 19 facilities that deal with that, the health care and
 20 mental health issues in these secure custodial
 21 institutions with limited care. I think it was
 22 actually, it was to me, a revelation because it was
 23 not an area that most of us had thought about even
 24 being as serious of problem it was in terms of simply
 25 having a safe and secure and healthy institution.

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1 So what I was also impressed with again, I
 2 will repeat back from what I was hearing, there are
 3 many institutions, I was very impressed with them,
 4 who know how to do this, who do it very well through
 5 intake, who figure out systems to deal with this, but
 6 one of the cost factors in Massachusetts is that
 7 health care alone right now is 15 percent of the
 8 budget, programs are five percent. Health care is 15
 9 percent, physical, the security just of the building
 10 alone is 50 percent, but then the largest issue is
 11 then the personnel cost is 80 percent and that's tied
 12 up very much in union contracts.

13 MR. KRONE: I was specifically
 14 concerned about the contagious diseases that come
 15 back to our communities, to our children and loved
 16 ones.

17 SENATOR ROMERO: Thank you for your
 18 presentation.

19 I'm looking especially at the development
 20 of coalitions. In California, to some extent, we're
 21 talking about corrections and rehabilitation to a
 22 large extent because we had the Terminator elected
 23 and not every state has a movie star running for
 24 governor of the state, thank God, but in California
 25 nobody can question him as being soft on crime. As

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1 an elected official, it is real. I'll say I've had
2 everything thrown at me; that I love rapists, sexual
3 offenders, you name it, I am soft on crime.

4 The issue that I have found to work is just
5 to accept it as a given, move forward, because to me
6 I think that regardless of the policies we embrace,
7 the most fundamental, important policy in any state
8 is the budget, it reflects the priorities, and when
9 you simply open up the books and you start looking at
10 how the money is spent, I can get some of the most
11 right-wing Republican dear colleagues to look at
12 those and side with one of the most liberal Democrats
13 in California saying there's something wrong here,
14 coupled with commissions like the Little Hoover
15 Commission who have labeled our parole system as a
16 billion-dollar failure. So I think it is something
17 we have to do because you have to -- I don't want to
18 say go under cover because I think backbone is
19 essential, but show me the money, show me the
20 taxpayer accountability, and to a large extent I
21 think some of the things we have heard about
22 California is saying California is about law and
23 order but it is not about being tough on crime, it is
24 about being smart on crime, and I think it is
25 something we really have to figure out how we work

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1 with governors and state legislatures throughout the
2 nation who get every insult hurled at them and to
3 figure out how to make it work.

4 Additionally, you talked about the media.
5 One thing that I think helps to explore that is media
6 access. To a large extent our prisons have been
7 closed. We hear about those places, we don't see
8 them, we don't open them up. We have tried getting
9 California, the sunshine state, to open it up, allow
10 media access. If we have nothing to hide, how do we
11 begin to provide access, and I think it is an issue
12 this commission needs to look at. Media access I
13 think is the big part of it. I think you are
14 absolutely right, we still live under the scepter of
15 Willie Horton and whether we see it in face of
16 Hurricane Katrina, to looking at corrections in
17 California, we cannot go to San Quentin, we cannot go
18 to Death Row in California and not see 40 percent of
19 the condemned African-American in a state where less
20 than seven percent are African-American. The face of
21 race, the question of race underlines to me criminal
22 justice corruption and, to a large extent, you cannot
23 talk about looking at conditions of confinement,
24 successful reentry, the whole process of how they get
25 into prison, how they're treated, race relations and

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1 how they get out without examining to a large extent
2 the fundamentals of race in this nation, so I think
3 there's much that we can do. I look forward to
4 working with you. Those are some very real
5 challenges. To a large extent it begins with open up
6 the book, show me. We do it in every other
7 institution. We still seem to be very reticent and
8 closed in dealing with this which makes it harder for
9 elected officials then to take on an issue that we
10 send out, nobody should be looking at.

11 DR. GILLIGAN: I wanted to address some
12 of the issues that came up in this discussion and I
13 would like to direct this primarily to Mr.
14 Harshbarger, theoretically to all three of the panel
15 members.

16 We have been talking about what's missing,
17 what we don't have enough of. We don't have enough
18 resources, not enough money. Second, not enough
19 political support. Thirdly, not enough knowledge
20 ourselves as to how to do the work. I want to
21 address all these things and get your thoughts as to
22 whether we might also be able to come up with some
23 solutions to them.

24 Just to give a few examples, the Rand
25 Corporation here in California, research I have done,

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1 research many other groups of individuals have done
2 have shown that there are rehabilitation programs and
3 violence prevention programs that do cost money put
4 into place, but when they are put into place save the
5 taxpayers money. A great number of us have shown
6 that the taxpayers can save \$4, \$5, \$7 for every one
7 dollar spent on a wide variety of violence prevention
8 programs from the intensive rehabilitation programs
9 in prisons, to substance abuse treatment programs, to
10 programs for families in high-crime neighborhoods,
11 et cetera. So the question is not whether we can
12 afford these programs, the question is whether we can
13 afford not to have them because they reduce
14 recidivism, they reduce initial crime so much. On
15 the other hand, the public hasn't been educated about
16 this, so we need to think how can we educate the
17 public better and, finally, how can we educate
18 ourselves better.

19 One anecdote. When the sheriff of
20 San Francisco, Mike Hennessey, a few years ago
21 started an intensive program to replace retributive
22 justice with restorative justice what he did was to
23 get a grant to do research and evaluation of this
24 program which I conducted for him. What we found, we
25 were able to demonstrate an 83 percent reduction of

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1 violent recidivism among inmates that had access to
2 this program compared to a control group that didn't
3 have access to it, that they were saving the
4 taxpayers four to \$5 for every dollar spent on them,
5 but how to publicize this, how to get it across.

6 I would start with Mr. Harshbarger. The
7 advisory council members which includes many very
8 appropriate and remarkably capable people on it did
9 not include the people who actually educate the
10 people; the editor of the Boston Globe, the
11 presidents of the major universities, the leaders of
12 the major religious organizations, the catholic
13 cardinals, bishops, et cetera, et cetera. Is there
14 any reason we shouldn't include throughout the
15 country on advisory councils to departments of
16 corrections the major educators of the public so we
17 can get some public support and political support so
18 that the public can learn, in fact, that what we're
19 doing now is not only improving their safety, it is
20 actually also costing them more money compared to
21 what we could do if we had programs that work?

22 And finally to put an emphasis on the idea
23 that there's no point in doing any kind of innovative
24 programming in the correctional system unless it is
25 always accompanied by research, by an evaluation that

1 will show whether or not this is working without
2 which its usefulness and effectiveness, disappears
3 the next time a new governor is elected. I just
4 wanted your thoughts about these ideas.

5 MR. HARSHBARGER: They're terrific
6 observations and comments and since I suspect we have
7 a time limitation here, no one wants us to take the
8 rest of the day.

9 Let me just say three things about that.
10 One is there is absolutely no reason why those things
11 should not have been done. An example. Given
12 limited resources, the first major research that was
13 done about the recidivism issue is just beginning to
14 be done now in Massachusetts.

15 Secondly, I am still hopeful and optimistic
16 about our democracy but I'm also not convinced that
17 evidence alone carries the day. I have seen too much
18 even in areas in the last 10 years, I have watched
19 with real concern as we took things like, for
20 example, the Comprehensive Multidisciplinary Safe
21 Neighborhood Initiative and reduced urban crime in
22 Boston, and that could have been done in many cities,
23 but the trouble was we eroded away, a example, the
24 after school program, the conflict resolution program
25 which I watched solve major racial issues in high

1 school. I saw the intervention of mediators in
2 conflict resolutions in jails. It was remarkable in
3 teaching inmates and young people to understand how
4 to understand problems without violence. But the
5 question was evidence-based practices. The leaders
6 here, that's all they talk about, but it doesn't seem
7 to move yet the legislative process.

8 The third piece about the media, and this
9 particular commission I think we set up for purposes
10 that were somewhat limited, my only concern on
11 advisory commissions, and maybe you want to think
12 about this, all of you, is many people will agree to
13 serve but will they serve. Will they go on just in
14 name. One of the best things we have going for us,
15 we happened to have two independent staff people who
16 worked with the commission. They were terrific. I'm
17 worried about who will actually commit themselves in
18 this area to this kind of service. And I go to the
19 academic institutions, there are remarkable people
20 who could help here.

21 I don't know whether, to answer the
22 senator's question, corrections departments are not
23 uniquely open to allow others in to help, or if it is
24 a chicken-and-egg situation; because we're not
25 invited in we do all our studies separate from it, or

1 is it, frankly, that in many respects the trouble
2 with corrections work is it is nitty-gritty, in the
3 fray, it is hard, it doesn't always produce perfect
4 control environments and it is always day to day and
5 active, tough to deal with this. It is not appealing
6 for many people to come in and do that.

7 But my other thing about the media, the
8 media is the messenger here. We live by 15-second
9 soundbytes, we live by 30-second reports, the eleven
10 o'clock news. Even the situation in Los Angeles, I
11 believe, I noticed last night it wasn't a lead story
12 on the news. You go to Boston, it is very hard to
13 get people's attention, and you can have a great,
14 good news story one day in the paper but as many
15 students in high school programs used to say to me,
16 if there's a shooting in a high school, every media
17 outlet in town will be here. If we went through the
18 day in most urban schools with no crime whatsoever,
19 we will never get any focus on that side of it. So I
20 am concerned about the dollars and cents we need.

21 I think we demonstrated prevention,
22 meaningful, real prevention programs work and
23 therefore it is a political problem, I think it is
24 more a political problem in the best sense. This is
25 a democracy after all, we do act out our values, but

1 through the political process. If you are going to
2 make change, we have to all commit ours in getting
3 into that fray as well.

4 MR. BRIGHT: Thank you very much for a
5 very stimulating panel. Unfortunately we have run
6 out of time so we're going to take a break.

7 (Recess)

8 MR. RIPPE: Yesterday we focused on
9 transparency in America's corrections and then we
10 focused on governmental oversight. Of course, this
11 morning we just had a superb panel on conditions that
12 create a positive change.

13 Our next panel this morning will highlight
14 the corrections professions' best practices around
15 internal oversight and accountability. I'm pleased
16 to announce our three distinguished witnesses;
17 Director A. T. Wall, Director Harley Lappin, and
18 Sheriff Michael Ashe. These distinguished panelists
19 will explore how corrections administrators aim to
20 hold themselves and their systems accountable through
21 sound management practices, effective grievance
22 procedures, data collection, analysis and
23 dissemination, internal auditing and professional
24 accreditation. We'll also address the challenges of
25 changing the culture and perception of corrections to
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1 for at least a third of the nation's correctional
2 operations and I think what I have to say will,
3 adjusting for size, will be relevant to the issues
4 that the commission is considering in larger or
5 smaller contexts.

6 First a frank discussion about the context
7 for accountability. The fact is that the prisons and
8 other correctional institutions that we run are the
9 product of a political process. They are the systems
10 that we all own, that we have designed, and we also
11 need to remember that whatever else a prison sentence
12 may seek to accomplish, it is what society has
13 prescribed as punishment for the conviction of a
14 crime. The sole basis for our right to intervene in
15 someone's life in corrections is that they have been
16 committed to our custody following commission of a
17 crime.

18 Prisons are, I think, preferable to the
19 historical alternatives of maligned medical
20 practices, of torture, other forms of punishment, but
21 by their very nature they have characteristics that
22 have consequences for the issues of safety and abuse.
23 They are total institutions, meaning that they are
24 self-contained units, they are isolated from the
25 larger world, all activities occur in the same
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1 assure the facilities operate in a secure, orderly
2 and humane manner.

3 Mr. A.T. Wall is the director of the Rhode
4 Island Department of Corrections where he runs both
5 prisons and jails statewide. Mr. Harley Lappin is
6 the director of the Federal Bureau of Prisons. Mr.
7 Michael Ashe has been the sheriff of Hampton County,
8 Massachusetts, for over 30 years.

9 On behalf of the commission and everyone
10 here present, I would like to extend my thanks and
11 appreciation to each of our panelists for their time
12 today.

13 Director Wall, would you begin please, sir.

14 MR. WALL: Thank you, Commissioner
15 Rippe.

16 My name is Ashwell T. Wall, III. I'm
17 commonly known by A.T. I got my start in corrections
18 30 years ago this May as a line probation officer and
19 am now in my seventh year as director of our
20 department, a position that I am proud and honored to
21 hold.

22 We are a unified system. We're responsible
23 for the state's prisons, jails, probation and parole
24 services. We are not Texas or California, but we are
25 representative of the smaller systems that account
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1 location, and the people who reside there are
2 required to surrender control of their lives to
3 authority figures. Mental hospitals, monasteries,
4 boot camps, traditional boarding schools, they're all
5 total institutions. Prisons represent a particularly
6 prime example of them. And, of course, all of those
7 institutions, while perfectly legitimate, are
8 characterized by an imbalance of power. And in
9 corrections, there are particular reasons why power
10 and authority dominate. The fact is that we are
11 managing large groups of people who did not elect to
12 reside with us; they correctly perceive that their
13 placement in this setting is punishment. Control,
14 enforced by adherence to rules and regulations, is
15 necessary under those circumstances. Also because
16 incarceration is what society has prescribed as
17 punishment, it entails certain deprivations referred
18 to as the pains of imprisonment; loss of liberty,
19 loss of freedom of movement, deprivation of access to
20 certain goods and services, sharp limits on freedom
21 of association, denial of sexual contact. It is the
22 duty of our staff to enforce the depravations that
23 are hardwired into prison management and that leads
24 to an adversarial relationship between the keepers
25 and the kept.

1 Finally, we have an ironclad no refusal
2 policy, a diverse array of people differentiated in
3 every respect except one; that they have demonstrated
4 a willingness to violate social norms through
5 commission of a crime. We're responsible for keeping
6 all of those people safe along with our staff,
7 visitors, and the surrounding community.

8 That requires some authoritarian
9 management. We all know that power can corrupt.
10 Even good people can be corrupted by power and
11 examples abound everywhere; academia, the church,
12 corporate America, politicians, even families, and
13 closed institutional setting are especially
14 vulnerable because the power is so great and the
15 space so concentrated. My point is this. It would
16 be disingenuous to express shock that abuses can and
17 do take place in such environments. The fact that
18 they don't take place more often is I think a tribute
19 to the character of those at all levels of the
20 organization who conduct themselves with pride and
21 professionalism amidst exceptionally challenging
22 circumstances.

23 So we recognize that correctional
24 institutions, like all other organizations where
25 power is the defining characteristic, have the
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1 potential for abuse, we know that, and so as
2 corrections administrators we have an obligation to
3 move aggressively and proactively institute checks
4 and balances and they include a variety. First,
5 communication. Multiple channels to communicate
6 problems; management presence touring housing areas,
7 being present at meals, written communications,
8 request slips, grievance policies that are locked
9 into deposit boxes that can only be opened by special
10 staff. Authorized links to outside authorities, the
11 court's elected officials, the ACLU, the director.
12 Telephone contacts. Unrecorded collect calls to our
13 investigative units. In-person contacts. Regularly
14 meeting with family members, former inmates to
15 discuss issues of concern, the core of
16 accountability. Investigations. Strong foundation
17 and written policy; clear, explicit, what are the
18 rules. Mandatory reporting. Requirement to
19 cooperate fully. Strict prohibitions on retaliation.
20 Uses of force, cell extractions requiring written
21 reports and mandatory reviews up the chain of
22 command. Security cameras, videotapes, audits,
23 investigate protocols whereby Internal Affairs
24 reports directly to the director, all investigations
25 are investigated, training of staff, and

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1 consequences. These systems are only credible in
2 action. People need to know that, in fact, if the
3 investigation documents misconduct something will
4 happen to somebody and it will be proportional to the
5 nature of the misconduct identified.

6 Ultimately this kind of system emanates
7 from the culture. We have to promote a culture in
8 which staff incorporate and integrate those values
9 into daily operations. That's when they will take
10 root, that's when they will be followed, and the
11 formula is pretty simple. We provide tools, create
12 expectations, provide resources, policies, post
13 orders, mentoring, supervision, train staff and
14 investigators, provide mechanisms for reporting,
15 enforce accountability consistently and discipline
16 proportionately when it isn't met. Ultimately
17 accountability of any kind must be supported by the
18 staff. Unless accountability is integrated into the
19 culture, all the efforts to create and enforce it
20 from either inside the system or outside the system
21 are likely to be in vein. Thank you.

22 MR. RIPPE: Thank you.
23 Mr. Lappin.
24 MR. LAPPIN: Commissioner Rippe, other
25 members of the commission, I'm Harley Lappin,
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1 Director of Prison. It is certainly a pleasure for
2 me to be here today and chat with you on what I know
3 is a very important subject to all of us.

4 I'm a current employee with the Bureau of
5 Prisons, I have been with the service 20 years,
6 started as a case manager 20 years ago, worked my way
7 up through the system as an associate warden,
8 regional director, oversaw about 20, 25 prisons, and
9 then became Director three years ago. I certainly
10 appreciate the opportunity to appear before you today
11 and discuss issues related to the oversight of
12 correctional systems and effective management
13 strategies but before I do, I would like to give you
14 a little bit of background about the Bureau of
15 Prisons, its philosophy, culture. I think without
16 that context it doesn't tie into the oversight that
17 we expect for employees and inmates as well.

18 Let me begin by stating that the mission of
19 the Bureau of Prisons is to incarcerate offenders in
20 facilities that are safe, secure, humane, cost
21 effective, and to provide offenders with
22 opportunities for self-improvement. The latter part
23 of our mission relates to public safety, less
24 somewhat than the former, but it is just as
25 important. Inmate programs such as job skills

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1 training, substance abuse treatment, faith-based
2 programs, reentry programs provide opportunities for
3 inmates to prepare themselves for a successful
4 reintegration back into our society and to avoid
5 further criminal misbehavior. These programs also
6 allow inmates to be productively occupied during
7 incarceration which allows us to run prisons more
8 safely.

9 In furtherance of the mission, the Bureau
10 of Prisons has several relevant core values which are
11 deeply ingrained in the agency's culture. First, a
12 recognition of inherent dignity of all human beings.
13 Second, the expectation that the correctional staff
14 will treat inmates fairly and with respect.

15 And, Judge Sessions, you will appreciate
16 this, you and I chatted about it last night. And,
17 third, the recognition that offenders are
18 incarcerated as punishment, not for punishment.

19 Finally, oversee all staff and correctional
20 workers first, with responsibility for maintaining
21 safe and secure institutions and for meeting
22 society's mainstream values and norms that help
23 prepare inmates for a crime-free return to the
24 community. While laws establish minimum standards of
25 care to which all inmates are entitled, the Bureau of

1 Prisons has worked over its 75-year history to
2 achieve the highest standard with respect to inmate
3 management. Our agency now operates over 116
4 prisons, housing over 188,000 inmates. All these
5 facilities range in security level from minimum to
6 high; some with very specialized functions such as
7 medical centers or super maxes. We remain one bureau
8 with institutions operating under the same policies
9 and procedures throughout the country. Agency
10 policies direct the internal systems of control and
11 they apply to all Bureau organizational components
12 and sites.

13 I provided to you a little list as I go
14 through these. In case you would like to ask
15 specific questions of the internal controls, please
16 feel free to do so. If you don't have a copy, I
17 think they can get you one.

18 The bureau's internal control systems of
19 checks and balances are designed to achieve various
20 objectives, including ensuring compliance with the
21 applicable regulations, laws, policies and
22 procedures, monitoring vital functions and
23 operations, identifying weaknesses and enhancements
24 needed in promoting efficient management practices,
25 determining whether programs are achieving desired

1 results, enhancing program quality. Incorporating
2 information from various sources results in holistic
3 and comprehensive management.

4 The primary system of control is our
5 program review or audit process through which the
6 bureau subjects each of its programs or disciplines
7 to a thorough, cyclical examination by
8 organizationally independent, trained bureau subject
9 matter experts. Institutions receive a rating based
10 upon their performance on all review functions, as
11 well as a listing of deficiencies or weaknesses
12 requiring correction.

13 Management assessments are the first step
14 in the program review or audit process in that they
15 provide the structure for program managers to develop
16 and update the program review guidelines or the audit
17 steps and identify additional systems of controls or
18 monitoring tools needed to ensure the performance and
19 compliance with applicable policy, regulations, and
20 American Correctional Association Standards are met.

21 In addition to the internal audit process,
22 the bureau's senior management team, the executive
23 staff, exercises extensive formal oversight of
24 institution operations and performance. At our
25 quarterly meetings the bureau's executive staff

1 reviews the data that's compiled through all of the
2 various oversight mechanisms, including program
3 reviews and some of the others I'm going to mention,
4 and carefully reviews the performance of all
5 institutions. And at each quarterly meeting,
6 significant time is dedicated to reviewing
7 institutions with specific security levels such that
8 in the course of the year we look at every
9 institution.

10 Some of the more important indicators that
11 are reviewed are assaults, use of force, staff and
12 inmate safety, capital costs, inmate program
13 participation, union grievances, allegations of staff
14 misconduct, inmate administrative complaints and
15 others. One of the most important tools used by
16 management to gather information about institution
17 operations is the Prison Social Climate Survey.
18 Administered annually since 1988, the survey provides
19 an opportunity for staff to confidentially report
20 their impressions about the conditions and operations
21 at the facilities where they work. The survey items
22 cover all aspects of the work environment for safety,
23 to job security, to job advancement, to sexual
24 harassment.

25 Institutional character profiles conducted
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1 by regional teams of administrators and the regional
2 director are done on a minimum of every three years
3 and provide a great deal of descriptive and
4 subjective information about institutions. The
5 character profiles include observations of
6 institution operations, interviews with randomly
7 chosen inmates and staff, and input from outside
8 agencies and organizations.

9 The Duty Officer Program assures that
10 significant incidents at our facilities, including
11 those affecting inmates in community programs, are
12 reported to appropriate officials promptly and
13 consistently. In this way senior staff throughout
14 the agency are made aware of serious incidents such
15 as homicides, suicides, escapes, disturbances, and
16 the institution's response. The sharing of
17 information promotes the openness and honesty among
18 senior staff and allows the agency to make the
19 greatest use of the knowledge that it gains in
20 resolving these incidents. The bureau is fortunate
21 to have relatively few major incidents in our
22 facilities, in part because of our efforts to
23 proactively identify and resolve potential issues.
24 Serious instances having criminal implications are
25 referred to the Federal Bureau of Investigation for
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1 prosecution.

2 Both inmates and staff are encouraged to
3 report incidents of misconduct or otherwise
4 inappropriate behavior. The Administrative Remedy
5 Program is the internal grievance process through
6 which inmates may request consideration for review of
7 any issue related to their conditions of confinement.
8 This program requires timely investigational
9 response, including redress as appropriate.
10 Procedures exist for expedited handling of issues
11 that inmates view as sensitive or emergency in
12 nature.

13 All the allegations of staff misconduct,
14 including allegations that a staff member has abused
15 an inmate, are referred to the Office of the
16 Inspector General which then refers back to the
17 bureau's independent office of internal affairs those
18 that they want to investigate. The Bureau takes all
19 allegations of misconduct seriously and certainly
20 investigates every allegation thoroughly, including
21 referral of cases for criminal prosecution when
22 warranted. There is zero tolerance for abuse of
23 inmates.

24 There is one I didn't mention that's not on
25 your sheet, it is not listed on your sheet, but I
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1 would like to mention another oversight procedure and
2 that is all of our facilities, the vast majority,
3 have community relations boards. These boards are
4 made up of local public officials, citizens,
5 legislators, sometimes the media, business people,
6 and routinely are staffed at those facilities, meet
7 with the community relations board, use them as a
8 sounding board to discuss issues of concerns, to
9 enlighten them as to procedures and issues applicable
10 to prisons, so that's one more that I didn't have on
11 the list that I wanted to mention.

12 The bureau continues to effectively meet
13 its mission to protect society through safe, secure
14 and humane incarceration of offenders and thereby
15 maximizing the likelihood of a successful community
16 reentry. We take this role very seriously, and
17 through critical self-examination we are assuring the
18 bureau's readiness to meet the future demands of the
19 agency.

20 I appreciate the opportunity to meet with
21 you and look forward any questions you may have.

22 MR. RIPPE: Thanks, Director Lappin.

23 Sheriff Ashe.

24 SHERIFF ASHE: First of all, I'm just very
25 honored to be here and I just applaud all of your

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1 efforts in terms of your leadership and dedication
2 for zeroing in on this particular subject, and I also
3 would like to just acknowledge Scott
4 Harshbarger regarding his leadership that he has
5 provided in the State of Massachusetts and, here
6 again, we talk about leadership. It is one thing to
7 have a title, but it is another thing to obviously
8 step up and do the work in terms of the substance
9 that he provides and the integrity and so on.

10 First of all, I as Sheriff have to run for
11 office. My background is obviously a social worker.
12 I mention that because one of the words that has been
13 singled out here is the politics of the job and I
14 just ask each of you to try to run as a social worker
15 for the office of Sheriff. So the first thing they
16 would -- so I have been through this and I would just
17 say that I remember being so concerned in terms of
18 being accepted by the public from the standpoint of
19 being a social worker because when you think of a
20 social worker, they're usually going to give away the
21 kitchen sink, and I remember a person saying that
22 your theme in your campaign should be he protects
23 people and their tax dollars.

24 The second thing is, is that I took over a
25 job where there was sort of a warehousing or

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1 custodial kind of model which I don't think was that
2 atypical in terms of our particular county, I just
3 think that there have been great strides, if you
4 will, being made in corrections and so your efforts
5 are to be applauded and I can't help but think
6 because of your work we are going to continue to move
7 inches further, you know, in our goal of
8 understanding the issue and bringing about public
9 safety.

10 What I would like to address is really
11 seven principles that I think are very, very
12 important in terms of bringing about accountability,
13 positive, humane, safe, secure facilities. And the
14 first principle would be the sense of balance, being
15 firm but fair, if you will, having strength
16 reinforced with decency. I as Sheriff certainly
17 don't want to run a hotel, but don't want to run a
18 cesspool of stagnation, frustration, and new crime.

19 The second point, as I mentioned earlier,
20 the focus is on corrections, not on warehousing
21 people, and what I'm about to sort of identify for
22 you is my 31 years in office in terms of, if you
23 will, I don't think I'm doing anything revolutionary
24 but really, if you will, just being conscious of the
25 population we're dealing with in trying to bring

1 common sense and leadership and a determined and
2 sincere will to bring about change from the
3 standpoint of affecting public safety.

4 In doing that, I would just like to
5 elaborate on this third point that I have, and this
6 is for staff to be held accountable, we must hold
7 inmates accountable, and I certainly heard the
8 commissioner from Arizona touch upon this.

9 First of all, we have to look at a typical
10 inmate, and I think what we have in the Hampden
11 County is not that different, if you will; nationally
12 as well. Fifth grade education; 85 percent come
13 there with drug and alcohol issues, 93 percent lack
14 any marketable skill, 78 percent at the time of
15 arrest aren't employed. So looking at that profile I
16 must say that I as Sheriff am committed to trying to,
17 if you will, use new language, if you will, and I
18 think one of the things we've talked about is that
19 the population we deal with doesn't, if you will,
20 generate much empathy, if you will, from the public.
21 Obviously they steal our cars, they maim our loved
22 ones, et cetera, so it is very difficult to do that.

23 On the other hand, the idea about public safety is a
24 key thing and there's no question that certainly
25 years ago out of sight, out of mind, and the idea

1 about incapacitation was in vogue. I must tell you
2 today the sense of taxpayer dollars being invested
3 into this particular area is of great concern and so
4 certainly the reintegration and that balanced
5 approach is obviously so, so important in terms of
6 our work.

7 And on this issue, I would just say that
8 one of the things we're all talking about, we're all
9 representing and you stand for it as well, is the
10 professionalization of our facilities. And so based
11 on that profile, I as Sheriff over the years, and I
12 must tell you it is not like being a genius and
13 saying here is the answer, I would just say that
14 myself and the staff have evolved this over the
15 years, in 31 years. First of all, it is the
16 establishment of that profile, but let's
17 individualize the inmate; let's look at, for example,
18 what are the deficits that he brings to this
19 situation. So one of the things we did is establish,
20 if you will, an orientation system that's very, very
21 professional.

22 I can remember the old system, the inmates
23 educated the other inmates. And one of the things
24 that we really worked hard at was to establish a very
25 professional orientation system, and I would just

1 touch upon the fact of a test, LSI, Level Service
2 Inventory, where we're looking at eight criminogenic
3 factors, and then, as well, making inmates aware of
4 the rules and regulations. But the key thing is the
5 fact that we're there to provide services for them
6 and opportunities, if you will, challenges that are
7 going to be available to them within the facility.

8 So this firm but fear kind of approach in terms of
9 with myself and the staff uniting to impact the
10 inmate, we want to challenge him, I want to place
11 demands on him, I want to, if you will, strife him
12 towards excellence is an excellent point because we
13 certainly know in sports and in classrooms around the
14 country we see that striving towards excellence and I
15 think in the past we haven't seen this in corrections
16 and I think that's one of the aspects of our work.

17 One of the things that we put in place on
18 this idea about challenging the inmates and putting
19 demands on them was we put together a couple years
20 ago a mandatory basic and intensive regimented
21 program where we -- I call these the core principles
22 that all inmates based on that profile as they came
23 in, we put forth a five-week mandatory program. One
24 of the things in my visits though the various pods on
25 weekly visit is that I found that there was a great

1 deal of downtime and not allowing inmates to
 2 immediately get into, if you will, GED, substance
 3 abuse, victim impact programs, so this frustrated me
 4 and my efforts and we studied this issue for a whole
 5 year and tried to maximize the resources within the
 6 facility and we put forth this basic intensive,
 7 regimented program for every inmate at the point of
 8 entry which is a key point. So, again, this isn't
 9 this sense of he comes into the facility, this is the
 10 time when he is most anxious. I want to seize that
 11 opportunity, make him uncomfortable, bring tension
 12 into his world in terms of what it is all about and
 13 that's it; that we're challenging him to improve his
 14 life.

15 So what we did is obviously in this
 16 five-week mandatory program we put together such
 17 things as, for example, substance abuse,
 18 preemployment training, victim impact, cognitive
 19 thinking were just a few of the programs, and then
 20 each of them, for example, had a body of knowledge
 21 and we have faculty that presented it. All those
 22 programs took place, if you will, on time. There was
 23 a multifaceted faculty that was put together so if
 24 someone was out sick or on vacation, there was
 25 accountability in these programs.

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1 Following this five-week program they then
 2 could graduate into, if you will, remedial education;
 3 GED, vocational training, et cetera, et cetera.

4 I then want to just touch upon the fact
 5 that the fourth point that I wanted to make here was
 6 that whether it is county corrections or state
 7 prisons, it should be part of the community. All the
 8 inmates come from the community; they all return to
 9 the community. It is so important to have a sense of
 10 reciprocity. One of the things we talked about is
 11 transparency, we've talked about openness. You and I
 12 know that how could we provide this safe, secure,
 13 humane facility. Certainly by allowing volunteers
 14 that come in from the community. In my case I have
 15 over 500 volunteers that come in on a monthly basis
 16 representing the faith-based initiatives, self-help
 17 programs in terms of A.A., N.A., Gamblers Anonymous,
 18 just to mention a few, as well as our education in
 19 the community.

20 The other aspect is having college interns
 21 from the college systems that we have in our county,
 22 and we have approximately 50 to 75 interns that come
 23 in on a weekly basis.

24 Fifth principle. Correctional supervision
 25 should always take place in the least level of

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1 security that is consistent with public safety.
 2 Sheriffs don't get elected to release
 3 people to the community prior to their discharge date
 4 because of the fear of the political ramifications if
 5 something failed. I would like to feel that I have
 6 the courage to take the risk. 45 percent of my
 7 inmates are in lower security and we have everything,
 8 if you will, from medium security all the way out to
 9 daily reporting. Back in 1986 because of
 10 overcrowding, again, rather than talk about the
 11 problem, talking about the complaining, we developed
 12 the first in the nation daily reporting system, the
 13 electronic bracelet system, where people could
 14 reintegrate back into the community, live at home,
 15 and participate in a correctional program that's
 16 going to benefit them.

17 I also wanted to highlight that in the
 18 secure, safe, humane facilities we challenge inmates.
 19 The key aspect is the reintegration back into the
 20 community. I always say to the inmates, "Anybody can
 21 do time, it is getting out and staying out." And so
 22 with this profile you and I know that a great deal
 23 needs to be done in terms of, if you will, building
 24 capacity in the community to effectuate jobs,
 25 housing, mental health help, all of these kind of

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1 things, and I just wanted to just give a couple of
 2 examples in that way. The development of an after-
 3 incarceration support service. Every inmate that
 4 leaves our facility has a universal planning system
 5 and with that is that we partner up with the police
 6 departments in terms of police, probation, parole, as
 7 well as collaborating with other agencies,
 8 particularly social agencies, over 200 agencies in
 9 the community to effectuate that, and that's very,
 10 very important.

11 And I also just for the sake of time here,
 12 corrections should not be allowed itself to be a
 13 scapegoat for the larger society failures. You and I
 14 know, as I mentioned earlier, a hundred percent of
 15 the inmates that come to us have failed and with that
 16 you and I know that when the people go to the
 17 hospital and have to deal with accident, disease, we
 18 don't blame the hospital. It is so important in
 19 terms of the image, the professionalism and the
 20 dedication of our staff to contribute to public
 21 safety and seeing that, that is so important.

22 And then lastly in terms of the principle
 23 is respect. Respect of professionalism and the role
 24 of the correctional worker, respect for the humanity
 25 of all within the fences, respect for the physical

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1 surroundings, and respect for the authority vested in
2 staff in the name of the people.

3 Thank you very much. I look forward to any
4 questions that you have.

5 MR. RIPPE: Thank you, Sheriff.

6 I will ask the first couple questions and
7 then open it up to the panel at large.

8 As correction leaders could you all tell us
9 to whom you consider yourselves accountable,
10 personally accountable.

11 A.T.

12 MR. WALL: I am accountable first and
13 foremost to the individual who appointed me and the
14 people who confirmed me. That is to say, the elected
15 leadership of the State of Rhode Island. The
16 governor is my boss. I need to have his confidence,
17 he needs to have my loyalty, and the people who
18 confirmed me, the legislature, needs to know that I'm
19 going to keep the promises that I made when they
20 screened me and questioned me prior to my
21 confirmation.

22 I'm also accountable to the larger public,
23 that's a little bit of a diffuse sort of concept, but
24 it can be expressed in a variety of ways. Local
25 officials, advocacy groups, families of offenders,

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1 victims, they're all stakeholders, they're all, if
2 you will, clients, and I'm accountable to the
3 offender population in this respect.

4 We have certain values that we articulate,
5 we have certain rules and policies that we follow,
6 and we need to have the integrity to adhere to them
7 if we are going to be credible with the inmate
8 population.

9 Last, of course, I'm accountable to our own
10 staff. They're looking to me to be their leader.
11 They need to have some confidence that I care about
12 them; that I have their best interests at heart, and
13 that I am stable and serious about what I do.

14 MR. LAPPIN: Truth be known, I'm most
15 accountable to my wife. You agree.

16 As a public servant I see myself most
17 accountable to citizens of this country to make sure
18 that we do the best to run the safest, securest
19 prison system in the country, if not the world. And
20 obviously I'm directly accountable to the attorney
21 general in this administration or whichever
22 administration I might be serving under. Beyond
23 that, obviously the judiciary and the other public
24 interest folks who have a role and an interest in
25 incarceration of our citizens and certainly in the

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1 reentry of those folks back into our communities.
2 But, again, a lot of folks, but certainly all of us I
3 think at this table and beyond certainly see
4 ourselves most accountable to folks that we serve
5 each and every day, citizens of the United States.

6 MR. RIPPE: Thank you.

7 Sheriff.

8 SHERIFF ASHE: I feel accountable obviously
9 to the people who elected me, but equally the staff
10 and the inmates. And, again, just as I said earlier,
11 I not only provide a secure, safe, humane setting,
12 but also the understanding is that providing the
13 inmates the tools when they get out on behalf of
14 public safety which I think is the key issue.

15 MR. RIPPE: As I mentioned at the
16 beginning, yesterday we had two panels that focused
17 on oversight and transparency. Could you tell us the
18 role that external oversight and transparency play in
19 each of your constituencies.

20 Director Wall.

21 MR. WALL: We've had good experiences
22 and we've had bad experiences with outside oversight
23 in my department over the years. There was a point
24 at which, and you have to remember the political
25 context of the times, these were the early 1970s,

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1 there was a point in time at which the legislature
2 became very involved in oversight of the corrections
3 department, became beguiled by certain inmate leaders
4 who exhumed some power and authority over them, and
5 ultimately it was a significant contributor to the
6 destabilization of the system.

7 That led to the second form of oversight
8 which was the federal court which imposed, in
9 essence, the equivalent of receivership over the
10 entire system in 20 years of litigation. Mr.
11 Bronstein was chief counsel for the plaintiffs and
12 knows the history well. And while we had our
13 difficult times, that oversight ultimately served to
14 professionalize the department and to help us garner
15 the resources we needed to run a constitutional
16 system.

17 More recently there has been an attempt by
18 certain advocacy groups to assert oversight on behalf
19 of the people and we are concerned again about the
20 naivety and about certain personal agendas, so it
21 very much depends. I think when it comes to outside
22 oversight, I don't think it is an up-and-down answer,
23 I think it is more nuanced than that. I think it has
24 to be based on a variety of considerations and it has
25 to take account of the political maturity of the

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1 jurisdiction in which it operates.
 2 Some of the considerations that I think
 3 have to be asked are how clearly, what are the goals
 4 of oversight, how clearly are they stated, what is
 5 the purpose, what are the conditions under which
 6 oversight is going to be exercised; is it proactive
 7 and preventive or is it remedial; where does it fit
 8 into the department's history and culture, what's the
 9 motive of the people who serve, what's their
 10 experience, what's their skill, who oversees the
 11 overseer, because the fact of the matter is that
 12 oversight can run amok; ego, grandstanding can all
 13 get in the way. What's the composition of the
 14 oversight, what's the relationship between oversight
 15 and the established correctional leadership, those
 16 are all considerations that have to be answered
 17 individually for each jurisdiction in which it is
 18 contemplated.

19 MR. RIPPE: Thank you.

20 Director Lappin.

21 MR. LAPPIN: The majority of
 22 correctional oversight, although you might question
 23 it, is external, it is from the Office of Inspector
 24 General and GAL, that's where the vast majority of
 25 our oversight beyond what we do internally is focused

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1 in the Bureau or Prisons, and there's a lot of that.
 2 Not a lot of requests. We get requests on occasions
 3 from outside groups to come in and assist in some
 4 way. It hasn't happened that often in the recent
 5 past; somewhat in the seventies as we got into
 6 operating supermaxes and the issues of confinement
 7 and so on and so forth, but, again, same concerns as
 8 A.T. on which direction that goes and how it is going
 9 to be managed and overseen if we begin to see an
 10 influx of requests for oversight beyond what we
 11 provide and what we see from GAL.

12 As far as transparency work, obviously
 13 we're not an open system but I can't say we're a
 14 closed system, we're a controlled system, and when
 15 groups have an interest and there's a connection,
 16 we're certainly amenable to folks visiting our
 17 institution. The community relations boards that I
 18 mentioned serve in that capacity, have easy access,
 19 assist us in relating to the public at large within
 20 those small communities. But throughout the course
 21 of the year we have tours of students and faith-based
 22 organizations, other interest groups, visit prisons
 23 at their request. So, again, beyond that, I can't
 24 think of anything that would be meaningful at this
 25 point.

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1 SHERIFF ASHE: Again, if you are
 2 running a warehouse or custodial facility, naturally
 3 a closed system is obviously something that is very
 4 restrictive and very limited and, again, as I said,
 5 my commitment is obviously to challenge inmates and
 6 in doing so provide that safe, secure and humane
 7 setting so it is so crucial, it is so important in
 8 terms of meaning what you say in terms of the
 9 integrity and the professionalism of your work. So
 10 first of all, I know back in 1975 when I took over as
 11 Sheriff is obviously open it up to the public from
 12 the standpoint of having community groups on a weekly
 13 basis to let them know what we're doing. Not only
 14 that held me accountable but also the staff and let
 15 them know of the tremendous need we have for
 16 resources; money, of volunteers, jobs, mental health,
 17 et cetera, et cetera, it goes on and on, so it is so
 18 important to open that up.

19 I think we have made great strides in my
 20 opinion. I think we can think back and I know years
 21 ago of suicides, riots, disturbances and so on, and
 22 there was very little outside intervention and I can
 23 think of particularly Massachusetts. Today, for
 24 example, I think the ACA, American Correctional
 25 Association, opened ourselves up to accreditation.

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1 In my opinion, I'm a big believer in that because
 2 here are your peers are coming in and looking at your
 3 operation and it challenges everybody in terms of the
 4 transparency of what you are doing, and so I'm just a
 5 big believer in that external audit. And you and I
 6 know the biggest audit is ourselves in terms of
 7 walking and talking and visiting the place and
 8 holding ourselves accountable on behalf of the staff
 9 as well as the inmates.

10 MR. LAPPIN: And I would be remiss that
 11 I failed to mention as well accreditation. I'm a
 12 firm believer in it. Our commitment is a hundred
 13 percent accreditation.

14 MR. RIPPE: Are you there?

15 MR. LAPPIN: We are not there because
 16 we opened so many new prisons, so everything that has
 17 been in operation for a number of years are all
 18 accredited. The newer facilities immediately get
 19 into the process and we certainly welcome their
 20 assistance, their insight, their suggestions, and we
 21 have closely partnered with them, in fact, in the
 22 program review process, we've come up with the unique
 23 approach, because it is additional work on our staff
 24 and there are limitations, we are stretched, most of
 25 our agencies are stretched resource wise, with our

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1 employees, with our staff. And so we've partnered
2 with them, the American Corrections Association in
3 this case, to look at how we can continue to have
4 adequate oversight but not do it in such a way it
5 overburdens our employees. Joint commission. We get
6 accreditation at many of our locations on hospital
7 accreditation as well.

8 MR. RIPPE: Judge.

9 JUDGE SESSIONS: Director Lappin, help
10 me deal with my ignorance.

11 You have spoken of mushrooming, so 10 years
12 ago you had how many, how many prisons?

13 MR. LAPPIN: 1980 we had 26,000
14 inmates, about 24, 25 prisons. In 1990 about 60,000
15 inmates, about 45 facilities, 50, maybe. And today,
16 116 facilities, 188,000 inmates.

17 JUDGE SESSIONS: So a tremendous
18 mushrooming.

19 MR. LAPPIN: Huge growth over the
20 course of that time.

21 JUDGE SESSIONS: Will you accept that
22 oversight cannot be meaningful unless we have
23 standards?

24 MR. LAPPIN: Absolutely.

25 JUDGE SESSIONS: Tell me about the
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1 Bureau of Prisons standards and what they might do
2 and cover that would help states individually meet
3 those standards that you find acceptable from the
4 federal. The leadership role is what I'm looking at.

5 MR. LAPPIN: Well, I think you hit it
6 on the head there, Judge. Leadership is critically
7 important. All the things that I mentioned here as
8 systems we put in place to provide the oversight mean
9 nothing without very capable, qualified, competent
10 people overseeing our institutions. I look back day
11 in and day out at some of the most important things I
12 do. It is clear to me that one of the most important
13 things I do beyond my normal responsibility is to
14 pick the right people to run prisons and when we do
15 that well, we're very successful. In doing so, and
16 to accomplish that, we have to do one of two things
17 depending on your system. You either have to have a
18 development and management approach to training your
19 pool of candidates internally or I have to have a
20 very good system of looking out beyond our system at
21 very capable, qualified people who will come in and
22 provide that leadership.

23 We have been fortunate in the Bureau of
24 Prisons to develop our leadership from within in most
25 cases and most of our wardens and executive staff
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1 members are reliant employees in the federal prison
2 system and move as I did up through the system as
3 warden and so on and so forth. Some systems aren't
4 able to do that for a number of good reasons and if
5 you can't do that, you've got to be able to go out,
6 reach out and find those folks who are capable to
7 come in because in my opinion, again, that
8 leadership, that cohesiveness between that senior
9 management at that facility is critically important
10 to carry out what systems you then decide to put in
11 place and to do that, you've got to have some
12 resources. And I have to say we were very fortunate
13 through the course of the eighties and nineties as
14 that growth occurred, the administrations, all of
15 them, and the Congress recognized that the change in
16 parole and the change in determinate sentencing and
17 mandatory minimums and the federalization of drug
18 laws and firearms laws was going to significantly
19 impact the growth of the Bureau of Prisons and during
20 the course of that time we received those resources.

21 Not so much so since 9-11, we're struggling too now
22 resource wise just like states are, have or have over
23 years. So, again, I sympathize with what they faced
24 for many years but it takes resources and a
25 commitment from the legislators, from the

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1 administration, to support those types of
2 initiatives.

3 JUDGE SESSIONS: So help me again.
4 Does the warden at X institution go to the shelf,
5 pull out a book and that says "Standards of the
6 Federal Bureau of Prisons" and know what is going to
7 be checked on, what's required, what is done to meet
8 those standards?

9 MR. LAPPIN: We are a very policy-
10 driven agency.

11 JUDGE SESSIONS: Yes.

12 MR. LAPPIN: And you can probably reach
13 out and touch, you, on our website, most of our
14 policies are public other than those that are
15 restricted for good reason, but, sometimes to our
16 detriment because our staff complained that we over-
17 control them but I think not so, I don't see that in
18 the same light. But we are a very policy-oriented
19 agency. Wardens can take something off the shelf and
20 read it and use that as a guide, a direction, and our
21 program review process is a method in which assists
22 us in that regard.

23 JUDGE SESSIONS: I will repeat the
24 second half of the question. What interplay is there
25 between federal and state in connection with

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1 standards for prisons?
 2 MR. LAPPIN: I think there is a
 3 connectivity but some limitation. There's an
 4 association of directors. We talk about oversight,
 5 we talk about policy, we talk about those issues.
 6 The standardization through the American Correctional
 7 Association assists us in that regard. But for us to
 8 say there's a direct relationship between us, the
 9 federal system and the states, I don't think there's
 10 a specific relationship in that regard or the local
 11 folks. It is all through associations, it is all
 12 through assistance that we may be called upon by
 13 states to help us, or we ask states in return for
 14 some assistance.

15 JUDGE SESSIONS: Mr. Ashe.

16 SHERIFF ASHE: Judge, your point is an
 17 excellent one and obviously the federal government
 18 has led the way, if you will, over the years.
 19 Certainly states and counties, if you will, have been
 20 potentially over the years short in terms of adhering
 21 to standards, but I can assure you when I mentioned
 22 earlier about coming a long way, we have come a long
 23 way regarding standards and you and I know it is not
 24 because we're just doing this on behalf of inmates,
 25 it is because of the vulnerability politically in

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1 terms of liability issues and so on that occurred.
 2 But given that, you and I know that do you mean what
 3 you say, and the standards obviously indicate that
 4 you are by first of all promulgating them and then
 5 practicing them as we're talking about in terms of
 6 whether it is ACA, whether it is the National
 7 Institute of Corrections or any of these agencies,
 8 and so in that way I'm indicating that we have
 9 certainly come a long way regarding that.

10 JUDGE SESSIONS: Then do the 50 states,
 11 all of them, have prison standards?

12 SHERIFF ASHE: Yes. To my knowledge,
 13 yes.

14 MR. LAPPIN: I couldn't speak to all 50
 15 states, but let me go back and mention one other
 16 thing, that there is connectivity to the federal
 17 government through the National Institute of
 18 Corrections, very good point that the sheriff raises.

19 Many of the state and the local jails rely
 20 on the National Institute of Corrections as a
 21 resource. The National Institutions of Corrections
 22 happens to be housed in the Bureau of Prisons, but
 23 their primary role and mission is to serve state and
 24 local jails and prison systems at their request,
 25 okay? It is not forced upon them, it is at their

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1 request, and I think they do an excellent job of
 2 serving those localities and those system that
 3 request their assistance. And certainly when the
 4 National Institute of Corrections requests additional
 5 assistance from us, we certainly partner with them in
 6 providing that service and assistance to those
 7 states, prison systems, local jails, sheriffs,
 8 community corrections and beyond.

9 JUDGE SESSIONS: Thank you.

10 Mr. Wall, did you want to add to that?

11 MR. WALL: With regard to whether all
 12 the states have standards, every Department of
 13 Corrections has policies that govern its operations
 14 and the touchstone for those policies tend to be the
 15 standards that are associated with the accreditation
 16 process that is sponsored by the American
 17 Correctional Association. That doesn't mean,
 18 however, that there are uniform standards across all
 19 50 states. A policy may, for example, every state
 20 will have a policy on use of force and most of those
 21 policies will refer back to the standards of ACA but
 22 it is not mandatory and not required and there are
 23 undoubtedly some jurisdictions whose policies don't
 24 make reference to standards.

25 JUDGE SESSIONS: Well, we all know that

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1 standards are always set above where you are and you
 2 are trying to adhere to them and gain that kind of
 3 institution that meets those standards and they're
 4 intended to be high and should be high. I don't know
 5 where we are on it and I want to know.

6 SHERIFF ASHE: Judge, I just wanted to
 7 add in regard to the standards as well, there's been
 8 great growth over the years professionally in terms
 9 of let's say like the ACA, but you and I know too is
 10 that there is a paper trail associated with those
 11 standards and we're seeing more and more of that.

12 JUDGE SESSIONS: Good.

13 SHERIFF ASHE: That's the key.

14 MR. LAPPIN: I'm not sure how familiar
 15 you are with the ACA process, if they have testified
 16 or not, but you are familiar with how the standards
 17 are established, the fact that the standards
 18 committee is made up of a well-rounded group of folks
 19 from both large prison systems, jails, community
 20 corrections, juveniles, and so, again, I think you
 21 have some good folks on there assessing what those
 22 standards should be and certainly the commission
 23 should go out and oversee the application of those
 24 standards at the facility but, again, it is
 25 voluntary. Not all states are as committed as

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1 others, nor are all systems as committed as others.

2 JUDGE SESSIONS: Thank you.

3 MR. RIPPE: Richard.

4 DR. DUDLEY: I'm trying to get somewhat
5 more of a concrete sense of internal monitoring and
6 review of programs that are part of the system so,
7 for example, if you are looking at the mental health
8 aspects of the system, in addition to determining
9 that it runs smoothly, for example, is there -- does
10 internal review and monitoring attempt to determine,
11 for example, whether inmates who come in denying a
12 history of the mental illness or inmates who don't
13 have a documented prior history of mental illness but
14 who in fact are mentally ill are picked up through
15 your evaluation practice as opposed to simply those
16 who come in announcing that I'm mentally ill, I have
17 a history of mental illness? Or when risk
18 assessments are done is there an assessment of
19 whether this bears any relationship to the mental
20 health assessment so that people are not mistakenly
21 classified as simply bad where in fact they're ill
22 and have no ability to control their behavior and so
23 that there's some understanding of what we're doing
24 with risk assessment in contrast to or in
25 collaboration with mental illness, or are we looking

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1 at programming and the assignment of people to
2 different programs? Is there some internal
3 monitoring that looks at the appropriateness of these
4 programs as it relates to fit for different inmates
5 so that, in fact, the programming does increase their
6 possibility of functioning on the outside as opposed
7 to that it is an interesting program but it doesn't
8 make any sense for Inmate A or Inmate B. So I'm
9 trying to get a sense of does internal monitoring and
10 evaluation of what goes on go on at that level as
11 opposed to yes, we have the program; yes, it is
12 running smoothly. Is my question clear?

13 SHERIFF ASHE: Yes.

14 The mental illness has been talked about a
15 great deal here and I just wanted to again reinforce
16 that, and certainly in the State of Massachusetts
17 with the de-institutionalization that took place
18 back, if you will, in the late seventies and early
19 eighties is that a good nine to 10 percent, for
20 example, of my population had severe mental health
21 issues. So today I have 2,025 inmates and so I'm
22 looking at a good 200 to 225 inmates have severe
23 mental health issues and it is a crucial issue.

24 First of all, putting the standards aside,
25 what are we doing, for example, in trying to treat

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1 that particular group. I can honestly say years ago
2 that one would be decompensating, for example, in the
3 facility and there would be little or no help that
4 would be provided. If anything, they saw this as a
5 behavior and disruptive issue. And, again, it has
6 only been in the last 10 years that, if you will,
7 there's been stepping up, if you will, from the
8 legislators in terms of providing some services.

9 So the answer to your question is, first of
10 all, is the leadership needs to identify that this is
11 an important and significant issue and to develop
12 strategies, and, of course, strategies in this case,
13 as in every legislative group, there's always a group
14 that's very interested in mental health and it is so
15 important to bring that to their attention.

16 Our case in the State of Massachusetts is
17 that we had the chairman of Ways and Means who
18 recognized this as an issue and provided, if you
19 will, X numbers of dollars so that we could obviously
20 enter into a partnership with the behavior health
21 network so that when an officer, for example, does
22 see, for example, somebody decompensating in his
23 podular living area, that he can notify the forensic
24 services and they can send in a clinician to
25 obviously assist and help. And so naturally the

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1 first thing is that services are there. Of course,
2 it is different degrees for different facilities.
3 And then, plus, go back to the judge's point, that
4 there is a standard there in terms of the services
5 being provided and so on, not only internally because
6 we do have standards teams that monitor what we're
7 doing on a day-to-day basis, we provide not only just
8 every three years the luxury of having ACA come in,
9 but we have internal standards, people within our
10 facility who are monitoring this on a day-to-day
11 basis and bringing it to our attention when that
12 standard is not being met, and so I just wanted to
13 clarify that.

14 MR. LAPPIN: The answer to your
15 question, at least in our system, is yes, but it
16 varies on how depending upon the type of program you
17 are looking at, but let's take mental health as an
18 example that you mentioned.

19 The audit process would look at is every
20 inmate screened as they come in the door and if
21 screened and there's an indication of some type of
22 mental health concern, suicide, so on and so forth,
23 what then occurred that ensured that we provide
24 adequate assessment and treatment and support to that
25 individual. As that auditing comes in they're going

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1 to step back over the last two or three years and
 2 look at it, what incidents that occurred that would
 3 reflect that maybe that didn't happen, did they have
 4 suicide attempts and, if so, what was the evaluation
 5 of what occurred, how did the staff manage it, so
 6 they do a case history on certain cases. But then
 7 they randomly look at the inmate population in a
 8 given institution to determine, first thing, are the
 9 basic policy requirements as far as review and
 10 evaluation being done at the onset of that person's
 11 period of incarceration and if an indicator is
 12 evident, how is that managed. And then, of course,
 13 you have inmates that may become ill after
 14 incarceration. How are those inmates identified, and
 15 if identified, how are they tracked, how is that
 16 managed, so they're looking at those types of
 17 specific steps on things like health care.

18 Let me take -- we're moving as well just
 19 like everybody else towards a more performance-based
 20 evaluation. There are some programs that are more
 21 conducive to that, so let's take the prison industry.
 22 Many of our prisons have industry programs. It is
 23 not just good enough for us to provide the program to
 24 keep inmates productive. That's certainly a good
 25 reason to do it and keep the prison safe but what

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1 impact does it have. So we tie to that what's the
 2 impact of recidivism of an inmate working in an
 3 industry. Our research reflects an inmate who works
 4 in the prison industry for six months is about 24
 5 percent less likely to come back to prison and more
 6 likely to get a job. And so we've tried to do that
 7 for other programs, GED, getting a GED, getting a
 8 vocational training certificate, completing drug
 9 treatment. So in some programs that's more tied to
 10 what's the outcome, is this having an impact, rather
 11 than what are you actually doing even though there is
 12 a standard practice for most of those things. So,
 13 again, it depends on the program, but they do drill
 14 down if there's an indication there that there's a
 15 concern or area of weakness to try to determine what
 16 was the area of weakness and what needs to be done to
 17 correct that.

18 MR. WALL: Commissioner, I think that
 19 safety can be defined in a number of ways and
 20 certainly one is whether someone with special needs
 21 such as mental health issues is treated
 22 appropriately. As my counterparts have said, we do
 23 have standards, the National Commission on
 24 Correctional Health Care is very credible in that
 25 respect, we do audit for compliance with those

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1 standards. Same in environmental health. Safety can
 2 be defined as is the institution sanitary. I should
 3 say that I also take the terms "safety" and "abuse"
 4 very literally because if inmates or, for that
 5 matter, staff don't feel protected from harm inside
 6 those institutions, protected, if they don't feel
 7 that their lives and their bodily integrity are safe,
 8 then nothing good can happen there, that's the
 9 foundation.

10 DR. DUDLEY: What I'm trying to ask is
 11 to the extent that you have in the federal prison
 12 system, for example, program options that might
 13 prepare you differently for the outside -- I
 14 understand what you are saying about demonstrating
 15 that program X has been helpful with regard to
 16 recidivism -- but as the question asks, how do we
 17 track persons to Program A versus Program B? In
 18 other words, would the outcomes be higher if did a
 19 better job of deciding who should get a GED program
 20 versus who should get factory, industry, and do we
 21 look at it at that level. Similarly with regard to
 22 the mental health programs, I understand what you are
 23 saying about the provision of treatment, providing
 24 mental health services and looking at the quality of
 25 services for those who are identified to be mentally

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1 ill. I'm trying to understand how do we look at the
 2 question of whether we're in fact identifying people
 3 who are mentally ill. In other words, do we go back
 4 and see that, you know, are there people who through
 5 our risk assessment have ended up in a level of
 6 placement and that by review we realize that we
 7 ultimately missed; that they were, in fact, mentally
 8 ill and should have been tracked to the mental health
 9 system as opposed to a shoe, that's the kind of
 10 question I'm trying to understand.

11 MR. LAPPIN: I see that as a daily
 12 operational expectation. The bottom line is as well,
 13 if we miss people we're going to know because we're
 14 going to have people who go into either a health
 15 crisis or a mental health crisis, and we certainly
 16 monitor the number of suicides we have and see if
 17 there's a trend in a certain location or certain type
 18 of facility. But day in and day out, have we tied
 19 the appropriate treatment plan to an inmate's needs,
 20 it is not an easy task as I'm sure you all realize.
 21 We're making progress.

22 In that regard, we are piloting now a
 23 system to assist the inmates upon entry to identify
 24 what needs they might have and then that information
 25 gets carried over to the case managers who try to

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1 encourage inmates to participate in those programs.
 2 Obviously with something as critical as health or
 3 mental health we're going to move that inmate in that
 4 direction, but let's take your example of the person
 5 being managed in seg versus in a hospital. One of
 6 our controls is that the warden and his executive
 7 staff will look at every single case in segregation
 8 every week and if there's an inmate in there who --
 9 and that team would include a psychologist and
 10 medical staff member so that we can say why is this
 11 person in segregation because you are right, those
 12 kinds of folks can fall through the cracks very
 13 easily. But one of our controls is you will look,
 14 you will know who is in seg and for what reasons and
 15 if we identify inmates who are there for mental
 16 health reasons, and maybe that's the right place for
 17 them given their situation, but even if they there,
 18 are they getting the appropriate treatment and care
 19 given that condition is an operational issue that
 20 occurs as part of the policy requirement and controls
 21 that we have in place to ensure those things are
 22 happening.

23 SHERIFF ASHE: Doctor, certainly I know
 24 you are aware of the first 24 hours in terms of the
 25 assessment and the services being provided. I would
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1 just also respond to the need too for continuing to
 2 work very closely with mental health, particularly as
 3 the person is reintegrating back into the community,
 4 and in that partnership equal responsibility in terms
 5 of dealing with these issues, that's all part, in my
 6 opinion, of the work that we have to do. And
 7 certainly, just as the director of the federal
 8 prisons has pointed out, is that certainly being
 9 human, professionally these aspects might be missed
 10 but I can assure you that they are picked up, if you
 11 will, in the pod living situations because we have a
 12 team that's providing this kind of services and so on
 13 inside.

14 MR. RIPPE: Thank you.
 15 Judge Gibbons.

16 JUDGE GIBBONS: I understand that the Bureau of
 17 Prisons has 116 separate facilities. Does the Bureau
 18 of Prisons require that each of those facilities
 19 provide to it a morbidity report with respect to
 20 every death that takes place there?

21 MR. LAPPIN: Yes, we do.
 22 JUDGE GIBBONS: Do they require a
 23 report with respect to every injury that takes place
 24 there?

25 MR. LAPPIN: There is a report for
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1 every injury, again, that's reported to us that we're
 2 aware of. As far as deaths in the institution, we
 3 also have an outside consultant who comes in and
 4 randomly evaluates the inmate's situation leading up
 5 to that death and provides us outside --

6 JUDGE GIBBONS: The review of the
 7 morbidity and injury reports are random?

8 MR. LAPPIN: We do an internal review
 9 of all of them. We do have a contractor who comes in
 10 and can look at all of them if they want to, but
 11 typically they do a random evaluation of cases that
 12 they select.

13 JUDGE GIBBONS: Are these reports
 14 maintained in a central place in Washington?

15 MR. LAPPIN: I don't know exactly where
 16 they're maintained. My guess is there's probably a
 17 central location in the Health Services Division, but
 18 certainly it would be maintained at least with the
 19 inmate's file.

20 JUDGE GIBBONS: Is there public access
 21 to those records?

22 MR. LAPPIN: I have to check on the
 23 releasability given some of the health care
 24 privacies, but guess the person is deceased, it is
 25 probably releasable. I'd have to check.

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1 JUDGE GIBBONS: And I suppose with the
 2 injury there might be privacy concerns.

3 MR. LAPPIN: There could be privacy
 4 concerns.

5 JUDGE GIBBONS: But with respect to the
 6 morbidity reports --

7 MR. LAPPIN: There's no privacy issue.

8 JUDGE GIBBONS: No privacy. And thus
 9 somebody wanting to make a study of the causes of
 10 death in the federal system would have a central
 11 resource to look at.

12 MR. LAPPIN: There would be a resource
 13 for them to look at.

14 JUDGE GIBBONS: Do you know of any such
 15 resource with respect to state institutions?

16 MR. LAPPIN: I'm not familiar enough.
 17 I have to defer to my colleagues.

18 SHERIFF ASHE: Certainly on a county
 19 level, as one can imagine, the seriousness of death
 20 obviously is reportable to the D.A. and the
 21 investigation takes place, et cetera, so there's no
 22 question about the accountability of that. So as far
 23 as major accidents that might occur in terms of
 24 injuries and so on, that's certainly reportable based
 25 on degrees but not every single one, there's not an

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1 accountability of that other than internally within
2 your own sheriff's department that we have there.

3 MR. RIPPE: A.T., did you want to
4 respond?

5 MR. WALL: With regard to morbidity,
6 yes, we too do reviews internally shared by our
7 director of health services, but including people
8 from outside the department. Those results are
9 forwarded to the state medical examiner as well so
10 that there is somebody conducting it there.

11 JUDGE GIBBONS: And available for
12 public inspection?

13 MR. WALL: To my knowledge, no, unless
14 the medical examiner would be willing to reveal them.
15 However, if you are talking about research and
16 analysis as opposed to the medical records
17 identifiable to a specific individual, then the
18 answer is yes.

19 JUDGE GIBBONS: Thanks.

20 MR. RIPPE: Dr. Gilligan.

21 DR. GILLIGAN: Both yesterday and today
22 we have heard comments indicating that sometimes
23 outside inspectors, say, independent of the
24 institution or the correctional system coming in have
25 been observed to precipitate crises or violence or

1 riots rather than to be helpful in preventing these
2 things or bringing them to some kind of resolution.
3 I was interested in getting more information on how
4 that happens and what has gone wrong when that
5 happens. And I say that, just take a moment, based
6 on my own experience over some 30 or 35 years in
7 having been involved in negotiations and a number of
8 ongoing violent incidents in prisons; hostage taking
9 incidents, riots, suicidal crises where an inmate
10 threatened to jump from a tower, one incident where a
11 correctional officer was psychotic and was holding
12 the whole institution at bay with weapons. In all of
13 these situations it turned out that the only way we
14 were able to get these situations resolved really was
15 with the help of people that came in who were
16 independent of the institution or the correctional
17 system. What the inmates in crisis were asking for
18 was somebody to listen to their grievance who was
19 outside the institution in which it occurred, so I
20 was powerfully impressed with the degree to which
21 people independent of an institution may serve to
22 diffuse or bring to a close an ongoing violence
23 crisis. But it is precisely because I think that can
24 be so helpful, I would like to get your help in
25 understanding more clearly what goes wrong when the

1 opposite happens, what should we know about or how
2 should we train and supervise inspectors who are
3 coming in to find out what's going on within a prison
4 before there is an incident of this sort, before
5 there is a riot or a hostage-taking or whatever, the
6 desperate means of trying to get people's attention.

7 Maybe Mr. Wall, especially since you
8 mentioned, you referred to one incident. I'm still
9 interested in understanding in more detail what were
10 the details, what were these people saying or doing
11 that seemed to provoke violence on the part of the
12 inmates.

13 MR. WALL: Certainly there are various
14 kinds of situations in which outside intervention can
15 occur. You are describing an acute episode of an
16 individual crisis. Other types of oversight would be
17 preventive in nature; somebody who simply sort of
18 comes in and screens the operation. Then there are
19 those which are exercises in response not to a
20 particular crisis, but a systemic kind of crisis; the
21 classification system has fallen apart, the health
22 care system is inadequate, so on and so forth. And I
23 think that you have to look individually at the
24 nature of the need for outside oversight. One size
25 can't fit all. There are times when it certainly has

1 proven helpful. There are also many times, by the
2 way, where that kind of crisis resolves successfully
3 from within; hostage-taking, suicide attempt,
4 barricading one's self in a cell block. Those things
5 are very often resolved very effectively within as
6 well.

7 With regard to those cases where I think
8 intervention can and has run amok, it really does
9 depend on the skill, the knowledge, the
10 professionalism, the savvy of the people who are
11 invited in or who invite themselves in in the case of
12 elected officials.

13 The situation that I described in the 1970s
14 was one in which, again, the tenor of the times was
15 to an openness, complete transparency to the
16 detriment of security in some cases. And legislators
17 became involved with inmate organizations and would
18 come in, would host banquets within the institution,
19 would invite inmates to come out of the institution
20 escorted by them to testify. I mean, things that
21 seem inconceivable to us now but those with long
22 enough memories will recall when these kind of
23 episodes occurred. My experience is that somebody
24 who is naive can become seduced by the most powerful
25 inmates in the system, the most articulate, the

1 heavies, the ones who put themselves forward, and
 2 their interests are not always the same as the
 3 welfare of the inmate population in general.
 4 Similarly, there are cases where well-
 5 meaning people come in, solicit complaints from
 6 inmates, ask them what's wrong, and leave the inmate
 7 population to believe that they have the authority
 8 and the power to make things better. They, in
 9 essence, make promises that they can't keep and that
 10 is very -- these are people who have been betrayed
 11 over and over again and those kinds of betrayals are
 12 devastating and we end up reaping the consequences of
 13 those. Those are some examples.

14 MR. RIPPE: Margo.

15 MS. SCHLANGER: I have a question for
 16 Director Lappin but I don't mean to keep you from
 17 answering that first one first.

18 MR. LAPPIN: I will just go back.

19 I will agree with A.T. that although we
 20 have not had a lot of experience with that, I think
 21 folks coming in a little naive is a concern and,
 22 therefore, in those scenarios where we need to have
 23 outside assistance, we need to be more proactive,
 24 identify who those individuals are and work with them
 25 in advance, and let me use the example of, and the

1 only one that comes to mind right now is our
 2 emergency preparedness.

3 We know, we assume at most times we can
 4 handle most of those issues but you can't be
 5 absolutely sure. So in light of that, we get with
 6 the local law enforcement in those given areas, we
 7 see what other resources, the FBI, see what other
 8 negotiation resources, see what other critical
 9 incident teams are available, and our staff works
 10 collectively with them in advance in preparation and
 11 scenario planning and practice; one, so they learn
 12 about what to expect in the prison setting if in fact
 13 they have to come in and what not to expect. And so
 14 I think in any scenario, I think that would be wise
 15 so that we don't have someone coming in and
 16 committing, doing something that would be
 17 inconsistent with what we can actually do or
 18 accomplish because that in and of itself escalates
 19 the situation, but I think there's plenty of
 20 opportunity in advance of those things to occur to
 21 step back and look at who and then how we do we pull
 22 together and work through those.

23 MS. SCHLANGER: My question is about
 24 all of these different types of internal review and
 25 accountability that you talked about, and what I'm

1 really curious about is how much is it fair to expect
 2 from that kind of system and how much is too much to
 3 expect so let me tell you what's kind of prompting
 4 that.

5 We heard yesterday about some problems
 6 In Florence. We didn't hear in detail but we heard
 7 about the criminal prosecution of the correctional
 8 officers in Florence, and what I wondered when I then
 9 read your testimony was, is that the kind of thing
 10 that internal review ought to be catching or even did
 11 catch, I have no idea how that stuff came to light,
 12 or is it too much to expect that the internal review
 13 is going to catch these deep, deeply problematic but
 14 individual kinds of officer problems, is that the
 15 kind of thing that it is just not going to get that
 16 and there's going need to be a different system that
 17 gets that or is that the kind of thing that in your
 18 internal review can catch.

19 And then I had a question related to that
 20 which was I gather, again, from yesterday's
 21 testimony, that some reforms were instituted after
 22 all of that and I assume they weren't reforms that
 23 told people that they shouldn't, that told
 24 correctional officers not to beat up inmates, I
 25 assume that they were accountability reforms, and I

1 wondered which of the things you told us about was
 2 new and related to all of that and how that's all
 3 working.

4 MR. LAPPIN: I can't say that one or
 5 the other might lend us to that information more so
 6 than not. In my experience as a warden I relied
 7 heavily on my own internal investigative unit at that
 8 prison and the staff and the inmates to each and
 9 every day give us insight into what's going on in the
 10 prison and that's what goes back to our best offense,
 11 in our opinion, and defense in running safe prisons
 12 is effective communication with inmates; that we're
 13 out there walking and talking each and every day,
 14 that staff at all levels from the warden right on
 15 down are accessible and there's a system of gathering
 16 that intelligence, it saves us each and every day.
 17 And my guess is that most of those issues evolve
 18 either from staff or inmates reporting those things
 19 to the leadership or it is working its way to the
 20 leadership whose obligation it is to report that.

21 Granted, some of the things I've mentioned
 22 here could pick up on those, especially if we see
 23 some trends. We look at how do cell phones get in
 24 the prisons? They aren't getting mailed in. More
 25 than likely there's an employee bringing those things

1 in, so it is obvious based on that intelligence that
 2 there may be a problem tied to employees or employees
 3 who are not clearly meeting our expectations. And
 4 believe you me, we would like to have the best
 5 methods of selecting folks from the beginning and
 6 although we have good systems, we're not perfect and
 7 sometimes we hire people that we probably shouldn't
 8 have hired. Or as A.T. mentioned, when they get into
 9 that position the sense of control and authority
 10 changed them and they do things they shouldn't do.
 11 So I think for me, the character profile is an
 12 example. We are in there talking with staff and
 13 inmates. This is not an issue of is this program
 14 performing, this is a character profile. A cultural
 15 assessment is how effective is the leadership at that
 16 facility in gaining information from their staff and
 17 inmates, is there open communication, and in doing so
 18 we would glean, hopefully, insight into what someone
 19 may or may not be doing and you open an investigation
 20 and then you just like investigators do, they
 21 investigate, and we do as much as we can to prevent
 22 that from occurring or eliminating those folks from
 23 the facility. And the aftermath, and most of us have
 24 been there, we have had staff that have done things
 25 they shouldn't have done. I was just in L.A.

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1 yesterday, you saw it in the paper. We had some
 2 correctional officers arrested for bringing in
 3 cigarettes and bringing in cell phones.
 4 That impacts those employees there. The
 5 majority of those employees who are dedicated,
 6 hard-working public servants whose peers have
 7 deceived them, who some of those employees don't
 8 believe that could have happened, that the
 9 management, the administration is wrong, so there's a
 10 wealth of emotions that occur in that work unit and
 11 it is leadership's job to address those issues and in
 12 addressing those issues continue to train, continue
 13 to set the expectations, continue to put in place
 14 the, reinforce the standards that we have established
 15 across the board so that we have less of that and
 16 when we suspect it is happening, that people are
 17 forthcoming in telling us. So it is a combination of
 18 things but to me it is really -- that's why, again,
 19 it goes back to leadership, it goes back to the folks
 20 who are there day in and day out managing the staff,
 21 managing the inmates, the familiarity with their
 22 staff and their inmates. If we have a good job of
 23 that, we have less of those of issues. When we slip
 24 and don't we know quickly, then we step back and hold
 25 them accountable. And sometimes when those things

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1 happen and we believe it shouldn't have happened we
 2 remove people we replace them with others that we
 3 think can perform at a higher level.

4 SHERIFF ASHE: I just wanted to follow
 5 up. It was very well put in terms of the
 6 accountability.

7 Again, I think when you are looking at the
 8 warehousing/custodial kind of concept versus
 9 corrections, this is what lends itself, if you will,
 10 to incompetence and unprofessionalism. And, again,
 11 any correctional facility that, again, it is
 12 highlighting; for example, challenging, placing
 13 demands on inmates, this is something that is very,
 14 very important and significant and was highlighted
 15 earlier about the walking and talking aspect of your
 16 leadership team and the standards that are being set
 17 forth and so on in terms of this aspect is crucial.

18 MS. SCHLANGER: So when you see a
 19 serious problem like that and there was a moment
 20 before you knew about it and now there's a moment
 21 that you know about it, is one of the things that you
 22 do to think about how you missed it before you saw
 23 it? I mean, in other words, do you audit the
 24 auditing, or is that sort of too metaphysical and we
 25 just don't do that?

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1 MR. WALL: I think any good system has
 2 after-action reviews. You are talking about various
 3 forms of accountability. One is auditing and
 4 reviewing records, those are prophylactic and
 5 diagnostic, and then you have an investigation when
 6 something happens that wasn't detected, that wasn't
 7 detected before it ripened into abuse, and in those
 8 cases, yes, clearly the investigative process is the
 9 key, you have to have multiple channels for
 10 reporting, so there are a variety of ways that what
 11 happens in there can get up to you or to the level of
 12 the person who can take action. You have to have a
 13 credible investigative process, a very aggressive
 14 one. And as I said before, there absolutely has to
 15 be proportional consequences, serious consequences.
 16 That's when people know you mean it.

17 Finally, you must have an after-action
 18 review, you've got to analyze what went wrong, what
 19 could have been done differently, why things happened
 20 as they did.

21 MR. LAPPIN: We would like to do a
 22 better job of knowing in advance when those things
 23 happen and certainly some of the controls that we put
 24 in place -- I was a warden who was on the receiving
 25 end of those controls -- and it was basically an

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1 assessment of your leadership and your ability to
 2 understand the staff and the inmates and it is a bit
 3 intimidating. And I have also been the giver of
 4 those. I have gone out and it is hugely resourceful
 5 for the first person overseeing those prisons and
 6 those wardens because those are the types of issues
 7 you get to in advance of that. Your staff are
 8 telling me, the inmates are telling me, and I tend to
 9 believe that that's an issue here and it is really a
 10 heart to heart between the person who supervises that
 11 work on what needs to be done in advance of there
 12 being a critical situation.

13 MR. RIPPE: Gentleman, on behalf of
 14 Judge Gibbons, the commissioners and everybody here
 15 present, we want to thank you for a very insightful
 16 and most useful panel in the work of the commission.
 17 Thank you very much.

18 (Lunch)

19 MR. SCHWARZ: Our next speakers will
 20 give us an examination of independent prison
 21 oversight.

22 Anne Owers was appointed Chief Inspector of
 23 Prisons in Great Britain in 2001. Before that she
 24 was for nine years the Director of Justice for one of
 25 the United Kingdom's leading human rights

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1 organizations, and when there she was a member of a
 2 number of governor committees, including the Home
 3 Offices Task Force on the Implementation of Human
 4 Rights Advocacy. Ms. Owers is going to describe the
 5 role of the inspector in prisons in the independent
 6 scrutiny of conditions and treatment in prisons and
 7 other places of detention, and she will describe the
 8 methodology that's used based on a set of
 9 expectations of accessing prisons and detention
 10 facilities and comment on how her tools for measuring
 11 outcomes may be applicable to other countries and
 12 cultures.

13 So thank you very much for being here and
 14 we look forward to listening to you and then
 15 questioning you.

16 MS. OWERS: That you very much,
 17 Commissioner, and thank you very much for inviting
 18 me. It is a great pleasure to be here and it has
 19 been a great pleasure over the last two days to learn
 20 about what's going on here too.

21 The first thing I really want to say is
 22 that I don't see that I am coming here to say that we
 23 have now cracked it in the United Kingdom and we're
 24 about to tell you that this is the way to do things.

25 We have far from cracked our problems in prisons. We

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1 have a lot of the same problems that I have heard
 2 being described over the last two days in prisons
 3 here; problems with mental illness, problems
 4 connected with substance abuse, problems of an
 5 increasing prison population, even though by U.S.
 6 standards it is small. Barely the prison population
 7 of New York State, I understand. But apart from
 8 that, you can't, it seems to me, simply import one
 9 system into another, you can't just transplant
 10 something that works somewhere into somewhere else
 11 just like that. You have to recognize the difference
 12 in different systems. There's difference of scale as
 13 some of your previous witnesses have said, there's
 14 the fact that you are operating within a federal
 15 system, and there are differences of legal and
 16 political culture and context, and it is very
 17 important to take those into account in whatever you
 18 are doing.

19 When my predecessor was Chief Inspector of
 20 Prisons we had a visit from a group of Russians
 21 coming to see how we did things and they asked three
 22 questions. They said, "Who appoints the chief
 23 inspector of prisons?" "The home secretary," we
 24 said. "And where does the money come from?" "Well,
 25 it is part of the Home Office vote." "And who is

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1 your chief inspector?" "Well, he used to be a
 2 general." "Ah," said the Russians, "we have
 3 independent inspectorates just like that."

4 In order to be effective you have to be
 5 working with the grain, you have to be working in a
 6 culture that will accept what you say and that can
 7 buttress the independence that I think is necessary
 8 to this role.

9 As I've said in evidence to the commission,
 10 and I won't go through it again in detail, our
 11 inspectorate is a creature of statute. It is created
 12 by statute, my office is created by statute. I hold
 13 the office for five years at a time. I am appointed
 14 independently of the Prison Service and also to an
 15 extent independently of government since I'm a Crown
 16 appointment and therefore I'm not part of the
 17 permanent civil service.

18 We inspect regularly all the 139 prisons,
 19 and by prisons I mean prisons and jails because we
 20 don't distinguish in England and Wales, so it is
 21 every single prison institution I am responsible for
 22 inspecting regularly. Some of that is with warning,
 23 some of it is without warning. I have the power at
 24 any time and over half my inspections are carried out
 25 unannounced without any warning to the institution.

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1 We will take in a whole team of inspectors
 2 including experts in education and health care and
 3 substance use. We will look at everything that is
 4 happening within that prison and we will provide a
 5 holistic picture of all that's actually going on
 6 irrespective of what should be going on or what those
 7 running that prison might think is going on. We do
 8 that by using criteria that we have developed over a
 9 lengthy period, which I have copies of which I can
 10 happily leave for the commission, called
 11 "Expectations" which is our criteria in detail for
 12 what we would expect to see, what would be best
 13 practice in all the areas of prison life, the
 14 prisoner's experience, and we have developed those
 15 over time. We have a separate one for juveniles
 16 also.

17 And we also have free access within the
 18 prison to everything. We have our own keys, we talk
 19 to prisoners, we talk to staff, we see all the
 20 documents, and before we go into a prison we will
 21 carry out a confidential survey of prisoners to find
 22 out what they think of their establishment and
 23 although prisoners are by no means honest about all
 24 the things they do, we find them a surprisingly
 25 reliable source about prisons, not least because they

1 are, sadly, expert consumers of prisons, and we can
 2 benchmark the responses from one prison against other
 3 prisons of its type or indeed what that prison was
 4 like last time, that is one source of information, it
 5 is only one. It is always triangulated against what
 6 my observers, what my inspectors see, the
 7 documentation they read, and what the staff also tell
 8 us.

9 We produce and publish a report which is a
 10 public document with recommendations for change. The
 11 Prison Service must produce an action plan saying
 12 whether they accept or don't our recommendations, and
 13 we will go back ourselves, always without warning, to
 14 check whether those recommendations have been
 15 implemented, so that's the way in which we carry out
 16 our inspection and I'm very happy to answer more
 17 questions about that.

18 I want to, though, in this initial short
 19 introduction to address some of the issues that have
 20 arisen about why you have external oversight,
 21 external inspection of prisons, why we have it, and
 22 to draw out that although the structures may not,
 23 will not be the same, some of the principles might
 24 guide your thoughts on this in the commission's work.

1 because there are not good people running prisons and
 2 working in prisons and responsible to politicians for
 3 the running of prisons. You have heard some
 4 witnesses on that today and yesterday. I see those
 5 people all the time in prisons and, indeed, without
 6 good managers and good leaders our inspection would
 7 be no use at all because nothing we wanted to happen
 8 would be able to happen. We rely on prison staff to
 9 make it happen. We do more than that. Half of my
 10 inspectors are people who have been operational
 11 within the Prison Service. I choose them and that's
 12 how I know there are good people working in the
 13 Prison Service, and they work for me for a three-year
 14 period but they have been operational prisons and
 15 they will go back to being operational prisons and
 16 that is very important. And in case anyone were to
 17 think that this is too cozy a relationship, I would
 18 have to tell you that those people who come from
 19 prisons are in many ways and often much less
 20 forgiving of bad and sloppy work done within prisons
 21 than colleagues that come from outside. They're by
 22 no means pushovers; quite the reverse.

23 We are not, I'm very clear, an advocacy
 24 group, we are a group that is there to provide an
 25 evidence-based account of what is actually going on

1 in the prison. We are aware of how fragile prison
 2 establishments are. They do not remain safe and
 3 decent places by accident, they only remain so
 4 because of constant work by those who work within
 5 them, and so we are very aware of that. What we see
 6 our role is is essentially preventive. Of course we
 7 can pull out sometimes when things are going wrong,
 8 but our whole aim is to find out what is going on and
 9 to prevent things getting worse. We can spot in the
 10 detailed work we do where those things that should be
 11 standards are not being implemented properly. Our
 12 Prison Service, like many of your witnesses today,
 13 has got a detailed set of standards, its own
 14 standards for prisons. It has audits, it does audit,
 15 it has targets which it expects prisons to meet.
 16 Those forms of internal accountability are there and
 17 present and very important.

18 We can look at what's actually happening on
 19 the ground. In a prison that is less than well run,
 20 what there may be is a virtual prison which is
 21 operated from the governor's, the warden's office
 22 where what is thought to be happening is being passed
 23 up the line to those above. Even in well-run prisons
 24 I don't think I have ever been on an inspection which
 25 hasn't found something, however small, that the

1 governor or the warden of the prison didn't know was
 2 happening and where the warden hasn't said,
 3 "I'm glad you told us that, I will need to take
 4 account of that," and that is a very important,
 5 preventive role that inspection can play. As one of
 6 your witnesses said yesterday, for those running
 7 prisons, it is what you don't know that will get you,
 8 and I think we are part of a procedure that can mine
 9 a bit under the surface and find out things that
 10 sometimes may not be known and their outcomes may not
 11 be known, so it very much complements our Prison
 12 Service, and you will be able to read how robust our
 13 reports are, but I'm pleased that, nevertheless, our
 14 Prison Service is very supportive of my inspectorate
 15 and wants it to continue in its present form because
 16 it sees it as an important part of what it is doing,
 17 not least because I think independent inspection
 18 which is coming from outside the institution can
 19 provide a credible voice which gives some political
 20 space for reforming and changing prisons. It is not
 21 coming from those who are actually running prisons,
 22 it is coming from somebody outside, it is pulling out
 23 to the public what is actually happening in their
 24 name in their prisons.

25 As many of your witnesses have said, the
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1 public doesn't always want to know what's going on in
 2 their prisons; they would like them to be out of
 3 sight, out of mind, and yet prisons are a public
 4 service just as surely as hospitals and schools and
 5 police are a public service, and it seems to me that
 6 the work that we can do, the publicity we can get for
 7 what's going on in prisons and the publicity we can
 8 get for what needs to be done in prisons is an
 9 important part of public accountability. Thank you.

10 MR. SCHWARZ: Let me start the
 11 questioning and then others will have more.

12 Maybe you could give us, even though it is
 13 hard to do in a compressed period of time, but what
 14 would you say are the factors which demonstrate a
 15 prison to be healthy or unhealthy?

16 MS. OWERS: We have developed four
 17 tests of what we call a healthy prison, which the
 18 tests are based upon something that the World Health
 19 Organization produced some while ago when it was
 20 doing an inquiry into prison suicides. Those tests
 21 are that a healthy prison is one where prisoners,
 22 even the most vulnerable, are safe; where prisoners
 23 are treated with respect for their human dignity;
 24 where they are able to engage in purposeful activity,
 25 and they are prepared for what we call resettlement

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1 and what you call reentry, so those are the four
 2 things we look at. And when we do the detailed
 3 examination under our expectations, we group what we
 4 find under those four headings and we will tell the
 5 prison how we assess, how we think it is doing under
 6 each of those four tests.

7 MR. SCHWARZ: Then the second point I
 8 wanted to ask you is your written materials attached
 9 a questionnaire for prisoners and you talked about it
 10 in your opening remarks. That sounds like a very
 11 interesting thing to do, but what assurance do you
 12 have of validity? I mean, have you tested -- how do
 13 you test for validity? Is there bias in what's being
 14 said or is that canceled out by something else?

15 MS. OWERS: Well, the first thing is we
 16 select a random sample which is statistically valid.
 17 The first thing is you've got statistical validity,
 18 you are not basing what you are saying on one or two
 19 people, so we have statistical validity which can rub
 20 out individual bias. The second thing is that, of
 21 course, what prisoners tell us isn't necessarily what
 22 we believe, it is only part of our evidence base, so
 23 we will have that when we go into the prison but we
 24 will be checking what the survey is telling us by
 25 what we see and hear and feel and read when we're

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1 actually in prison.

2 Having said those things, it is surprising
 3 to us, and I think it was very surprising to the
 4 Prison Service, how often prisoners are able to
 5 pinpoint the things that are right and the things
 6 that are wrong in a prison. We ask some quite
 7 difficult questions, ones that our service found
 8 quite difficult, like have people ever been
 9 victimized by other prisoners, have they ever been
 10 victimized by staff. And when we first asked those
 11 questions our Prison Service said, "But they're all
 12 going to say that, they're all going to say that,"
 13 and actually they don't. A very small number do. So
 14 when a significant number of prisoners are expressing
 15 concerns about staff, it is something that we look at
 16 with particular concern, or whenever they're
 17 expressing fears of unsafety from other prisoners
 18 which is, obviously, also part of safety. So that
 19 although we treat this quite rightly as only one
 20 source of evidence which needs to be corroborated,
 21 because of its statistical base it does provide, I
 22 think, quite a good landscape map of the areas of
 23 good and bad practice within the prison.

24 MR. SCHWARZ: The final one I wanted to
 25 ask you is you mentioned in your earlier remarks the

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1 helping with political support for reform. You were
2 there I think at the first panel this morning where
3 there was a lot of discussion about how one generates
4 political support for reform and I would be
5 interested in your comments on that dialogue or your
6 own views on the subject.

7 MS. OWERS: I think it is a very tricky
8 one and one that certainly our country no more than
9 this has cracked yet.

10 There are two things that relate to
11 independent oversight that I think are relevant here.
12 One is that while public opinion generally is not
13 sympathetic to people who are held in prisons, my
14 experience has been that nor does the public want to
15 think that its country is running prisons where
16 people are held in degrading conditions, for example.
17 And so there is actually a public, a public
18 groundswell where things are revealed that should not
19 be happening and that's rare in our prison system but
20 it has happened and it does generate that
21 groundswell.

22 The other thing, I think, is to get an
23 intelligent debate going about what prisons are for.
24 People clearly go to prison as a punishment, as one
25 of your earlier witnesses said, but if that's all

1 that happens, then society is not truly protected
2 because, as many of your witnesses have said, they're
3 going to come out, and often quite quickly, and we
4 want prisons to be places which make them less rather
5 than more likely to re-offend, and getting an
6 intelligent debate about what actually happens within
7 prisons, which is part of what we do, I think part of
8 that.

9 MR. SCHWARZ: Thank you.

10 Mr. Maynard, did you have a question? I saw you
11 waving your pencil or something like that.

12 MR. MAYNARD: You probably said it
13 earlier, but you said 131 prisons, jails?

14 MS. OWERS: We have 139.

15 MR. MAYNARD: How often do you visit
16 those, how often do you inspect those?

17 MS. OWERS: Not often enough, but each
18 of those will see us at least twice in a five-year
19 period. But if there is a prison or a jail that I'm
20 particularly worried about then I will go in more
21 quickly than that, and the ones where our inspections
22 have raised some concerns are the ones that we will
23 go into more quickly. Our work is supplemented by
24 citizen committees called Independent Monitoring
25 Boards who are there all the time and also have

1 access to the prison and can go in regularly.
2 They're not connected to us, but they're a separate
3 form of monitoring.

4 MR. MAYNARD: Laurie.

5 MS. ROBINSON: Thank you very much for
6 being here. I think this is very interesting.

7 You commented that the correctional
8 administrators are very open to and supportive of
9 having visits by you and your staff and I'm curious.
10 Is that consistent across the board or are there some
11 who are resentful and unhappy about it? I mean,
12 human beings generally are somewhat diverse in their
13 reactions. And where there is resentment, as
14 presumably there will be, I'm curious how you deal
15 with that.

16 MS. OWERS: It is certainly true that
17 not every governor of a prison is absolutely
18 delighted when an inspection team walks through the
19 door and all of them are somewhat nervous and it is
20 not pleasant being inspected.

21 My remarks were about the top of the Prison
22 Service, the Director General of the Prison Service,
23 who is responsible to ministers for it, who feels
24 that what we do is a very important part of his
25 intelligence-gathering network and what he needs to

1 know about prisons he can't get into in detail at the
2 time.

3 When we do encounter, which we sometimes
4 do, we sometimes encounter a variety of difference of
5 mechanisms. They can be anything from "I know
6 exactly what's going on here so you don't need to
7 come," to putting up various issues that we don't
8 think are relevant about why the prison isn't working
9 properly. Also staff sometimes can be resistant, but
10 it is actually surprising, and I think it is partly
11 because we have a great familiarity with prisons. It
12 is surprising to me that we are -- we very rarely get
13 the kind of resistance -- well, we never had
14 resistance that makes it impossible to do our job,
15 but we very rarely have resistance that means that it
16 is a very uncomfortable procedure.

17 MS. ROBINSON: But I'm actually curious
18 about those who are somewhat reluctant and, in
19 effect, how you kind of win them over to be more open
20 to, in effect, the kind of recommendations you might
21 have or things that you are pointing out. Not
22 necessarily where you have to kind of work your way
23 into the prison, but more to develop the partnership
24 and working relationship.

25 MS. OWERS: I think you have to start

1 from the belief, as I think some of your earlier
2 witnesses said, that people actually want to work in
3 and run good prisons; people do not want to be
4 associated with a prison that is a failing prison,
5 that is doing badly. You have to work with that. If
6 you are working with people who genuinely wouldn't
7 care what kind of institution they were running or
8 what kind of institution you were working in, you
9 wouldn't get anywhere.

10 We find a lot of people in prisons have got
11 kind of stuck, have maybe got stuck in a way of doing
12 things or stop seeing something or are completely
13 ground down by the day-to-day problems of with
14 limited resources and an increasing prison
15 population, trying to deliver everything that
16 everybody wants to a whole heap the political masters
17 and other kind of masters, and people can get very
18 kind of ground down by that. And what we try to do
19 is to present it as a helpful exercise, an exercise
20 that is about a free consultancy, trying to improve
21 performance, trying to let them running their prison
22 be able to put levers on those above them about what
23 they need in order to do their job properly. It has
24 to be in that sense, although we have to be in very
25 separate places to start the exercise, it will only

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1 work if you can convince the people you are talking
2 to that things could be better.

3 MS. ROBINSON: Thank you.

4 SENATOR ROMERO: Just two questions.

5 Your role in terms of looking at the
6 independent oversight, it is one thing to go in and
7 to inspect but the question, for example, that I have
8 here in California is what's the enforcement, where
9 is the teeth, what's the power to -- we can have all
10 the observations, we can have all the reports and
11 they will sit on shelves. I would like to hear that
12 from you in terms of truly the power, the authority,
13 the teeth to make something happen.

14 And, secondly, it is fascinating to listen
15 to your description of this, I rather like it. Can
16 you outline some of the maybe most stark contrasts
17 you see between the system of independent oversight
18 as you practice it, and although we are 50 states
19 with 50 different correctional systems, maybe some
20 observations to compare and contrast between your
21 system and what you have observed with ours.

22 MS. OWERS: I'm sorry, the second
23 question was so interesting I almost have forgotten
24 your first which was --

25 SENATOR ROMERO: Teeth.

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1 MS. OWERS: Oh, yes. I shouldn't have
2 forgotten teeth.

3 SENATOR ROMERO: After lunch, teeth.

4 MS. OWERS: Thank you.

5 In relation to that I think I would echo
6 what your inspector general, Matthew Cate, was saying
7 yesterday, which is you can chose to go down two
8 routes. You can either be part of a system and have
9 regulatory powers or you can be outside a system in
10 which case you haven't got regulatory powers and you
11 have to rely on your powers of persuasion, shaming,
12 advocacy in order to get what you want. We are, like
13 him, in the second group. I would not have the
14 freedom to try to have expectations which asked
15 prisons to get better and to go above minimum
16 standards if I was tied into the system and had
17 regulatory powers, so the powers of advocacy and
18 persuasion. But, as I say, I think you are working
19 with a system, and certainly we are in our current
20 prison system, with the director general and his
21 staff who want that prison system to get better, and
22 I think an indication of that is that around 95
23 percent of our recommendations are accepted by the
24 Prison Service and when we go back to check, because
25 we don't entirely trust when people tell us that they

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1 have done things, when we go back to check we found
2 around 72 percent of those recommendations have been
3 implemented, and so 72 percent of those things are
4 better in that prison than when we were last there
5 and in the kind of state our prisons are in that's
6 pretty much good enough for me at the moment,
7 although I would like to be a hundred percent.

8 Going to the second question, I'm reluctant
9 to get into that territory because, as I said at the
10 beginning, I think that you have to develop systems
11 that work for you and you have to develop systems
12 that fit into the political, the legal, the cultural
13 and the federal nature of the systems that you are
14 running. I have heard today some very interesting
15 examples of ways in which individual states have been
16 looking at things and I think the test will be to see
17 whether those kind of principles that I set out about
18 external oversight, first of all to see whether you
19 think they are useful principles, but also see how
20 they might work in particular states and in the
21 federal system, and I'm not sure I can do better than
22 that.

23 MR. SCHWARZ: That's a good answer but
24 let me ask you a pure fact question that maybe you
25 would feel comfortable answering.

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1 I was having lunch with the judge from
2 Alabama and the former head of the Alabama Prison
3 Service who said that the starting pay for a
4 corrections officer in the State of Alabama is
5 \$15,000; 8,000 pounds, or something like that. So
6 what would the starting pay be for a corrections
7 officer in Great Britain?

8 MS. OWERS: It would be about twice
9 that in the public sector, it is less in the private
10 sector prisons, about 3,000 pounds less, but it is
11 about double that. And, of course, we have, the
12 difference for us is we have a national prison system
13 which is run nationally and more or less the same
14 throughout the country.

15 MR. BRIGHT: Let me ask another factual
16 question very much like that.

17 When did your office first become
18 established and is there any measure of how effective
19 it has been, particularly with regard to the safety
20 of the institutions that you inspect?

21 MS. OWERS: My office was established
22 in 1982 so it has had quite a long run for its money.
23 We're nearly celebrating 25 years.

24 It is very difficult, I think, to isolate
25 one particular actor in a prison system. My view,
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1 and I think the view of most people, is that our
2 prison system has gotten better over that time. It
3 is significantly safer, there is more activity, there
4 is more education, more training, and certainly a
5 greater emphasis on reentry than there was at that
6 time, and I think the inspectorate has played a key
7 role in that, I mean, if you think of some of the
8 things that we have gone on about have now become
9 things that are embedded in practice. I give you an
10 example. We produced a thematic report, because we
11 do some thematic reports, on suicide in prisons about
12 six or seven years ago, and that has led to a huge
13 change in the way the prisons manage prisoners at
14 risk of suicide and self-harm. And I know that my
15 predecessor, the previous chief inspector, came over
16 to the U.S. and looked at some systems in the U.S. he
17 was rather pleased with and invited the government to
18 think about those. Prison health care too, which was
19 in a dreadful state some while ago, is now run by our
20 National Health Service with the aim that it is run
21 to equivalent standards to that provided in the
22 community. I think those are some examples of areas
23 where the inspectorate -- you know, on the big issues
24 you have to go on and on for quite a long time. The
25 small issues you can get some wins; the larger issues
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1 take longer. But the fact that we don't give up on
2 them means, I think, I hope that they would
3 eventually happen. My big issue at the moment, as it
4 has been said about many places in the U.S., is
5 mental health and the need for better mental health
6 provision out there so that we don't have poorer
7 mental health provision for those within our prisons.

8 MR. BRIGHT: And you say dealing with
9 that to get people who are mentally ill out of the
10 prisons or to get treatment for those people in the
11 prisons?

12 MS. OWERS: It has to be both. It is
13 one of paradoxes, I think, of inspecting prisons;
14 that you could make prisons places that people feel
15 more comfortable about sending the wrong people to.
16 My view is that prisons are not mental health
17 institutions, they're not therapeutic environments,
18 and at present we are sending far too many of our
19 mentally ill people to prisons because we closed down
20 our large mental institutions and we did not replace
21 them with anything else. And they are people who are
22 very difficult to manage in prisons; they are a
23 danger to themselves, to staff and to other prisoners
24 many times, and many of them, as here, are held for
25 lengthy periods in segregation.

1 Mental health services within our prisons
2 have gotten better and they need to get better
3 because there are mentally ill people in the prisons,
4 but I think the end game has to be to provide better
5 mental health facilities, secure facilities and
6 non-secure facilities, out there in the community so
7 the don't prisons become by default mental
8 institutions.

9 MR. BRIGHT: The National Health
10 Service provides the mental health care as well?

11 MS. OWERS: Yes.

12 MR. BRIGHT: You have no private
13 providers?

14 MS. OWERS: There are some private
15 providers. The National Health Service will not
16 provide to prisons, for example, so the private
17 prisons have private providers.

18 MR. SCHWARZ: We have one more
19 questions from Dr. Dudley if you want to.

20 DR. DUDLEY: Could you just kind of
21 briefly characterize the prison population, like what
22 percent is mentally ill, the cultural breakdown?

23 MS. OWERS: I'm not sure I can do that
24 off my head but I can certainly provide the
25 commission with answers afterwards.

1 There are around 78,000 people in our
 2 prisons now of which around 5,000 are women and
 3 around 3,000 are juveniles under 18. The estimates
 4 of mental disorder are very wide and I think it
 5 depends on what you count as mental disorder because
 6 some people can become depressed because they're in
 7 prison, but certainly a lot of the statistics would
 8 say you are looking at around 70 to 80 percent of
 9 people with some form of mental disorder often, of
 10 course, linked to substance use. And, of course,
 11 once people come off of the substance that is masking
 12 the disorder, then the disorder becomes that much
 13 more pronounced. In terms of ethnic breakdown, I'm
 14 not sure, I don't have the statistics at my
 15 fingertips, but I can certainly provide that.

16 MR. SCHWARZ: Did you have one?

17 JUDGE SESSIONS: I have one or two.

18 Talking about recidivism rates in this
 19 country, they're accepted as being unacceptably high
 20 in most circumstances. How does the recidivism rate
 21 in England compare with what we have here generally
 22 and how does the reentry program, which is the second
 23 question, or the resettlement program, affect that?

24 MS. OWERS: Our recidivism rates have
 25 been poor, very high for young adult men, age 21. It

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1 is 70, 75 percent recidivism. In general the prison
 2 population, around, I'd say over half, around 52, 53
 3 percent that's reconvicted within two years and, of
 4 course, that doesn't count the crimes which aren't
 5 even detected.

6 For that reason we have started within the
 7 last three or four years to put a lot more focus on
 8 reentry programs. We put a lot of trust in the
 9 cognitive behavior therapy programs developed in
 10 Canada and they looked initially as if they were
 11 producing very good results but actually
 12 longitudinally, unless you put other things in place
 13 like employment, like family connections and so on,
 14 that won't work, and so we're putting a lot more
 15 energy now into reentry.

16 JUDGE SESSIONS: Are those in
 17 transition then, are they improving on the reentry
 18 programs?

19 MS. OWERS: It is too early to tell.
 20 This is still very new.

21 JUDGE SESSIONS: How deep are you into
 22 it then? That's the fourth question.

23 MS. OWERS: How deep. Well, it started
 24 very slowly around two years go. We're now creating
 25 a new structure where we're joining together prison

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1 and probation to try to do that in a more seamless
 2 and organized way, but it is the short-term offenders
 3 who are the major issue.

4 JUDGE SESSIONS: Thank you, Inspector.

5 MS. OWERS: Thank you.

6 JUDGE SESSIONS: Thank you very much.

7 MR. SCHWARZ: And while Judge Thompson
 8 is walking up, you may be interested in the dialogue
 9 that the starting pay for corrections guards in Great
 10 Britain is double what the starting pay is in the
 11 State of Alabama.

12 MS. SCHLANGER: We're going to hear now
 13 from our next panel, and what our speakers will talk
 14 about is another method of oversight and that is
 15 oversight by litigation or by judge, and it is really
 16 my pleasure and privilege to welcome these three very
 17 distinguished panels, so we are going to start with
 18 Al Bronstein and Stephen Hanlon and Judge Myron
 19 Thompson. Let me tell you a little bit about them.

20 Mr. Bronstein founded the American Civil
 21 Liberties Union's National Prison Project in 1972 and
 22 is now the director emeritus. He is currently the
 23 U.S. board member of Penal Reform International and
 24 is a member of the assembly of delegates to the World
 25 Organization Against Torture.

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1 Mr. Hanlon is a partner at the law firm
 2 Holland & Knight and has been pro bono counsel in
 3 several different class action lawsuits addressing
 4 unsafe and abusive conditions in prisons and jails
 5 too, I think, right? No, just prisons.

6 Judge Thompson serves on the U.S. District
 7 Court for the Middle District of Alabama sitting in
 8 Montgomery and has presided over a large number of
 9 individual actions brought by prisoners, and quite a
 10 number of them, of larger injunctive cases involving
 11 overcrowding, gross medical neglect and other
 12 unconstitutional conditions.

13 Our panelists are going to talk about court
 14 intervention and litigation, litigated intervention,
 15 the role of lawyers and of judges, and are going also
 16 to discuss the recent congressional, this is not so
 17 recent, the congressional changes in that system, The
 18 Prison Litigation Reform Act which was passed in
 19 1996. So thank you all for coming and we are going
 20 to start with Mr. Bronstein.

21 MR. BRONSTEIN: Thank you.

22 Before 1970 there was no court supervision
 23 of jails and prisons in this country. We operated on
 24 what was called a hands-off doctrine. The Supreme
 25 Court had articulated a theory that prison officials

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1 knew best and knew how to take care of their own
 2 facilities and they wouldn't interfere. That changed
 3 partly, I think, as a result of the outgrowth of
 4 World War II, the civil liberties, and Civil Rights
 5 Movement of the sixties. Every early civil rights
 6 lawyer, including myself, started out, every
 7 prisoners' rights lawyer started out in the Civil
 8 Rights Movement. And then aided by the public
 9 awareness that came out of the Attica disturbance,
 10 the Attica uprising in September of '71, the courts
 11 began to look at prisoners.

12 The early organizations, the NAACP, Legal
 13 Defense Fund, the New York Legal Aid Society, they
 14 had a marvelous Prisoners' Rights Project, still do,
 15 Southern Center for Human Rights that Steve operates
 16 that came on a little later, and the ACLU National
 17 Prison Project was organized in 1972 and became the
 18 largest such organization in the country.

19 Let me give you two examples, I detailed
 20 some of this in my written report, but two early
 21 examples of the court intervention. One was in Judge
 22 Thompson's court. His predecessor, Chief Judge Frank
 23 Johnson of the Middle District of Alabama, took a pro
 24 se handwritten petition by a prisoner and certified
 25 it as a statewide class action even though the

1 prisoner wasn't in his district, did you know that?
 2 And appointed a law professor at the University of
 3 Alabama and then told him to call our office and get
 4 help and he appointed me as amicus with the rights of
 5 the party, a phenomenon known only to Judge Johnson.

6 We litigated that case. We proved with
 7 some hints from Judge Johnson in his decision denying
 8 the state's motion to dismiss that if we could prove
 9 that the totality of conditions in the state prison
 10 system actually made prisons worse, that that would
 11 be a violation of the eighth amendment and then given
 12 the broad remedial powers of the court of equity he
 13 could address issues that weren't really directly
 14 found in the constitution and we proved it and we did
 15 it. He found the system unconstitutional.

16 He appointed -- in his view of not
 17 interfering too much in the state he made the
 18 mistake, I think, of appointing a committee of 20
 19 leading citizens of the State of Alabama to be the
 20 court monitors and to run around and just bother the
 21 hell out of all the wardens. That part of the order
 22 was set aside by the Fifth Circuit. They affirmed
 23 and everything else but said no, that's a little too
 24 intrusive, and he then appointed two people, one a
 25 prison official, John Conrad, who had been the

1 research director of the Federal Bureau of Prisons,
 2 and one local lawyer and they became the monitors.
 3 That was an early kind of case.

4 One other thing that's important to mention
 5 in this, same question, I think Steve Bright asked
 6 the question, about literally sometimes to get the
 7 legislature to give you the funds to comply with the
 8 court order, and Frank Johnson, we found a way around
 9 that. Alabama for the first six, seven years, George
 10 Wallace was the governor, they weren't willing to
 11 comply with the court's order and the state, there
 12 was an announcement in the papers, the state was
 13 about to get \$48 million from offshore oil
 14 investments and we moved to intervene the state
 15 treasurer as a party for the purpose under the
 16 federal rules for the purpose of implementing the
 17 court order. Frank Johnson, Judge Johnson, ordered
 18 him into the case and then enjoined the expenditure
 19 of any of that \$48 million until they appropriated
 20 the money to fix the prison system and that worked.

21 The other example that A.T. Wall mentioned
 22 earlier today was quite different, and the Alabama
 23 case lasted only about eight or nine years before it
 24 was dismissed as being in total compliance and now
 25 Steve Bright is suing them all over again.

1 In Rhode Island, the case was filed also
 2 pro se. We were appointed by Judge Petine, the chief
 3 judge in the Middle of District of Rhode Island. We
 4 proved that the system was a mess, it was a very old
 5 prison system, it was so dangerous that the entire
 6 medium-security facility, which was the largest
 7 prison in the system, was devoted exclusively to
 8 protective custody so people couldn't get out of
 9 maximum to go down, there was no medium to go to and
 10 they couldn't get to minimum without going through
 11 medium, so they were all stuck in the old max which
 12 was built, as I said, in 1890. Old max also has the
 13 pre-trial detainees that Rhode Island has as a result
 14 of the unified system. And Judge Petine took this
 15 tour with the law students and saw the filth and
 16 degradation in the pretrial unit and said that's the
 17 presumption of innocence that you heard about.

18 He appointed, after finding the whole
 19 system unconstitutional, a special master, one of the
 20 first special masters in contemporary prison
 21 litigation, and he had the good sense to pick a
 22 person with corrections experience, Alan Breed, who
 23 had been an official here in the State of California,
 24 ran the California Youth Authority, and was later
 25 after the mastership the first director of the

1 National Institute of Corrections.
 2 20 years it took to fix that system. It
 3 went through three corrections directors. This all
 4 happened I think when A.T. Wall was still in grade
 5 school, although he did come in during the tenure of
 6 either John Moran or George Vost. It was George Vost
 7 who actually cleaned up the system and came into the
 8 court for the first time and said, "Well, we ought to
 9 comply with this, it sounds like good corrections
 10 practice," and he brought the governor in and things
 11 have changed and Rhode Island, in my opinion, today
 12 has one of the best state systems in the country.
 13 It is small, but it is a model system.

14 I know my time is up. One minute more.
 15 By the eighties corrections officials were
 16 welcoming this kind of litigation. Bill Leake, the
 17 former president of the ACA, called me and said,
 18 "Look, there's a couple of pro se cases in South
 19 Carolina for a good district judge, you get into
 20 those cases and I will settle with you and I can get
 21 the resources I need from the state legislature," and
 22 we did that and we settled. Most of the cases after
 23 1980 were settled by consent decrees. The state
 24 didn't want to go through and pay the money to spend
 25 on attorneys' fees. They recognized that what we

1 wanted for them they really wanted as well in most
 2 cases, and almost all of the cases after 1980
 3 resolved themselves with consent decrees.

4 We became the victims of our own success
 5 and Congress, I think to celebrate my retirement from
 6 the Prison Project in 1996, passed the Prison
 7 Litigation Reform Act which resulted from really an
 8 outrageous set of lies perpetrated by the National
 9 Association of State Attorney Generals, Chunky versus
 10 Smooth Peanut Butter case. They claim that -- they
 11 solicited 10 examples of prison litigation. One, a
 12 prisoner suing about he ordered chunky peanut butter
 13 from the commissary; he got smooth. One got the
 14 wrong cleansing thing. Those are isolated things
 15 picked out of really important pieces of litigation.

16 Some really extreme members of Congress
 17 bought into this thing and the PLRA passed without
 18 any congressional hearings and is now a law. Steve
 19 Hanlon can tell you more about that. And I will come
 20 back and answer some questions about some other
 21 things I want to say even if they're not contained in
 22 the questions.

23 MS. SCHLANGER: Thank you, Mr.
 24 Bronstein.

25 Mr. Hanlon.

1 MR. HANLON: Thank you.
 2 I, as I indicated in my written remarks,
 3 would really like this commission to seriously
 4 consider the question of whether or not we need
 5 judicial oversight in our prisons, whether or not it
 6 has been effective, and whether or not it is sound
 7 national policy, and particularly whether or not our
 8 existing national policies as formulated by our
 9 courts, particularly the United States Supreme Court,
 10 and the United States Congress move that policy goal
 11 forward or backward. I've suggested to you that, in
 12 my remarks, that those policies are really standing
 13 in the way of what I think is a highly effective
 14 remedy in our prisons.

15 I am not nearly as experienced in this
 16 litigation as Al Bronstein or Judge Thompson. I have
 17 been practicing law for 40 years and it is only in
 18 the last few years that at the insistence of Steve
 19 Bright that I began to work in this area because I
 20 was convinced that it was impossible to win in this
 21 area.

22 I do think that I have some experience in
 23 what it takes to get lawyers; qualified, experienced,
 24 competent lawyers to do this highly complex work, and
 25 I think there are substantial disincentives in the

1 system right now as a result of these recent changes.
 2 The basic argument that I think I'm making
 3 is that if you would like to have Judge Thompson and
 4 others in the federal judiciary involved in judicial
 5 oversight, I go with the territory. We can't get
 6 Judge Thompson into this judicial oversight unless
 7 there are lawyers like myself and others who are
 8 prepared to bring these cases, and there are several
 9 huge obstacles to bringing these cases as a result of
 10 this emerging national policy.

11 The first one I believe is the Farmer
 12 versus Brennan test for deliberate indifference to
 13 establish cruel and unusual punishment under the
 14 eighth amendment to the constitution, and Farmer
 15 established a standard of subjective recklessness as
 16 defined by the criminal law as the test to establish
 17 a violation in that. Justice Blackman had a dissent
 18 in Farmer in which he describes that focus as, and
 19 I'm quoting him, "Myopic and mistaken." And I would
 20 imagine that you have over the course of your
 21 hearings here taken some interesting testimony where
 22 you would have a pretty good idea of whether a
 23 problem is subjective recklessness which focuses on
 24 individual culpability of individual state actions
 25 with respect to specific acts or failure to act, or

1 whether Justice Blackman is right that the real
 2 problem here is what he calls a cumulative
 3 agglomeration of action and inaction by the
 4 institution that we know as the prison system. The
 5 institution in the sense of baseball being an
 6 institution. That institution has an enormous number
 7 of players in it. It is has the governor, it has the
 8 legislature, it has the executive officers, the head
 9 of the prison system, et cetera, and at least in
 10 Justice Blackman's view, that's really where our
 11 focus ought to be. It would be interesting to me
 12 what you believe after you've had all this testimony
 13 on that issue. If you agree with me that that's the
 14 wrong focus, then I think you ought to say so.

15 One of the institutions I work with, the
 16 Constitution Project, put together a blue ribbon
 17 panel, Judge Sessions is on that panel, dealing with
 18 the death penalty and took a look at the effect of
 19 the United States Supreme Court's decision in
 20 Strickland on the appropriate test for ineffective
 21 assistance of counsel, and in a remarkably well-
 22 written report called into serious question the
 23 Strickland test and I think it is a commission such
 24 as yours that can, I think, render a significant
 25 public service by doing that very thing if you

1 believe that what we're looking at is not really the
 2 problem.

3 Also I believe there are a host of
 4 provisions of the PLRA that I would hope you would
 5 address beginning from caps on fees which push fees
 6 down to a third to a half of what market rates are,
 7 as well as court decisions which eliminate the
 8 catalyst theory for recovery of attorneys' fees when
 9 attorneys have caused a good result in a prison
 10 system and can get it settled without winding up in
 11 Judge Thompson's court, and whether or not lawyers in
 12 the private practice should be expected to fund the
 13 significant cost of experts in this litigation even
 14 when they prevail and meet the subjective
 15 recklessness test, and even when you are in the
 16 remedial phase afterward where the only way you can
 17 help the institution is to hire those experts to get
 18 them the kind of expertise that they need to solve
 19 those problems.

20 So I will rely on my written remarks and my
 21 answers to your questions thereafter on other issues,
 22 but I think you've got a series of important issues
 23 that you can address in this area and move the ball
 24 forward significantly in terms of national policy.

25 MS. SCHLANGER: Thank you very much.

1 Judge Thompson.

2 JUDGE THOMPSON: I appreciate the
 3 opportunity to share some thoughts with you here
 4 today, Commissioners. I had some prepared remarks
 5 but they say that an old dog cannot be taught new
 6 tricks. Well, after listening to the comments this
 7 morning and earlier this afternoon; in fact, the
 8 comments of my fellow witnesses here, this old dog
 9 has learned several new tricks, things that are so
 10 substantial that unfortunately I have to vary from my
 11 prepared remarks.

12 I had wanted to basically talk about
 13 judicial oversight in the sense of the cases that I
 14 handled over the years from prison overcrowding, to
 15 chain gangs, to the hitching post, just a whole host
 16 of cases. Once the mental health system was under my
 17 supervision. I know what it is like to have a
 18 monitor, I know all about that.

19 In my remarks I will address the
 20 limitations of a court and I basically say several
 21 things. First of all, that courts are basically
 22 reactionary. We don't prevent violations, we remedy
 23 them, and our intrusion in the system is only to the
 24 extent of redressing the violation and it is really
 25 up to the executive and the legislative branches of

1 government to come up with the oversight that
 2 prevents constitutional violations.

3 The courts are not intended to do that, the
 4 courts are not in the business of overseeing
 5 institutions, monitoring institutions and so forth.
 6 And my remarks go on to say that just the limitations
 7 of judicial oversight, the cost of it, that it is a
 8 rather blunt way of addressing an issue. After
 9 listening this morning to the other witnesses, and
 10 particularly the witness from the Federal Bureau of
 11 Prisons, I realized that I as a judge wear two hats.
 12 I wear a Hat Number 1 as hearing these institutional
 13 cases, but I further realize that I wear a hat as a
 14 sentencing judge, and as a sentencing judge I realize
 15 from the testimony that I have significant judicial
 16 oversight. That first of all, when a defendant
 17 appears before me, in fashioning a sentence I can
 18 determine, for instance, whether that defendant
 19 should receive mental treatment, whether he should be
 20 offered some type of mental evaluation, and
 21 ultimately whether that mental evaluation follows him
 22 into the prison system. And as part of that process
 23 I have actually called in before me members of the
 24 prison system, the Federal Bureau of Prisons, to tell
 25 me what facilities, what they have available to treat

1 a particular defendant in fashioning a sentence.
 2 Now I want to give you one dramatic
 3 instance that comes to mind. I had a defendant
 4 before me who was a cross-dresser, extremely
 5 effeminate, and I was deeply concerned that if I
 6 sentenced him to jail that he would be sexually
 7 abused. As part of the sentencing process I required
 8 that the Federal Prison Bureau come before me and
 9 tell me what they could do to assure me that if I
 10 sentenced him to prison, that he would not be
 11 sexually abused, that is the type of oversight. Now
 12 whether they actually carried out their promise is
 13 one thing, but the fact that they were called before
 14 a court to assure that court that this particular
 15 defendant was not abused was very important.

16 Secondly, not only at the front end do I
 17 realize as a sentencing judge wearing my criminal hat
 18 that I engage in some oversight, even when a
 19 defendant comes out of prison I realize that I engage
 20 in some oversight.

21 Within the last I think it was year and a
 22 half I had a prisoner come out who was mentally ill
 23 but who had gone into the prison system displaying no
 24 symptoms of mental illness. I had a hearing on the
 25 matter essentially to determine why he was mentally

1 ill. The evidence revealed that while in the prison
 2 system he had become psychotic and that the federal
 3 prison system while incarcerating him essentially
 4 warehoused him in a one cell to treat his mental
 5 illness. Actually they weren't treating his mental
 6 illness, that was a way of not treating his mental
 7 illness, and basically confined him.

8 After holding that hearing and hearing not
 9 only from the defendant but we actually appointed a
 10 court psychiatrist to review his medical record while
 11 in the federal prison system to confirm what he was
 12 saying; that he had actually become psychotic while
 13 in the system and that the federal prison system had
 14 done nothing; in fact, had exacerbated his problem by
 15 confining him and putting him in solitary
 16 confinement. I then sent my record to the federal
 17 prison system and asked them to investigate it and
 18 report back to me not by order but by suggestion as
 19 to whether the findings I had made were accurate
 20 because I had not heard from the federal prison
 21 system itself. I knew that within the federal prison
 22 system they did have certain sort of procedures
 23 whereby they did investigate complaints. I realized
 24 that a complaint from a federal judge carried a lot
 25 of weight and I did hear back from them and they did

1 report to me that they had investigated the matter
 2 thoroughly. But my point being that as a sentencing
 3 judge, first of all, I am actually a part of the
 4 prison process, I am the one who sentences people to
 5 prison, and I, as a sentencing judge, do have
 6 significant authority in what is in that prisoner's
 7 record, I have significant authority in requiring, at
 8 least to the extent we're talking about in the
 9 federal prison, that the prison assure that judge
 10 that that defendant will be treated fairly. And,
 11 secondly, when the prisoner does come out again, my
 12 relationship with the federal prison is such that I
 13 can write letters to the prisoner; in fact, can hold
 14 hearings and request an investigation of a matter.
 15 And this is not something that I, a right I have sort
 16 of when I'm wearing that institutional civil hat when
 17 you have all these sort of well-know cases, but I
 18 think every federal judge in this country has that
 19 authority, it is not unique to me, and I also think
 20 that every state judge to some degree has that
 21 authority, and if they would merely go and visit
 22 these prisons and see them and be more concerned
 23 about what happens to individuals after they are
 24 sentenced, I think that that part of the oversight
 25 process can be expanded. So my bottom line is I

1 think that as we talk about judicial oversight, you
 2 should include judges as sentencers, as people who
 3 sentence people as a significant player in that role.

4 MS. SCHLANGER: Thank you very much.

5 As we have been doing through this whole
 6 hearing I will start with a question or two, but at
 7 Judge Thompson's request, before we open it up, he
 8 asked that I remind everyone that he cannot talk
 9 about cases that are either before him or might come
 10 before him again, which means really any injunction
 11 that's alive, they can all come before him again, so
 12 I'd ask you to keep that in mind.

13 MR. BRIGHT: It is sort of like a
 14 Supreme Court confirmation hearing.

15 JUDGE THOMPSON: Mr. Bright, I so wish.

16 MR. BRIGHT: Me too.

17 MS. SCHLANGER: So until that
 18 confirmation hearing sometime in the future, we will
 19 stick with prison reform.

20 I have a question about the limitations of
 21 litigation as an oversight method and I have two that
 22 I'm curious about. The one is that you sort of see
 23 it a lot more with prisons rather than jails. There
 24 seems to be a lot more big injunctive litigation
 25 involving prisons rather than jails and I wonder if

1 that might tell us something about the limitations of
2 this kind of oversight in general, so I will come
3 back to my second one. Since I have the mike for two
4 or three, I will just start with that.

5 MR. BRONSTEIN: I can respond to that.

6 We very carefully during the 26 years I ran
7 the Prison Project, or 25 years, selected prison
8 systems rather than jails just because of the
9 numbers. We could impact the lives of more people by
10 suing the entire state prison system in Rhode Island
11 than picking one jail in Massachusetts, more people
12 involved, so that was the main reason. We also felt
13 that it was difficult from a class action status to
14 work with jails because the turnover is so -- not in
15 L.A. County where the average trial detainee waits
16 three years for trial, but in most jails you have a
17 turnover and class action status problems, so that's
18 why we picked prisons generally, but there is some
19 very effective litigation involving jails.

20 One thing I neglected to mention, I will do
21 it now, sort of finishing off the scenario of the
22 effectiveness of court supervision, by 1989, '88,
23 there were 39 states plus the District of Columbia
24 and the Virgin Islands and Puerto Rico that had their
25 entire state prison system or one or more major

1 that any court order entered into a jail by the court
2 in a jail or prison case at the end of two years is
3 subject to a motion to dismiss by the defendants, and
4 the court is obligated to dismiss unless you can
5 prove present unconstitutionality, you have to
6 prove your case all over again, very low fees and the
7 expert problems that we mentioned.

8 It is much more difficult to get
9 preliminary injunctions, consent decrees are almost
10 impossible because the PLRA requires that the consent
11 decree include language to the effect that the
12 parties concede to the constitutional violation.
13 Well, one of the advantages of consent decrees for
14 the state defendants was they didn't have to concede
15 constitutional violations which would expose them to
16 damage lawsuits. Now you have to have that
17 concession plus a whole bunch of other barriers. A
18 single federal judge could no longer after the PLRA
19 enter any kind of relief which would reduce the
20 prison population. In many of our cases, in
21 Tennessee, a judge, a federal judge in Nashville
22 enjoined the state from taking anymore prisoners in.
23 Judge Jackson did the same in Alabama until it came
24 down to what he considered to be the appropriate
25 population. Single judges can't do that anymore, you

1 institutions under a court order involving
2 overcrowding and the totality of conditions, my
3 office had 25 of those cases, so it was a very
4 significant judicial oversight by the middle, end of
5 the eighties.

6 MS. SCHLANGER: The reason that I asked
7 the question about jails was in part just to
8 understand what are the things -- if this kind of
9 litigation is going to work as an oversight
10 mechanism, Mr. Hanlon already told us that we need
11 lawyers and they need to get paid more than the PLRA
12 allows and that Buckannan is a problem and there are
13 all these issues. What I'm trying to get at is what
14 are the preconditions for this kind of oversight
15 mechanism to be in play, to work. So I think what I
16 hear you saying about the jails is that one of the
17 things that we need is inmate populations that can
18 meet these criteria for class action status, the
19 cases don't get mooted out, and I'm sort of in search
20 of what are the other preconditions for this type of
21 litigation work as an oversight mechanism.

22 MR. BRONSTEIN: Right now you have, and
23 Steve didn't mention all of the other barriers
24 created by the Prison Litigation Reform Act, they
25 have a two-year limitation on jurisdiction basically

1 have to have a three-judge court, so all of these
2 barriers make it much more difficult to litigate in
3 these counties.

4 JUDGE THOMPSON: I would just like to
5 add that anecdotally looking at Alabama, we look at a
6 county like Macon County which is the poorest county
7 in the state, I'm sure that when lawyers look at
8 those counties they say to themselves if I bring this
9 lawsuit what's the likelihood that I can bring about
10 effective change even if I win. It is probably not,
11 the likelihood is not very good, there just aren't
12 funds, and you are looking at a county that can
13 barely keep its schools open, let alone provide an
14 adequate jail.

15 MR. HANLON: I want to second that.
16 Lawyers really do look at it and say is there an end
17 game here, is there something we can do that will
18 effectively move the ball down the court. That
19 analysis precedes every one of these cases.

20 MS. SCHLANGER: A similar kind of
21 question was I heard once Al's successor at the
22 National Prison Project say that the best you could
23 hope for out of prison litigation is to go from a
24 system being a horrible system to it being a pretty
25 bad system. It may be that it gets past that but it

1 won't be because of the litigation; that that's as
2 much as the litigation can do is, from horrible to
3 pretty bad.

4 MR. BRONSTEIN: Elizabeth and I have
5 disagreed on many things and I disagree with that,
6 and the A.T. Wall system is living proof of that.

7 JUDGE THOMPSON: I would like to
8 comment on that. I do think that people perceive
9 that judicial oversight will allow for a good prison,
10 that is not the function of the court. The function
11 of the court is to provide a prison system that meets
12 minimum constitutional standards, and that does not
13 necessarily translate into a good prison. Judge
14 Johnson's order cabining the funds of the state would
15 have what, the life of about five seconds if it were
16 entered today and I think we would have to be very
17 candid about that. That order could not survive
18 appellate review today.

19 Looking at the way the law is today, I
20 think we are playing our eyes too low when we assume
21 that the remedy that a federal court will provide
22 will be one that will, for instance, cure
23 overcrowding. Well, actually I should say cure
24 crowding. Federal courts can cure overcrowding but
25 they can't cure crowding.

1 JUDGE SESSIONS: Professor, I will join
2 them in disagreeing. I think that lawyers are the
3 hand-maiden for the courts and unless the lawyers
4 bring those cases to the court, the court can't go
5 out and grab them. I disagree somewhat about the
6 unavailability of appropriate review in jail cases.
7 I have been there, done that. It was effective
8 because the judge has the power to correct what is
9 wrong. And what I would like Mr. Hanlon, who is my
10 partner, to do is to enunciate for us -- the courts
11 are constant, there's a constancy and availability of
12 them, and talk to us a bit about how you accommodate
13 what you are talking about in your paper, which I
14 have not yet read, and how this commission could
15 bring about those things which will help in the work,
16 that needs to be brought to the court's attention.

17 MR. HANLON: I think the most important
18 thing you can do is question the impediments of
19 settlement. That's where this work is really
20 challenging, exciting. We can, frankly, get more
21 done with prison officials in working out a
22 settlement that we could ever get in court.

23 JUDGE SESSIONS: Is that because of the
24 threat that's there that the court will do it if they
25 don't do it or what is it? I shouldn't invite you to

1 speculate, I'm just asking what you think.

2 MR. HANLON: Al pointed out this
3 serious problem. In most civil litigation one of the
4 best things that we have to deliver for the defendant
5 is the defendant doesn't have to admit liability. We
6 have this problem in the act that is going to require
7 a finding to trigger jurisdiction and even if we were
8 to get an order, a subsequent intervener could come
9 in and upset the order if there weren't a finding, so
10 that's, I think, a serious impediment. The
11 elimination of the catalyst theory is a serious
12 impediment because those state lawyers who are trying
13 to help their client here can't go back to the client
14 and say, "Look, let's get in and solve this problem
15 now and we are going to save these fees from
16 accumulating." Well, limit them. You need as many
17 incentives to settlement of prison litigation as you
18 can possibly get because we can do very creative
19 things there. We frequently, and I think you have
20 heard this before in testimony here, it is almost
21 like we're family when we get a mediation there and
22 we're trying to work something out that they can get
23 back to their legislature and get worked out. Any of
24 those areas of settlement ought to go the way of old
25 flesh.

1 MS. SCHLANGER: Steve.

2 MR. BRIGHT: I will add two things to
3 that. One, I think it is a last resort, the court
4 intervention. But, secondly, there are those cases
5 where the people, things have gotten so bad that
6 people look at it as how do we sit down and solve the
7 problem, now how do we have an all out war in court.
8 But I want to ask two things.

9 One, the limit on Legal Services lawyers.
10 I'm talking about fees and all that. It used to be
11 that Legal Services lawyers could handle prison cases
12 and so Macon, Alabama, whatever, the Legal Services
13 Program, if they saw things were that bad, they could
14 bring a lawsuit. They can't do that anymore, just to
15 comment on that.

16 And then, second, I would ask Mr. Bronstein
17 just to talk about, elaborate a bit on the problems
18 with the two-year time period to try to implement the
19 remedy in the case.

20 MR. BRONSTEIN: Your first point is
21 well taken. When we brought the Tennessee statewide
22 case our co-counsel was the Legal Services Program,
23 Middle Tennessee in Nashville, and they provided a
24 lot of person power, lawyer power to assist us in the
25 statewide case and they couldn't do that today.

1 MR. BRIGHT: And that also, I might
2 just interrupt and say, that also accounts for who
3 was doing the jail cases because you are suing
4 prisons because it affects a lot of people, and the
5 people suing the Johnson County Jail in Tennessee is
6 the local Legal Services lawyer.

7 MR. BRONSTEIN: Legal Services people
8 and they can't do it anymore.

9 The two-year question -- well, it is
10 illustrated in Rhode Island. We thought we could fix
11 Rhode Island in a couple of years. Rhode Island had
12 700 prisoners, sentenced them pretrial, when we filed
13 that lawsuit, 700 in the entire state, and we thought
14 three facilities, 700 prisoners, great judge, Judge
15 Petine, we thought we would fix it in two years.
16 Well, it took 20 years. The legislature just
17 wouldn't provide the funds. The first two
18 corrections directors we were dealing with were not
19 very reform minded, they were pretty stubborn, there
20 were all kinds of other problems, some of them that
21 A.T. alluded to. There was a significant Mafia
22 problem in Rhode Island, both the prisoners and
23 staff, I think, were also members of the Mafia, the
24 chief judge of the Rhode Island Supreme Court was a
25 member of the Mafia, there were a lot of problems to

1 deal with.

2 MR. BRIGHT: Kind of like Family 2,
3 wasn't it?

4 MR. BRONSTEIN: But the family didn't
5 want to work with us and it is very difficult.

6 You have funding issues. First of all, you
7 have sort of admission of we've got to fix these
8 things and that takes some time. You want to do that
9 in a friendly, cooperative way working with the
10 prison officials rather than beating them over the
11 head, so it takes some time to talk about it with
12 them. Then you need to get the legislature on board
13 and executive branch. We never had -- even though
14 the governor was the main defendant in Rhode Island,
15 no governor ever showed up to Judge Petine's regular
16 conferences until about 16 years after the lawsuit
17 had been adjudicated and then a new governor came in
18 and brought in George Vost as the commissioner from
19 Boston and the two of them showed up at this hearing
20 before Judge Petine and the judge says, "Tell us what
21 we have to do to fix this." Well, that hadn't
22 happened before and it was very unusual, so the two-
23 year thing is just almost impossible to work with. I
24 think I disagree with Steve. Steve thinks that the
25 two years is an incentive to get things fixed quickly

1 and I think what happens is it becomes a deterrent.
2 The defendants say, "Well, we can stall this for two
3 years and then we can move" -- take the Pelican Bay
4 case. The judge, Judge Henderson, gave the state two
5 years to come up with the compliance plan. This was
6 before the PRLA was passed. The moment the PRLA was
7 passed, that was down the drain. I think the two
8 years is a very serious impediment to resolving the
9 prison, the jail litigation.

10 MR. HANLON: Let me clarify my
11 position. Just from my experience it does seem to me
12 that it has had some effect of focusing people's
13 attention on very serious problems, and this seems to
14 me that -- I have seen it work effectively that way.
15 The problem with the two years, again, this Farmer,
16 because the test of whether or not to extend is going
17 to get back to the subject of recklessness rather
18 than a test that I would be much more comfortable
19 with a two-year limitation, which would be did you
20 substantially comply with the judge's order. I would
21 much rather go in on that, quit trying to find out
22 whether there's a bad person around.

23 MR. BRONSTEIN: I don't think, Steve,
24 that Farmer is as much of an impediment as you think
25 of it because although the majority opinion first

1 talks about the testing, they say, well, if the
2 defendants knew or should have known, and the should
3 have known is not the criminal intent mechanism, it
4 is a much, it is a less onerous kind of thing.

5 JUDGE THOMPSON: It is a difficult
6 standard to meet.

7 MR. BRONSTEIN: It is difficult but it
8 is not impossible.

9 JUDGE THOMPSON: And when you are
10 dealing with a system like a bureaucracy, a prison,
11 it is hard to find out who to point your finger at
12 and I think that's the problem.

13 MR. BRONSTEIN: Under the facts in
14 Farmer, you remember, we won Farmer.

15 JUDGE THOMPSON: I want to again
16 reiterate one group of people that you leave out when
17 you are talking about prison overcrowding and that's
18 state judges. Routinely in the prison overcrowding
19 cases that I have it is convincing those state judges
20 not to send people to jail if they don't have to and
21 quite often you will have the lawyers for the state
22 agreeing sometimes to a consent decree that they can
23 take to their state judges so as to let them know
24 this is the bind we are in. These are principal
25 players whom the state has no control over quite

1 often. And I know that has played itself out in
2 Alabama, it is playing itself out as Steve knows in
3 state court where the state judges are crowding our
4 state prisons and the state officials are complaining
5 to the state judges, and until you get those state
6 judges on board and address particularly the issue of
7 prison overcrowding, I think you are leaving out a
8 principal player.

9 MR. BRONSTEIN: Since you raised the
10 question of crowding, let me mention something that
11 you only briefly mentioned yesterday which I hope
12 this commission, everyone up here has taken the
13 opportunity to say we hope the commission addresses
14 this, this is my hope.

15 33 years ago the National Advisory
16 Commission on Criminal Justice Standards and Goals,
17 the last commission of your kind, commented in their
18 report that we use prison too much in this country,
19 there were too many people in prison, and at that
20 time there were 300,000 people in our prisons and
21 jails. Today there are 2.3 million, it is not 2.2 as
22 somebody said yesterday. If we count the way other
23 countries count, juveniles in secure facilities and
24 people in immigration facilities, it is a little over
25 2.3 million. That is 25 percent of the world's

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1 prison population. There are nine million people in
2 jails and prisons throughout the country, throughout
3 the world. We have 2.3, 25 percent of them in this
4 country. I think we can really provide some public
5 service by saying is this really the land of the
6 free. What are we talking about? Why do we have so
7 many people in our jails and prisons. Our
8 incarceration rate is six times that of Canada on the
9 U.S. Mainland. They have a similar immigration
10 problem, they have similar minority populations,
11 similar indigenous populations, similar crime rates,
12 except their homicide rate is now since they
13 abolished death penalty, it has been going down.
14 Their incarceration rate is 116,000, our is 750.
15 That's something that seems to me we ought to say
16 something about.

17 MR. GREEN: Mr. Bronstein, you watched
18 this over 30 years and you have seen this escalation.
19 Can you talk about what kind of factors are at play
20 that have created this tremendous escalation, but,
21 more importantly, we talked about how we get the
22 public interested, how do we frame this so that
23 people care whether or not we've got two million
24 people in prison and deal with just what many believe
25 is a concern with fear and, therefore, we're willing

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1 to put up with it. How do we deliver the message?

2 MR. BRONSTEIN: That's the tough one.
3 The easier one is why it is happening. I think that
4 politicians discovered that it was wise to run by
5 being tough on crime even before the Willie Horton
6 stuff. Governor Wilder, the first black governor in
7 the south, Virginia, ultimately for ran governor, he
8 became a death penalty advocate, advocate of harsher
9 punishment. It is difficult for me to say this as
10 still a long time ACLU staff member and consultant,
11 but I think the press has a great deal of
12 responsibility in this, particularly the broadcast
13 media. I travel around the country and the opening
14 program, the opening segment of every local news
15 program is a crime and so the public thinks that
16 crime is happening every minute. You are safer in
17 Washington, Los Angeles or New York than you are
18 today in Rome or London or Paris, the crime rate is
19 higher there in terms of street crime, yet that's not
20 the perception in this country, so the press has to
21 have a role in educating people about this. Somehow
22 we are beginning to get some of the fiscal
23 conservatives to say the fastest rising line item in
24 our state budget is corrections, it is increasing at
25 twice the rate as -- well, California bankrupted

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1 their public school system by building new prisons
2 and the same is being recognized in other states.

3 I think we have to be honest with people
4 and say that prisons don't really work for what most
5 people think you want it for. We're sending too
6 maybe people, particularly property offenders. We
7 have to deal with certain categories of offenders in
8 a different kind of way. It is not going to affect
9 public safety if -- marijuana possession in
10 California, has it become more dangerous since you
11 changed your law? Marijuana possession, instead of a
12 mandatory one-year minimum it is community treatment,
13 it saves the state money in dealing with it in that
14 way. I don't see there's any increase in crime.
15 Public education, get the media on board on this. It
16 is a tough job because we have done so much negative
17 publicity in the last 30 years, but I think it can be
18 done.

19 MS. SCHLANGER: Senator Romero.

20 SENATOR ROMERO: Thank you. I have to
21 apologize first, I need to leave at this time, I have
22 some legislative obligations I've got to return to,
23 but I wanted to thank the panel.

24 I would say certainly in California it is
25 not lost on me or this legislature or any advocates

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1 for reform the role of the judicial system. I have
2 no doubt that had California not been sued over and
3 over and over that we wouldn't even be where we are
4 now in terms of beginning to anticipate some reforms
5 and seeing some of them, as modest as they can be.

6 An area that I have felt very empowered by
7 is certainly when it comes to the juvenile system and
8 that's exactly -- the judges are paramount. To large
9 extent I have lot confidence in the ability of the
10 State of California to reform the juvenile system.

11 What I have done at this point then is I'm taking it
12 to the judges, we're taking it outside and basically
13 having them and partnered with the media, because I
14 think it has got to be a very creative and really
15 audacious coalition that brings this together. There
16 are three different branches of government and then
17 there's the role of the free press. The media has
18 been profound in presenting these issues to the
19 California electorate in terms of what has been going
20 on to the best they can. I have advocated for the
21 strong role of the media presence in looking at our
22 prisons and jails and I hope when we write the final
23 report, we really address the role of the media as
24 the facilitator for change. But it has been very
25 encouraging to see the questioning, the visitation,

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1 the beginning to recall, to take a look at what
2 happens to these kids when they send them to the
3 juvenile authority and what are the alternatives.
4 I'm happy to hear that, it has taken a lot of work,
5 but I feel very -- I don't want to say vindicated,
6 but I feel very satisfied that this work is not done
7 in a vacuum. As lonely as it sometimes feels in the
8 legislature to do this work, the judges in California
9 are playing a significant role that I don't even
10 think we can begin to tap at this point and it is an
11 area that nationally I think we've really got to make
12 sure that we maximize.

13 Having said that, I do have to leave. I
14 thank you all. Fellow commissioners, welcome to
15 California. Stay, enjoy yourself, it is a beautiful
16 day, we ordered it just for you, and I'll look
17 forward to working with you when we get about writing
18 the reports.

19 MR. BRONSTEIN: One more thing going
20 back to Mr. Green's question, if I may. I was just
21 thinking about how do you get the message out.

22 I have found as I travel around the country
23 I very often, the local ACLU will ask me to speak at
24 one of the middle schools or the high schools.
25 Middle school is like sixth, seventh and eighth

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1 grade. These young people are very receptive to the
2 kinds of things I talk about. I can spend an hour
3 with a group of middle school students and really
4 change their perceptions about the death penalty,
5 they begin to think about it. If you can somehow
6 come up with a report that can be used and utilized
7 and distributed in the schools, the high schools and
8 the middle schools, I think that would be an
9 important thing, get these kids talking to their
10 parents and challenging what their parents say, not
11 just because they saw some unfortunate person was
12 raped or mugged or abused on the news but look, this
13 is what this national commission says about these
14 things. We have to look at it more broadly and not
15 anecdotally. That would be one way of doing it. I
16 mean, I think that was one of the successes of the
17 Attica Commission. They came out with a paperback
18 book that was in every bookstore in America and
19 people were reading about it. And they had a video,
20 I told Alex Busansky this, they had a video that came
21 out on national T.V. and it really resonated with
22 people; wow, look what happened there, and the causes
23 of the riot. The same thing in New Mexico. The
24 attorney general of New Mexico, now the senator, Jeff
25 Bingaman. He came out with a report saying the riot

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1 in New Mexico was caused by us, our neglect over
2 these years. Those things can really sell the public
3 and particularly the younger people.

4 MS. SCHLANGER: Judge Thompson, I want
5 to follow up on what you said in your initial remarks
6 and then what Senator Romero just said.

7 Is there a way to encourage sentencing
8 judges to do the kind of intervention that you are
9 talking about --

10 JUDGE THOMPSON: Yes, I think that is.

11 MS. SCHLANGER: -- or is that too much
12 in their face?

13 JUDGE THOMPSON: No, I really don't. I
14 think the remarks that were made earlier this morning
15 by the director of the Bureau of Prisons as to what
16 he does with federal judges are very important and
17 could be replayed in each state. That is, when a
18 federal judge takes the oath of office, one of the
19 first things that he or she does is to visit a
20 federal prison. In Montgomery we have Maxwell
21 Prison. I would say that on average a federal judge
22 visits that prison once a year and I would say --
23 and, in fact, my law clerks quite often go there with
24 one of the magistrate judges or with me to visit that
25 prison.

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1 When I go to judicial conferences, if they
 2 are held near a federal prison it is routine, and I
 3 think Judge Sessions may remember this, it is routine
 4 for us to go visit that prison. Now what does this
 5 mean. It means that the prison system knows that
 6 judges are going to be coming and visiting. Now
 7 you are absolutely right, some of you are saying
 8 they're probably going to lay out the better food for
 9 us. But it is, I think, an important part of our, of
 10 sort of the overall judicial oversight to go visit
 11 those prisons as sentencing judges and make sure that
 12 what we see there meets our expectations. And I
 13 think the wardens are trying to let us know that when
 14 we sentence someone, they're going to be treated
 15 fairly. I don't think that happens in state systems
 16 and I think that if state judges were required to
 17 visit state prisons on a fairly regular basis, I
 18 think it would be beneficial for the judges and I
 19 think it would be beneficial for the prisoners
 20 because I think it would make them more transparent
 21 and I think it would make the judges more aware of
 22 what's going on, and I don't think that's going to
 23 cost the state one dime. It is something they can do
 24 and I don't think it would be controversial, I just
 25 think it needs to be done. I think that's one model

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1 I would take to the federal system and play it out.
 2 MS. SCHLANGER: Steve Rippe.
 3 MR. RIPPE: Several of us were down in
 4 Louisiana a couple of weeks ago talking to Secretary
 5 Stalder and they're in a real fiscal bind for obvious
 6 reasons and he has been told to pretty drastically
 7 cut his budget. And we asked him how he was going to
 8 do that and one of the principal ways he is going to
 9 do it with less prisoners in his jails through
 10 sentencing reform. So I guess my question to you all
 11 is, and we have talked about it, what would you like
 12 us to have in the report, what should we say about
 13 sentencing reform?

14 MR. BRONSTEIN: Well, I would make a
 15 list of things that ought to be reviewed. Mandatory
 16 minimum sentencing is a great mistake, I think. It
 17 binds the hands of judges and it sentences too many
 18 people in for longer periods of time than necessary.
 19 Not only do we have the most people in the most
 20 prisons, in jails, in world, but we also have the
 21 longest sentences in the world. Our average time
 22 served is four or five times higher than any of the
 23 countries in Western Europe, any of the industrial
 24 countries, so mandatory minimums should be abolished.
 25 The recidivist, so-called recidivist statutes, three

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1 strikes, which has been just a total disaster, is
 2 greatly responsible for the California numbers that
 3 you have heard, and so often the third strike, any
 4 one of them is, you know, a stolen pizza or
 5 something.

6 Looking at a range of options, we ought to
 7 look at sentencing sort of as a stairway and we ought
 8 to look at the lowest step first, you know, real
 9 probation with large caseloads where the probation
 10 can work. In most of the big cities probation
 11 officers have a caseload of 100 or more and they
 12 can't do anything but play cop. In Sweden probation
 13 officers have a caseload of 10 and every probation
 14 officer has 10 graduate students in social work that
 15 work for them so that every probationer has a
 16 one-to-one relationship with somebody who is helping
 17 them sort of work their way through the system.

18 We ought to then look at other kinds of things
 19 and use the top of the ladder of prisons as the last
 20 resort instead of the first resort. It is the most
 21 expensive, it doesn't work very well. There are some
 22 kinds of people that I would like to see off the
 23 streets and for those people we ought to put them in
 24 prison, but 50 percent of the people in prison in
 25 America today are property offenders. Mr. Lappin's

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1 system is jammed full of first-offender possession,
 2 drug possession. We don't need to send those people
 3 to prison. So I would talk about things like that
 4 and get the public thinking about how costly this is,
 5 how damaging it is. Prison is a damaging experience;
 6 it really brutalizes people.

7 MS. SCHLANGER: Judge Gibbons.
 8 JUDGE GIBBONS: You are suggesting that
 9 this commission should take on the task of sentence
 10 reform. Well, the problem with that is we have a
 11 time limit and we have limited funding to spend in
 12 that time limit and we have from the Vera Institute a
 13 charge to look at safety and abuse in prisons. Now I
 14 don't know that we can do more on sentence reform, I
 15 don't think it even needs study, it is so awful that
 16 it is self-evident, but other than to say if you are
 17 going to do this stupid thing, you've got to do it by
 18 providing safe conditions that meet minimum
 19 constitutional standards.

20 MR. BRONSTEIN: I agree with you, Judge
 21 Gibbons, that that's not a mandate but in saying we
 22 want to have safe prisons where prisoners are free
 23 from abuse and where staff are safe as well, one of
 24 the things we have to do is reduce the numbers of
 25 people in those prisons. We just have too many

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1 people in prisons to keep them safe. I mean, the
2 Men's Central Jail somebody testified -- well, my
3 young associate from the local ACLU this morning
4 mentioned she thought that there were 5,500 to 6,000
5 men in Men's Central Jail in Los Angeles. There are
6 7,000 there today, not 5,500 to 6,000. Well, that's
7 obscene. That's a facility that my expert said
8 should have 2,400 prisoners in it and they have 7,000
9 there. So that's worth saying, something like that.
10 That's not a safe prison.

11 JUDGE GIBBONS: And it probably with
12 those numbers could never be made safe --

13 MR. BRONSTEIN: No.

14 JUDGE GIBBONS: -- but the message, it
15 seems to me, that we can give is you can't do that
16 unless you want to spend the money for a facility
17 that will take care of 10,000.

18 MR. BRONSTEIN: Well, no. You can make
19 your prisons safer by keeping people out of prisons
20 and jails who don't need to be there.

21 JUDGE GIBBONS: In states that face a
22 big budget like New Jersey and California it is very
23 likely that that's what's going to happen because the
24 legislature will come to their senses and say let's
25 reduce the prison population.

1 MR. BRONSTEIN: We can be safe and be
2 smart at the same time.

3 MR. RYAN: This will be scary.

4 Since I'm one of those individuals that has
5 a name that's on the other side of the "V" that goes
6 over, I have some concerns about litigation and its
7 oversight possibilities.

8 MR. HANLON: Only in your official
9 capacity, sir.

10 MR. RYAN: Sometimes.

11 And I am concerned about your frivolous
12 side since I was ordered one time to make sure that I
13 did not feed an inmate any food that would kill him
14 as a result of a lawsuit and I have ensured that I
15 have kept my 2,600 calories and so forth on going
16 through on that, or the time that I was ordered not
17 to put an inmate in a cell because he was
18 claustrophobic and had issues to try to deal with
19 those types of things.

20 When I left Santa Clara County in
21 California and went to Florida I had either 37 or 34
22 lawsuits against me as a facility administrator. I
23 never had to come back to California because all of
24 them were thrown out on summary judgment, they were
25 gone. So my concern in saying that is litigation,

1 I'm concerned, I take them personally, I actually
2 read the cases and say what the heck, because if
3 there's some element of truth in that case, I want to
4 fix it.

5 The other personal episode out of Santa
6 Clara County is I took over on February 2nd,
7 Groundhogs Day, 1998, and found out that 30 days
8 later that we did not have proper assessment of TDDs
9 and ADA issues regarding the hearing impaired. I
10 called the local ACLU to ask them to help me deal
11 with that particular thing, what kind of suggestions
12 they would make. We made an appointment, it was
13 sometime around my favorite day, March 17th, six
14 weeks later, and I thought I was getting one
15 attorney. Six attorneys from the ACLU arrived and
16 handed me a lawsuit, Prazoo versus Ryan, after
17 telling me that I did not meet the ADA standards, so
18 I struggle with the fact that we need litigation.
19 You know, if you just told me, I would fix it. I'm
20 trying to be a proactive administrator.

21 What sort of things can we do to prevent
22 litigation from your end? If I'm a good
23 administrator, I should be doing those things anyway
24 and trying to get them fixed. Sometimes I can't get
25 them fixed. I would like to do the preliminary stuff

1 before you hand me the "V" versus Ryan.

2 MR. HANLON: All right. Good. This
3 phenomenon, by the way, is not limited to prisons,
4 okay?

5 MR. RYAN: I'm a jail.

6 MR. HANLON: Or jails. Okay.

7 I spent most of my professional career
8 doing institutional reform litigation, and what we
9 do, and I have seen many, many lawyers who are in
10 this field do this, is that we go in and investigate.
11 We know that this is going to be a substantial
12 undertaking, we don't have the luxury of doing things
13 that aren't going to be productive, and in almost
14 every case in my career I have laid that out in a
15 letter, okay? Certainly in any prison litigation I
16 have done I have sat down with the prison officials
17 beforehand and you have a natural, it is a little bit
18 defective mechanism in the PRLA about exhaustive
19 administrative remedies, it seems to me there seems
20 to be some national minimum standards about what
21 exhaustion really might be, but --

22 MR. BRONSTEIN: That's up in the
23 Supreme Court right now.

24 MR. HANLON: That's right. We may get
25 some national standards or we might get some from the

1 Congress too. Less chance there.
 2 But in any event, my sense of what I do in
 3 institutional reform litigation is I go in and I
 4 speak to the officials involved and I say, "Would you
 5 please move this way?" And they say, "No, I'm not
 6 going to move that way." And then I go into a
 7 federal court and I say, "Will you please make them
 8 move that way?" "Okay." And then we spend some
 9 time, now in prison litigation it is going to be
 10 limited largely to two years, and the whole goal of
 11 litigation is just to try to move the battleship.
 12 I'm just trying to move it that way, okay? And I
 13 know that when I get through or when the judge, more
 14 importantly, when the judge gets through it is going
 15 to slip back, okay? And I'm going to have to keep
 16 going back in. This is a Sisyphus kind of existence.
 17 We're just pushing that stone up the hill and it
 18 keeps slipping back down. Because you've -- and I
 19 haven't done any jail litigation, okay, but --
 20 MR. RYAN: And I appreciate that.
 21 Thank you.
 22 MR. HANLON: Well, I don't know, it
 23 might have been a good experience for me.
 24 It is not just an administrator that you
 25 are looking at, it is the legislature and the whole
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1 political process, and it is going to keep slipping
 2 back, you know. My clients don't contribute to
 3 political campaigns, they don't have any political
 4 voice, even when they get out in some of the states
 5 they don't have a political voice, so that's the way
 6 I view it. And I think -- I have seen an awful lot
 7 of what I call very responsible prison litigation in
 8 the time that I have been involved.
 9 MR. BRONSTEIN: But I think you are
 10 talking about something different.
 11 I would guess that the 37 or 38 lawsuits
 12 against you probably, more than half them were filed
 13 pro se by prisoners without lawyers.
 14 Well, one of the things you might think
 15 about and Rhode Island, I don't know whether A.T.
 16 Wall is still here but they have done that, as you
 17 may know the Supreme Court in the Casey case a few
 18 years ago basically said you don't have to provide
 19 law libraries anymore, they overruled the old law
 20 library case and some of the states acted
 21 irresponsibly; Arizona for one and abolished the law
 22 libraries completely and provided other alternatives.
 23 Maybe since Dora has come back, come to Arizona, she
 24 has changed that.
 25 What Rhode Island did, and the Federal
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1 Bureau of Prisons does this in most of their
 2 facilities, they provide some legal services program,
 3 either through the university with students, a
 4 clinical program, Rhode Island contracted with a
 5 local college to train at least two prisoners in
 6 every one of their facilities on how to be a
 7 paralegal and how to do research, and then they hired
 8 probably the two most experienced law librarians in
 9 the state to work in their central office and they
 10 have a completely -- no books anymore, but all
 11 electronic research system and that kind of service
 12 will reduce litigation. If you provide some service
 13 to the prisoners that can tell them you don't have a
 14 case, it is frivolous, they won't be filing these
 15 lawsuits. You might think about that.
 16 JUDGE THOMPSON: Did I understand your
 17 question correctly that you were concerned that you
 18 yourself had identified the problem, called the ACLU,
 19 and rather than approaching you informally they
 20 slapped you with a lawsuit?
 21 MR. RYAN: Yes. Six of them.
 22 JUDGE THOMPSON: Pardon me?
 23 MR. RYAN: Six of them.
 24 JUDGE THOMPSON: Six lawsuits.
 25 MR. RYAN: To an Informal meeting. Six
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1 people. Hey, I've got a problem.
 2 JUDGE THOMPSON: I will tell you this
 3 right now. If I heard about that happening in my
 4 court I would be a very upset judge. I just don't
 5 think that should happen.
 6 JUDGE GIBBONS: Was that the ACLU of
 7 Southern California?
 8 JUDGE THOMPSON: Well, to me it is not
 9 an issue of what particular group did it, but --
 10 MR. RYAN: It was in this state.
 11 JUDGE THOMPSON: -- I just think it is
 12 an abuse of the process not to obviously pursue
 13 informal resolution, whether it is prison litigation
 14 or any other type of institutional litigation or
 15 litigation, period, that is just an abuse of the
 16 process. And if I as a judge heard about it after
 17 the case had been filed, rest assured I would have
 18 given you some relief. Not throwing the case out,
 19 but I would have let the lawyers know that the
 20 process was not appropriate.
 21 But I want to talk about, though, the
 22 notion of frivolous lawsuits. I have rather mixed
 23 feelings about that. I, of course, our court, like
 24 many federal courts, is flooded with these so-called
 25 frivolous lawsuits that some of you have mentioned.
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1 And while many of them are frivolous and, in fact,
 2 many prisoners don't recover, I think that they do
 3 play a very important role in oversight of the prison
 4 process. I have tried over the last 25 years a
 5 number of cases where the prisoner alleged physical
 6 abuse by guards. Most of those cases don't succeed,
 7 I would say 99 percent of them don't succeed,
 8 assuming that's by summary judgment, even when they
 9 get to the jury they don't succeed, but I do think
 10 that the process of going to court and letting six
 11 civil people hear what happened in that prison and
 12 passing judgment and letting the guards and the
 13 prison officials know that if you beat someone up you
 14 can arguably be held accountable is a very important
 15 part of the oversight process, even though many of us
 16 might consider that abusive. That is, the number of
 17 suits that are filed. In the long run I think that
 18 while these suits don't always succeed -- in
 19 particular I'm talking about the abuses, not the one
 20 about wanting caviar for breakfast -- but the
 21 physical abuse suits I think have a very prophylactic
 22 effect in curbing actual abuse in prisons.

23 MS. SCHLANGER: Laurie Robinson.

24 MS. ROBINSON: Steve, I wanted to
 25 follow up on the judge's discussion about judicial
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1 involvement and oversight and ask you because of your
 2 involvement with the American Bar Association and I
 3 think with the State Bar in Florida what kind of role
 4 can the organized Bar play in terms of calling public
 5 attention and really instigating more lawyer
 6 involvement in the prison and jails issue. It seems
 7 to me that the organized Bar has the ability to be a
 8 key player in public attention to these sets of
 9 issues and over time has played some role but as Al
 10 Bronstein well knows, it has been a very modest
 11 number of lawyers at most who have ever really been
 12 that involved in this set of issues.

13 MR. HANLON: Well, that's a very good
 14 question. We have addressed a lot of important
 15 issues in the American Bar Association in criminal
 16 justice system, and in the state where I principally
 17 practiced, in Florida, so has the Florida Bar, but,
 18 quite frankly, I don't think we're a player in this
 19 problem. I'm trying to get some of the major
 20 Washington law firms now to take a serious look at
 21 trying to work in this area and I think there's a
 22 huge role, to answer your question, for the organized
 23 Bar to play.

24 We have a Death Penalty Representation
 25 Project in the American Bar. It has done a great job
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1 of convincing lawyers to do death penalty cases. It
 2 is, again, one of those Sisyphus jobs, it is really
 3 tough to try to get folks to take that work on, but I
 4 think we have some potential here to bring some of
 5 the most responsible players in the country, in the
 6 profession, to do this work and I would like -- I'm
 7 no longer the chair with direct responsibility but I
 8 think I would like to see us get it on the agenda, it
 9 is a good idea.

10 MR. BRONSTEIN: Laurie, if I could add
 11 to it, you probably know the ABA has created, the
 12 standards committee has approved a task force on
 13 advising the Legal Status of Prisoners, the
 14 30-year-old standards that we have, and the reporter,
 15 we have a top-notch reporter, she testified here
 16 yesterday, Michele Deitch, she is in the room
 17 someplace, and we have two co-chairs. I'm one of
 18 them, Marty Love, is the other one. We have a superb
 19 committee which includes people from the ACA. Dora
 20 Schiro was at our last meeting because we were
 21 meeting in Arizona. We have lawyers, we have AJA,
 22 Jail Association people on the committee, we have --
 23 we had Joe Lehman, Director of the Washington
 24 Department of Corrections but he resigned, he left
 25 the job and Pat McManus has taken his place. It is a

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1 really good committee and I think this will be an
 2 important venture, we hope to finish it next year and
 3 go through the process of getting it to the standards
 4 committee, the Criminal Justice Section Council, and
 5 you know that routine, you used to be there, but we
 6 will get it through.

7 And the other thing is that the standards
 8 committee approved the concept of having in the
 9 commentary references to international standards and
 10 international human rights law for the first time and
 11 that resulted primarily from Mary Robinson's visit to
 12 the Criminal Justice Section Council and all the
 13 Irish folks on the council said, "Oh, I remember
 14 that, we had a drink in Dublin, didn't we?" And so
 15 it passed easily.

16 MS. ROBINSON: I thought maybe the Bush
 17 Administration proposed it.

18 MR. BRONSTEIN: No.

19 MS. ROBINSON: I'm just kidding.

20 MR. BRONSTEIN: But I think that's an
 21 important step that the ABA has taken and I think the
 22 Corrections and Sentencing Committee is getting
 23 revitalized, we have new chairs there, and I think we
 24 will be meeting in a couple weeks, so some stuff is
 25 happening, Steve.

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1 MS. ROBINSON: That's very encouraging
2 to hear and I had forgotten about the Legal Status of
3 Prisoners Standards being updated so that's very
4 helpful to hear. Thank you very much.

5 MR. HANLON: I have a comment I would
6 like to make before we get out of here.

7 MS. ROBINSON: Absolutely.

8 MR. HANLON: One provision of the PRLA
9 that I would hope that you would address is that
10 there is no action for mental or emotional injury
11 without the showing of physical injury so that mental
12 torture is not actionable. I think you ought to call
13 that into very serious question in your report. When
14 we saw the horrible television images at Abu Ghraib
15 our first national response was that's not who we
16 are, but this law seems to make that very -- it seems
17 to make it as national policy the idea that mental
18 torture is not actionable, and I just -- you know,
19 Solzenetzin was right. I mean, how we deal with our
20 prisoners tells us more about ourselves than it does
21 about prisoners and that's something I would hope
22 very soon would go the way of old flesh.

23 MS. SCHLANGER: Thank you very much to
24 all the panelists, it has been very informative, and
25 I think we now have a break until 3:30.

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1 (Recess)

2 DR. GILLIGAN: Welcome back to the
3 final panel of the afternoon and of this hearing in
4 Los Angeles.

5 Our final panel of this hearing will
6 address non-governmental forms of correctional
7 oversight. It is my pleasure to welcome our four
8 panelists who held a wealth of experience on this
9 subject; Ms. Katherine Hall-Martinez, Mr. A. Sage
10 Smith, Ms. Leslie Walker, and Mr. Jack Beck.

11 Oversight comes in many forms and this
12 panel will explore a variety of mechanisms that NGOs,
13 non-governmental organizations, have created to
14 monitor prisons and jails, to foster transparency,
15 and increase accountability. Some of the areas that
16 our witnesses will describe in detail include giving
17 prisoners a greater voice in the public realm,
18 empowering ordinary citizens to visit and report on
19 conditions and facilities, and working
20 collaboratively with correctional administrators to
21 advance systemic improvements.

22 Ms. Hall-Martinez is the Co-Executive
23 Director of Stop Prisoner Rape. Mr. Smith is
24 Director of Client Services at the Center on Wrongful
25 Convictions at Northwestern University's School of

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1 Law and is on the board of directors of the John
2 Howard Association, and Ms. Walker is the Executive
3 Director of Massachusetts Correctional Legal
4 Services. Mr. Beck has been the Director of the
5 Prison Visiting Project at the Correctional
6 Association of New York since October of 2004. I
7 would like to thank each of our panelists for their
8 participation today and I look forward to an
9 enlightening discussion.

10 Let's start with Ms. Hall Martinez.

11 MS. HALL-MARTINEZ: Thank you. Good
12 afternoon.

13 I am honored to address the Commission on
14 Safety and Abuse in America's Prisons about the dual
15 roles my organization, Stop Prisoner Rape, plays in
16 shoring up government response to one of the most
17 serious human rights violations in our country today,
18 the pervasive sexual violence that exists in prisons
19 and jails. First, SPR advocates for better policy
20 responses to prisoner rape through our role as a
21 monitor and critic of government. Second, SPR
22 collaborates directly with government entities by
23 providing training and spearheading special projects
24 toward that same goal. Our mission is to end sexual
25 violence against men, women and youth in all forms of

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1 detention through the U.S. SPR has three main goals
2 for its work: To advocate for policies that ensure
3 institutional accountability, to change society's
4 attitudes about prisoner rape, and to promote access
5 to resources for survivors of sexual assault behind
6 bars.

7 SPR was founded in 1980 by a survivor of
8 prisoner rape and has served as an outspoken voice
9 for ending such violence when few others had the
10 courage to do so. In 2001 SPR's board hired its
11 first part-time ED and it now employees a growing
12 professional staff of six. SPR was instrumental in
13 securing the passage of the Prison Rape Elimination
14 Act of 2003, or PREA, and the organization has worked
15 closely with senators and representatives on both
16 sides of the aisle for more than two years, as well
17 as helping to lead a broad coalition of organizations
18 that supported PREA. Monitoring and reporting on
19 PREA's implementation at both the federal and state
20 levels continues to be a high organizational
21 priority.

22 There are three unique attributes of SPR
23 that have contributed to its successes as an advocacy
24 organizations. First, as its history makes clear, it
25 is first and foremost an organization that seeks to

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1 bring perspectives and experiences of survivors of
2 prisoner rape to the forefront of the public debate.
3 It grew from humble beginnings. For many years SPR
4 was run from the back of a survivor's minivan which
5 was also his home.

6 Second, SPR continues to focus its mission
7 exclusive on addressing sexual violence behind bars.
8 While it may seem tempting to branch off into other
9 issues, our board and staff believe there's still a
10 dire need to focus on this particular horror of
11 prison life, in part because it does so profoundly
12 impact prisoners' rights and our greater society.

13 Third, several years ago SPR made a
14 strategic decision to use an international human
15 rights framework in all its work. This decision
16 emerged from our leadership's firm belief that
17 international human rights instruments provide a
18 uniquely powerful moral and legal standard for
19 fighting prisoner rape. These universal standards
20 also have the strength to endure the vicissitudes of
21 national, state and local politics.

22 So these characteristics of SPR are closely
23 linked to how and why SPR has been an organization
24 uniquely able to contribute to transparency in U.S.
25 detection facilities and to enhancing government

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1 oversight, and finally to working with corrections
2 officials directly.

3 Our mission emphasizes that we provide
4 access to resources for survivors. By their nature,
5 our links to survivors enable us to contribute to
6 policymaking and advocacy in unique ways. We receive
7 about 20 letters per week from survivors of prisoner
8 rape, the vast majority of them still in prison.
9 The information we receive spontaneously from these
10 survivors provides unique insight as to what is
11 happening in our prisons, about the culture there.
12 To date, our four-year-old database contains
13 information from more than 500 survivors of sexual
14 assault in prisons spread across every U.S. state.

15 We have currently about 120 of those
16 survivors who are part of a voluntary survivor
17 speakers' list so by testifying before legislative
18 bodies, meeting with corrections officials, providing
19 writing testimony to fact-finding commissions and
20 speaking to the media, these courageous survivors
21 provide a window into the reality of prison sexual
22 assault that is usually firmly sealed from public
23 view. In some cases we have identified the need to
24 more formally document violations in certain types of
25 facilities or against certain categories of inmates.

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1 For example, in 2003 we published "The Sexual Abuse
2 of Female Inmates in Ohio." In 2004 we published "No
3 Refuge Here: A First Look at Sexual Abuse in
4 Immigration Detention," and last year we published
5 "Still in Danger: The Ongoing Threat of Sexual
6 Violence against Transgender Prisoners" with the ACLU
7 National Prison Project.

8 The collaboration that we do with
9 government is also an important part of our work. In
10 many instances we found that officials have
11 approached us, eager to succeed in their legal
12 mandate to address prisoner rape. In other instances
13 we have identified need and found corrections to be
14 particularly open to collaborating with us to fill
15 that need. And just to give one example, we have
16 long believed that more concerted action is needed to
17 address the mental health needs of many woman who
18 have survived the trauma of sexual assault behind
19 bars, so we designed a project that draws upon the
20 extensive counseling resources available outside of
21 prison to address the needs of prison rape survivors.
22 Initially our project will involve collaboration
23 between corrections officials from two pilot state
24 prisons in California, our staff, counselors from two
25 pilot rape crisis centers, all of whom will work

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1 together to ensure that confidential high-quality
2 services without fear of retaliation and further
3 abuse are available to victims. In effect, we're
4 trying to draw upon, build a bridge between the two
5 worlds of rape crisis centers on the one hand and
6 prison settings on the other hand.

7 My time is up but I did want to just say in
8 closing that we have found that with the unique
9 opportunity opened by the PREA, were able to, we now
10 work both with federal and other government officials
11 who request our assistance, and at the same time
12 we're also able to retain our independence. So far,
13 anyway, while it requires some delicate balancing, we
14 have not found it contradictory to act in both of
15 these roles.

16 Thank you again and it has been nice to
17 have you here in our home territory of Los Angeles.

18 DR. GILLIGAN: Thank you very much, and
19 we will also can ask for your comments in the
20 question period.

21 Mr. Smith.

22 MR. SMITH: Good afternoon, commission
23 members. I want to thank the commission for inviting
24 me to take part in the examination of safety and
25 abuse in prisons. It is an honor to share with you

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1 my perspective as a former long-time prisoner in what
2 used to be one of the nation's most violent maximum-
3 custody prisons, Stateville, in Joliet, Illinois.

4 Although my incarceration at Stateville was
5 long ago, between 1973 and 1991 when I was
6 transferred to Menard in downstate Illinois, my
7 ongoing work at the Center on Wrongful Convictions
8 and as a director of John Howard Association have
9 kept me abreast of changes, for better or worst, in
10 maximum-security environments. What I say now about
11 my past personal experience I think is relevant to
12 the situation today.

13 I grew up in a community that was anything
14 but free of violence, my neighborhood was one of the
15 poorest in the Chicago south side, where one of the
16 rites of passage was withstanding blows to the
17 stomach and chest from the toughest guy in the group
18 until you could take it no more and say, "I give."
19 Another rite of the passage was being flipped and
20 slammed to the ground by the best wrestler in the
21 room to be acknowledged as tough enough to be okay
22 for the group. Nonetheless, there was standards of
23 conduct that fostered, to a considerable degree, a
24 sense of personal security within that community.

25 While at Stateville, there were no
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1 standards of conduct and no sense of security. There
2 at Stateville 24-hours a day, seven days a week,
3 there was a constant atmosphere of random violence.
4 It was a condition which I had to adapt to quickly in
5 order to survive.

6 My introduction to the kind of random
7 violence prevalent at Stateville occurred shortly
8 after I arrived there. My co-defendant and I were
9 working in the prison furniture factory when as we
10 walked toward the bathroom, we heard someone
11 screaming for help and pleading for mercy. When we
12 walked into the restroom we saw four prisoners
13 beating a man, who was screaming, with 30-inch batons
14 which were made for the guards in the wood shop of
15 the furniture factory. Now where we are coming from,
16 my co-defendant and I, four guys with batons against
17 one guy, somewhat out of the picture, just didn't
18 seem right to us and nothing was being done about it
19 so we decided we would get involved to kind of even
20 the score.

21 As we were about to do this the prison
22 guard came up behind us and said, "You don't want to
23 get involved in this, mind your own business or you
24 are next." We didn't have to be told twice.

25 From that day forward, each time I would hear
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1 someone yelling or pleading for help in the distance
2 of the cell house or the cell next door or when I
3 came up on somebody being stabbed or crying out for
4 help, it seemed that their cries became less and less
5 heard by me as my sense of compassion and caring
6 failed to hear them more and more. In essence, I
7 learned to wear the mask, to suppress my human sense
8 of caring for others, to conceal my compassion in
9 order to survive, such as it was, for another day.

10 I might have completely lost my moral
11 center and belief that all life is precious had it
12 not been for the job I later secured in the prison
13 law library which provided me an opportunity to help
14 others. I benefited from the various programs
15 started as a result of lawsuits brought by legal
16 organizations and individuals to force changes in the
17 prison system, and by the different volunteer groups
18 such as prison ministries, professional prison watch
19 groups such as John Howard Association, the Jails and
20 Prisons Project, the Prison Action Committee, and the
21 Positive Anti-Crime Trust.

22 People who volunteered to come into prison
23 and teach programs on life skills, the arts, anger
24 management courses and basic reading helped
25 tremendously to inject a sense of purpose into many

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1 prisoners' conscious. The professional prison watch
2 groups were invaluable also. They would monitor
3 prison activities by scheduling visits and walking
4 the cell house galleries and talking with prisoners,
5 providing a rare and critical chance for legitimate
6 grievances that needed to be heard. Additionally,
7 there were professional groups that would bring
8 groups of college students and volunteers into the
9 prison who would bring a sense of concern and infuse
10 a sense of hope into many prisoners.

11 Indeed, my own freedom from prison is the
12 result of a young volunteer attorney, Shaena Fazal.
13 She would visit Death Row where I worked as a law
14 clerk with her group, The Illinois Coalition Against
15 the Death Penalty. They would visit and talk with
16 the men on Death Row to find out how they were being
17 treated and to listen to their complaints and needs.
18 After their visits, they would then meet with the
19 warden to discuss the things told to them by the men
20 on Death Row.

21 One day when visiting, Shaena approached me
22 at the small law library where I worked on Death Row
23 and asked about my status and I told her I was a "C"
24 number. And many of you have seen Shawshank
25 Redemption where the guy goes up on parole and so

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1 forth. Well, I had gone up 14 times. She championed
2 my cause and eventually I made parole.

3 My time is drawing near but I want to tell
4 the committee and share with the committee that were
5 it not for the people who were coming into the prison
6 and sharing with them, sharing our needs and
7 grievances with them, were it not for people like
8 Shaena Fazal who had access to the prison, I wouldn't
9 be sitting here before you today. So I think it is
10 very important that there is a degree of transparency
11 within American prisons and to that extent, after the
12 rest of the panel has spoken, I would love to speak
13 to and address some of the concerns that I heard here
14 today regarding not wanting external visitations.

15 Thank you very much.

16 DR. GILLIGAN: Thank you very much.

17 Could we now hear from Ms. Leslie Walker.

18 MS. WALKER: Thank you. Thank you for
19 inviting me. Sorry, we're the last panel on the last
20 day of the last hearing. We will try to be as quick
21 and as informational as we can be.

22 I have been asked to speak as the director
23 of a prison legal services office about the Rapid
24 Response to Brutality Project that our office has run
25 since 2001. Just a point of clarification, someone

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1 said earlier that the legal services offices can't
2 help prisoners, that is true, for funding, those
3 funded by Legal Services Corporation. However, we
4 are a private nonprofit, receive different kinds of
5 funding, so I just wanted to clarify that if people
6 were concerned as to what she was doing up here
7 representing the prisoners.

8 MCLS was founded, as was the Prison Legal
9 Services Office in New York, in the wake of the
10 Attica riots. Prisoners were asked what do you want
11 and they said that they wanted a voice, someone on
12 the outside to listen to them, and access to the
13 courts. Our office has been in existence since 1972.

14 The Rapid Response to Brutality Project is
15 designed to deter guard-on-prisoner violence, there's
16 information in your materials, but briefly when my
17 office receives a report of a guard having abused or
18 staff member abuse of a prisoner, within 72 hours
19 someone from my office goes to that prison,
20 photographs the prisoner's injury, interviews the
21 prisoner, documents and advocates for medical care if
22 it is needed, and documents other injuries that may
23 be unvisible or invisible and advocates for the
24 prisoner if they want it. It is always offered to
25 them; some chose not to. We get a lot of our calls

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1 from other prisoners, not the prisoner in question
2 because that person has typically been lugged off
3 segregation where they are unable to contact us. The
4 short-term goal is to deter brutality, the long-term
5 goal is to eliminate it. Much needs to be done before
6 this country will ever eliminate staff brutality.

7 While our prisoners report a high degree of
8 satisfaction with the project, we ourselves are very
9 unsatisfied and I think you will be as well when you
10 hear some of the information I have for you.

11 One of the things that needs to change of
12 the eight or nine I have listed is that prisoners
13 need to be encouraged, not discouraged, from
14 reporting staff abuse. The administration cannot
15 address it, as Mr. Ryan has said, if they don't know
16 about it. Currently, however, there are many
17 discouragements that occur from prisoners. It begins
18 with the withholding of pens and papers in
19 segregation, it begins with not making copies of
20 prisoners' grievances so that they have no record
21 that they have made it and then throwing them away.
22 Many prisons have a safety box for sick slips. This
23 does not exist for the grievances, which is very
24 important.

25 The second comment I have to make on the

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1 lack of encouragement is that the whole system lacks
2 confidentiality. If a prisoner, a brave enough
3 prisoner, and I know you have all seen prisoners that
4 were the opposite of brave; loud and complained about
5 everything, but the assaulted prison who was brave
6 enough to report it needs to know that that report is
7 going to be held in confidentiality which is not
8 currently happening, at least in Massachusetts. The
9 brave prisoner who again chooses to complain in
10 writing therefore runs headlong into that blue wall
11 of silence with the real fear of retaliation.

12 Retaliation can take many forms including
13 the likely of remaining in segregation for longer
14 periods of time, poor classification decisions that
15 keep that prisoner in a higher security environment
16 where they cannot get any program or are not near
17 their families, the very real fear of physical
18 retribution wherever they go in the system, and
19 should the grievance be denied, at least in
20 Massachusetts, the fear of discipline for filing a
21 false grievance, so it is a setup for many from the
22 beginning.

23 Finally on that topic, since ratting, as we
24 know, is the lowest form of life in prison, not only
25 does a prisoner who reports expose himself to the

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1 retaliation of the corrections officers but it
2 follows you, that reputation follows you everywhere.
3 Even if it is something that has been done against a
4 staff member, you are labeled a rat and that follows
5 you everywhere.

6 So in addition to encouraging and reporting
7 abuse the following eight changes are required.
8 You've heard some of them; some of them will be new.

9 The careful choice of leadership.
10 Superintendents must make it clear that despite union
11 pressures and many other pressures, they will not
12 tolerate abuse. But as important, as important, they
13 will not tolerate the humiliating, daily treatment by
14 staff which creates and lends a credibility and
15 allowance for the kind of atmosphere where abuse can
16 occur. That is a very tough, tough standard and I
17 understand it but it is necessary. These leaders
18 must also be clear that staff members must treat
19 prisoners with respect, a prisoner's word will be
20 believed over staff on occasion, abusive staff will
21 be disciplined and honest staff will be rewarded.
22 That's a very missing piece here. Why should honest
23 staff come forward. There is no reward for it in too
24 many systems.

25 One of the small things that happens, and
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1 it has happened here for the last two days, is the
2 use of words. I personally find it very offensive to
3 have prisoners referred to as offenders, I don't even
4 like "inmates." I mean, they are prisoners, and this
5 is part of the whole dehumanizing process that has
6 gone on that has allowed abuse to run rampant in some
7 prisons, not all, thankfully, but I would urge you to
8 consider the very use of the words to label people
9 that have committed crimes. People often say to me I
10 am not my crime, I'm a person that committed a crime,
11 and that very slight difference can be very
12 significant. A verbal commitment to this kind of
13 holding people to high standards is insufficient;
14 consistent adherence to this kind accountability at
15 all levels is required. A lot corrections officers
16 have been around for a long time and they're going to
17 wait out a good superintendent, they're going to wait
18 out anyone else. But what happens is that the
19 commissioners need to be consistent at all levels.

20 Number 2, new and longer term staff must be
21 trained in effective ways of dealing with difficult
22 situations. This you have not heard: Cameras.
23 Cameras are very important. Cameras with audio
24 equipment especially in segregation units, you can
25 actually know what is going on, including stairwells
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1 and mental health watch area. Additionally, systems
2 for protecting the integrity of those tapes. Too
3 often there's editing and lost tapes. We have a case
4 pending right now where the superintendent knew he
5 was going to be sued, he asked it be taped, and the
6 tapes have mysteriously disappeared.

7 The bidding system where corrections
8 officers are allowed to bid on posts must be
9 abandoned. Investigations that you have heard about
10 need to be required by an independent person, someone
11 outside of the prison needs to go in and talk to the
12 prisoner claiming the abuse. The department must
13 record all allegations of abuse and report them. The
14 code of silence must be exposed, discussed and
15 discouraged and disciplined. Criminal prosecutions
16 taken against corrections officers that cover up for
17 others. If prisoners are held to that standard
18 they're charged with conspiracy, corrections officers
19 that are guilty are to be charged with criminal
20 prosecutions as well. And, finally, the independent
21 oversight that we're talking about, including an
22 independent body that reports not only to the
23 executive branch but to the legislature and issues
24 reports and works with the media.

25 Very briefly, I have run out of time but I
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1 would like to comment briefly on the media.
2 I think you need to think about recommending a whole
3 media strategy. As we heard earlier, if it bleeds it
4 leads on the news every night. We need to include
5 the media in these discussions and arrange individual
6 meetings, which my office has started to do, with the
7 editors of the local paper telling them the stories
8 they're missing, good and bad, and see if we can move
9 the dialogue further. The dehumanization of the
10 defendant, the coverage of sensational trials, has
11 led to the dehumanization of the prisoner, which has
12 led to the violence that occurs in the prisons. It
13 is a huge problem.

14 Thank you very much for allowing me to
15 address you. I don't envy you for having to
16 reconcile all of the different positions you've heard
17 over the last several months but the public safety
18 and the lives of millions of people are really up to
19 your leadership right now, and I offer the following
20 two quick stanzas from a Seamus Heaney poem.

21 "History says, Don't hope
22 On this side of the grave.
23 But then, once in a lifetime
24 The long-for tidal wave of justice can rise
25 up.

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1 And hope and history rhyme.
 2
 3 So hope for a great sea-change
 4 On the far side of revenge.
 5 Believe that a further shore
 6 Is reachable from here."
 7 Thank you.
 8 DR. GILLIGAN: Thank you very much.
 9 Mr. Beck.
 10 MR. BECK: Thank you for the poetry.
 11 I want to thank the commission on behalf of
 12 myself and Robert Gandi, who is the Executive
 13 Director of the Correctional Association who is also
 14 present today, for this opportunity to testify about
 15 the role the CA plays in monitoring prisons in
 16 New York State.
 17 The Correctional Association has been
 18 around since 1846 and we have statutory authority,
 19 we're only one of two organizations in the United
 20 States that have that, to go into the prisons and to
 21 report about what we observe. On a regular basis we
 22 go into the prisons and we monitor what's going on
 23 and we report to the legislature about our
 24 observations. We also conduct in-depth studies on
 25 specific topics, including our current effort to
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1 assess the safety and abuse in New York prisons. For
 2 our current study on prison violence we have
 3 interviewed or received surveys from more than 850
 4 inmates in 11 prisons of the 70 prisons in New York,
 5 and we anticipate to have a thousand surveys done
 6 when the project is finished.
 7 In my testimony I laid out many different
 8 ways I thought you could assess the effectiveness of
 9 non-governmental oversight but I would like to talk
 10 about two and those are transparency and
 11 accountability, the two terms we have been focusing
 12 on these last two day.
 13 The most important aspect of our
 14 legislative mandate is access to the prisons. We can
 15 go anywhere in the prisons we want and speak to any
 16 inmate in their housing area or program area. It is
 17 crucial that a monitor speak to the often silent
 18 majority of the prison population who are not
 19 necessarily out advocating for themselves, but rather
 20 attempting to survive 75 their prison term and get
 21 out. We also talk to staff and the prison executive
 22 team. Getting a true picture of what is happening
 23 requires that the monitor identify how prison
 24 practices diverge from stated prison policy. Direct
 25 access to inmates and to staff is essential to
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1 perform our duties, and it is also useful to review
 2 department documents and data in evaluating systemic
 3 practices and in assessing whether the information
 4 obtained from staff interviews is confirmed or
 5 credited by department records, but getting that
 6 correction data can be difficult. First of all, some
 7 of it may be privileged and therefore not accessible
 8 under Freedom of Information laws.
 9 But a second and more problematic area is
 10 when the department doesn't actually keep the data or
 11 it keeps the data in a format that is not retrievable
 12 and let me explain. Many incidents of use of force
 13 are only recorded if they rise to a certain level
 14 like in New York what's called an unusual incident
 15 report, but many uses of forces are not recorded in
 16 that system so you lose the data. But more
 17 disturbing is kind of an example of what happens in
 18 staff misbehavior. We have tried to get that
 19 information for the study and we are told we cannot
 20 retrieve that information because it is put into the
 21 individual staff folders and, therefore, they would
 22 have to review thousands of records and tens of
 23 thousands of documents and they refuse to do it.
 24 Namely, we cannot monitor what's going on but what's
 25 much more important is that the system cannot tell
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1 you what's happening if they don't have a way to
 2 retrieve the information.
 3 The paucity of violence data is not simply
 4 an oversight by corrections administrators, it
 5 perpetuates a system that hides the violence that
 6 goes on every day in our prisons from state
 7 officials, the public, and even the prison
 8 population. As you know, it is common for inmates
 9 who are involved in inmate/staff confrontations to be
 10 immediately transferred from their housing area to a
 11 disciplinary segregation unit following the incident.
 12 In large systems such as ours, these individuals are
 13 often transferred to another prison without ever
 14 returning to general population. Other inmates can't
 15 find out what happened to the inmate involved in the
 16 incident, or how serious his or her injuries were,
 17 and they cannot assist the inmate if he or she wants
 18 to challenge staff conduct. The inmate simply
 19 disappears and the prison population is left to
 20 wonder whether the same could happen to them.
 21 A remedy to the failure to maintain
 22 adequate record keeping is for the state legislature
 23 to mandate that the department regularly make public
 24 reports containing specific data about inmate and
 25 staff confrontations, inmate and staff injuries, and
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1 inmate and staff discipline. I urge the commission
2 to pose the type of data that should be kept and
3 reported by the corrections department and to define
4 terms such as "unusual incident" or "reportable use
5 of force" so that systemic data can be compared from
6 state to state.

7 It is also important that inmates who
8 believe they have been subjected to improper use of
9 force be afforded the opportunity to have those
10 assertions investigated by someone other than staff
11 at the prison.

12 Holding correctional departments
13 accountable means revealing to policymakers and the
14 public what is happening within prisons and
15 advocating that the department and others in state
16 government take action to correct and identify
17 deficiencies. It is crucial that a monitoring
18 organization's reports are fair and unbiased in
19 describing prisons and in presenting findings and
20 recommendations. The purpose should not be only to
21 detect failures, but to note successes and to
22 acknowledge progress in addressing previously
23 identified problems. Model programs should be
24 highlighted so they can be replicated elsewhere in
25 the system. The voice of inmates should always be

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1 included, as should the views and opinions of staff
2 and prison executives. The credibility of the
3 monitor will always be tested, and it is crucial that
4 the organization can fully support its conclusions
5 and demonstrate that it is equally prepared to listen
6 to and present the staff's and the administration's
7 views.

8 The monitor's role in publicizing and
9 advocating improvements is crucial, and the current
10 environment where incarcerated populations have
11 almost no political power and their families who
12 often come from poor and disenfranchised communities
13 have limited influence on state politics. Along with
14 publication, monitoring agencies must educate
15 policymakers and the public about what is happening
16 in our jails and prisons and help frame the public
17 debate about what is appropriate when confining
18 individuals. This would include outreach to the
19 press, non-governmental organizations, and coalitions
20 of concerned citizens. Participation in coalitions
21 is essential to develop a network of individuals who
22 are informed and empowered to advocate for change.

23 Two areas that I hope we can get to talk
24 about because I see my time is up, is, one, what is
25 the role between a monitoring agent and the

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1 department, and I have certain views of that and it
2 basically goes to the model of what I call quality
3 assurance, namely that the agency should have to
4 develop, respond to findings of the monitor and
5 develop their own corrective plan.

6 And, second, I would like to talk about the
7 relationship between monitors and litigation. I
8 think that's a very interesting one where the
9 monitors should not be involved in litigation, but
10 litigation plays a role in the enforcement mechanism.
11 Thank you.

12 DR. GILLIGAN: Thank you.

13 Let me start with a question for Ms.
14 Hall-Martinez.

15 From my years of working in the prison
16 system I reached the conclusion that rape in prisons
17 might very well be the most frequent, unreported
18 crime of major violence in America today for the
19 simple reason that everybody involved has a vested
20 interest in keeping it secret to a degree that's just
21 not even comparable to the situation in the free
22 world. The prisoner can be reluctant to report it
23 because of fears of being called a snitch or a rat
24 and really could be subjected to assaults or even
25 death, murder, if they complain about it. The

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1 perpetrators, of course, have a vested interest in
2 keeping it a secret, and the prison administrators
3 and correctional staff have a vested interest in
4 keeping it secret because it makes them look bad.
5 I'm saying that as a preface to asking you how do you
6 deal with this problem and how do you suggest we can
7 deal, what experiences have you had with the issue of
8 the powerful pressures on the part of everybody
9 involved to keep this a secret and when you are able
10 to penetrate that wall of secrecy, what can you do
11 effectively to protect an inmate against retaliation.

12 MS. HALL-MARTINEZ: Very good
13 questions.

14 Well, one of the projects that I mentioned
15 that we started to work on and I guess the way we see
16 to approach this is to make it known to prisoners
17 that there are resources that they can avail
18 themselves of. However, we have tried to think about
19 how those resources need to be beefed up which is why
20 I was talking about the need for mental health
21 counseling that can be unequivocally confidential and
22 so that's why we developed this project that's trying
23 to form a partnership between rape crisis centers and
24 the community and the prisons. That to us is one of
25 the major problems with even trying. For the person

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1 who suffered a rape in prison, they don't want to
 2 report it and it may not just be because of fear of
 3 retaliation; of course, that could be a huge factor,
 4 but it is the nature of rape and what's happened to
 5 that person and the stigma, the emasculation, and so
 6 just trying to cut through that is a huge challenge.
 7 And, of course, when the prisoner is aware that there
 8 are substandard mental health services, for example,
 9 at the prison, and particularly if they have seen
 10 what may have happen in other cases where it did not
 11 in fact stay confidential because of mandatory
 12 reporting requirements, that just causes the whole
 13 thing to unravel even more and makes it all the more
 14 difficult for that person to have access to any kind
 15 of care or to make any decision about whether he or
 16 she wants to go forward with a formal complaint, you
 17 know, et cetera.

18 So Stop Prisoner Rape is still such a small
 19 organization that we don't as an organization have
 20 the resources to provide services to every prisoner
 21 that contacts us in a comprehensive way. I talked
 22 about how we tried to be a resource for survivors and
 23 most of the letters we get are from people that are
 24 in prison. Many are from those who are out of prison
 25 and they've finally chosen to try to deal with this

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1 in their lives, but for those that are still in
 2 prison we try to know what resources there are in
 3 their state, we have a state-by-state resource guide
 4 that talks about mental health services, rape crisis
 5 centers and legal services that might be available
 6 for them if they want to reach out in that direction.
 7 But it is very frustrating for us because we don't
 8 really feel that we're kind of really meeting their
 9 needs in any real way and that's mainly a resource
 10 challenge in our case.

11 But I guess to get back to your question
 12 for a second, I mean, penetrating the wall of secrecy
 13 is just such a challenge and I guess we felt that,
 14 again, one place to start is just in trying to make
 15 it possible for that person to get some counseling
 16 from an expert, from a person who is trained in
 17 dealing with rape and with posttraumatic stress
 18 disorder that results from rape and then see how and
 19 whether that person wants to somehow move forward.
 20 So we're still, I guess, we recently hired a mental
 21 health program director and this is part of what she
 22 is doing in her work. Again, a lot of this has come
 23 out of the survivors that are part of our governing
 24 structure and our advisory committees and they too
 25 know that we're still so small that we can't do

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1 everything but to us it seemed like something that
 2 was a good step. I hope I answered your question
 3 more or less.

4 DR. GILLIGAN: That's very helpful.

5 I would be interested if you could share
 6 with us any experiences you have had in reporting
 7 incidents of rape, say, to correctional authorities.
 8 And, again, I say that on the basis of my experience
 9 in sometimes reporting to the Commissioner of
 10 Corrections of Massachusetts when I discovered a case
 11 where someone had been raped and, fortunately, he
 12 handled it I thought appropriately and reevaluated
 13 many aspects of this person's history and got him
 14 moved to a safer place and so on, but it still didn't
 15 get to the bottom of the problem, I mean, because
 16 this is an endemic problem in prisons. And have you
 17 had, could you show us any good or bad experiences
 18 that you've had with attempting to report these
 19 things, what kind of responses have you gotten?

20 MS. HALL-MARTINEZ: Well, we don't play
 21 that role so we don't report. We have looked into
 22 situations and documented situations based on
 23 interviews with prisoners and that kind of thing, but
 24 similar to a group, I suppose, like the Human Rights
 25 Watch, we played that kind of role but we haven't

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1 played a role of moving forward on the basis of a
 2 complaint from a particular individual or a set of
 3 individuals. We have tried to offer some guidance
 4 and input to a person who wants to do that in the
 5 ways that I described before but we know that we're
 6 just kind of chipping at the top of the iceberg, so
 7 to speak, so we don't -- I mean, we are very aware of
 8 many instances -- I mean, we have some statistics in
 9 our database, and it is not a statistically sort of,
 10 what's the word, pure database in the sense that
 11 these are just random letters that we've gotten over
 12 four about years, there's about 500 of them, but the
 13 vast majority who have reported the incident have not
 14 had any action taken on it. I can certainly tell the
 15 commission the information right out of the database
 16 but I don't have that in front of me, but it is by
 17 far, you know, a significant majority will say that
 18 they have reported, they have reported it, they had
 19 taken some steps, and then no action was taken on the
 20 basis of their going forward and using whatever the
 21 formal complaint mechanism is. I'm talking about of
 22 those who did report and, of course, many don't
 23 report but of those that did, most did not see any
 24 action taken on it.

25 DR. GILLIGAN: Have you worked with the
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1 Prison Rape Elimination Commission, the commission
2 assigned to implement the Prison Rape Elimination Act
3 that Congress passed a couple of years ago?

4 MS. HALL-MARTINEZ: Yes, very closely.
5 We have been collaborating with the commission, both
6 the staff of the commission as well as the
7 commissioners, individually and collectively, in
8 trying to provide our expertise in whatever way we
9 can. We helped to facilitate the participation of
10 survivors in the commissions, two hearings they had
11 in 2005, and we are prepared to keep playing that
12 role whenever we can. We're certainly interested in
13 providing input into the standards that the
14 commission is going to be working on as part of the
15 statutory mandate. That work is going to be worked
16 up next year, I believe that their deadline is
17 mid-2007, so we're certainly planning to be part of
18 that process as much as we can. We feel that we play
19 an important role at all stages. Before PREA came
20 into existence we were very active in that process
21 and then now that we are in the limitation phase
22 we're trying to stay active and really, as I said,
23 both trying to provide a watchdog role over the
24 various federal agencies that have a mandate with
25 PREA, as well as be collaborative in whatever way we

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1 can.

2 DR. GILLIGAN: Do you have any thoughts
3 or have you had any experience with collaborating
4 with the media to try to disseminate the information
5 you have been getting? For example, I mean, 500
6 letters is quite a large database, you might say.
7 Have you had any contacts with television, movie,
8 newspaper, magazine, any form of media dissemination
9 on this or have you given much thought to that?

10 MS. HALL-MARTINEZ: Well, definitely a
11 major part of our mission is to try to change public
12 attitudes and, of course, the main way that that can
13 happen for a small organization like ours is by
14 relying on media to help us do that so it is a
15 significant portion of our resources in terms of we
16 have communication specialists whose job it really is
17 to try to get the word out there on this and we work
18 with them, we certainly have, we were part of an
19 effort to get some -- for example, there was a very
20 offensive commercial on at one point by 7-Up that
21 dealt with prisoner rape in an extremely callous way
22 and we were part of getting that pulled by them.
23 That was a couple of years ago. In a couple of cases
24 we tried to get -- the show "E.R.," for example, did
25 a positive show where they, you know, tackled the

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1 issue of prisoner rape, we were part of helping to
2 develop that, and certainly we've gotten quite a bit
3 of coverage in mainstream media for this issue, again
4 largely because of our connection with survivors and
5 how important, you know, their experience is and
6 their stories are and how much that can be a
7 connection for the average person to understand this
8 issue that is not as abstract as just talking about
9 the Prison Rape Elimination Act and all of that kind
10 of thing. So we definitely see the media as key and
11 of the limited resources we have, we're using it in
12 every which way we can.

13 In terms of our database specifically, I
14 mean, we're just stating to feel like we are
15 beginning to get to that point, in fact, and, again,
16 it is not like this has been done in sort of a
17 scientifically sound way from the outset, it has
18 been -- I mean, we have file cabinets full of
19 longhand written letters from prisoners and that's
20 the basis of it really, and we obviously enter the
21 data largely from those letters, and I think we're
22 just feeling -- we use it sometimes in particular
23 instances if we're talking about a state and we may
24 say look, we have some information and we know on our
25 database X number are from the State of California,

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1 for example, and we'll talk about that for a
2 particular story, but we haven't really, I guess,
3 sort of -- we haven't sought to develop stories
4 directly yet.

5 DR. GILLIGAN: Have you had any contact
6 with or access to correctional professionals or
7 groups such as the American Correctional Association
8 or associations of state correctional administrators
9 or whatever?

10 MS. HALL-MARTINEZ: We have in an
11 informal way at conferences such as these or
12 gatherings such as these, I should say, at some other
13 conferences. Some of the followup, for example,
14 meetings that have been held by the Bureau of Justice
15 Statistics, trying to work on gathering data on
16 prevalence that we participated in, as well as
17 organizations that you mentioned, but we haven't
18 collaborated with those groups in a formal way. We
19 have, as I said in my remarks, collaborated with
20 particular departments of corrections on a number of
21 different matters related to training, related to
22 standards setting, that kind of thing, but not the
23 national entity as such. We have collaborated with
24 the National Institute of Corrections on some of the
25 training that they have been developing, again

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1 pursuant to their mandate under PREA.
 2 DR. GILLIGAN: Ms. Schlanger.
 3 MS. SCHLANGER: I have a question for
 4 those of you from New York and Massachusetts, and
 5 that is about access. I mean, you said, Mr. Beck,
 6 that your organization is one of only two in the
 7 country that has statutory access, and I gather
 8 Massachusetts is somewhat unusual also. I remember
 9 when I used to teach in Massachusetts that my
 10 students, many of them would go in and represent
 11 prisoners at disciplinary hearings and I mentioned
 12 that to somebody in a different system who said,
 13 "They let in law students to do disciplinary
 14 hearings, what, are you kidding?" So I think that
 15 maybe lawyers and law students, paralegals, have
 16 unusual access in the Massachusetts prison system as
 17 well, and I wondered, I guess, a couple questions.
 18 One, do you think that other systems would
 19 voluntarily do that, have either of you had any
 20 contact with other systems to sort of say this
 21 actually works well, that's one question. And then
 22 the other question is do you see that having any ill
 23 effects for those systems, the kinds that one ought
 24 to think about if you were advocating for that in a
 25 different state, is there any bad side to that.

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1 MR. BECK: Your second question first,
 2 ill effects. We have not observed any ill effects.
 3 You know, we go into the prisons, we have been doing
 4 it for 160 years they have been going into prisons,
 5 this organization. We have not had a problem and we
 6 can go anywhere. I must admit, I was an attorney for
 7 23 years at the Prisoners' rights Project where I
 8 litigated and to then change from the restrictions
 9 that attorneys have when you are trying to litigate
 10 and how hard it is and now I can really go anywhere I
 11 want and talk to anyone I want is extraordinary but
 12 it is not disruptive. I mean, it is not what --
 13 we're out there, we're just talking to people. As a
 14 matter of fact, I think one very important point, and
 15 I'm digressing just for a moment, is this notion of,
 16 and I think it was said here yesterday, communication
 17 with inmates is very affirming to them. I think it
 18 is rare that they are going to respond to violence
 19 when someone is actually concerned about what's going
 20 on with them, that that's going to produce them to be
 21 violent, I find it very much different. I find that
 22 people are very encouraged to be able to talk to us
 23 and feel some affirmation from that, and therefore
 24 there is a sense that there is a mechanism in place
 25 to resolve or at least someone to hear their

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1 grievance rather than just be frustrated.
 2 When we have looked at our violence data I
 3 can say that the high violence is in the areas where
 4 there is a tremendous amount of tension, where there
 5 is no communication between staff and inmates. When
 6 you go to a facility where there's communication
 7 violence is down, we're on another form of
 8 communication, so I don't think there's a lot of
 9 chance of disruption. On the rare occasion there
 10 was, the executive director was telling me before I
 11 got there, there was this one time where we went to
 12 the prison and there was a disturbance before we got
 13 there and they said, "I'm sorry, you can't come in
 14 today, we're locked down." Well, of course we
 15 wouldn't go into a situation if it felt like it would
 16 cause further disruption, but I don't believe it has
 17 that impact.
 18 Whether there's a model elsewhere -- in my
 19 testimony I lay out there's a couple different
 20 models. Do I think that necessarily our statutory
 21 provision which was done in the 1842s can be
 22 necessarily done today? I think that's a legitimate
 23 question that would be difficult, it is very
 24 broad-based. But there are other models where they
 25 have created commissions to look at specific issues,

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1 look at health care, mental health care, maybe
 2 violence. Florida has one that deals with health
 3 care, for example, and others are cited.
 4 There's also a way where the government can
 5 get in and do something where they're appointing a
 6 commission, but in my testimony I emphasize that it
 7 is very important that I think an outside commission
 8 does not become an arm of the prison administration,
 9 and the ways to avoid that is to have many
 10 stakeholders be part of that process. One is to have
 11 both, if you have a state where there isn't really a
 12 minority/majority party to have people appointed from
 13 both parties, both from the governor's office and
 14 from the legislature, and also an authorizing statute
 15 to include provisions that would appoint people from
 16 the outside such as people from Legal Services or
 17 from the health-based organizations or from
 18 providers, and this is a way to have a commission
 19 that will be open, I think that is possible. I've
 20 had a few people come to us and talk about could
 21 there be statutory provisions but I haven't seen
 22 something implemented, but there are some models out
 23 there.
 24 MS. WALKER: Briefly, if I understand
 25 your first question, Mr. Schlanger, would other

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1 systems voluntarily do this, I don't know. I think
 2 so much of it, like life, depends upon the
 3 personalities involved. Some commissioners, some
 4 superintendents, some wardens, "Certainly, come in,
 5 go wherever you like," other are bothered by the idea
 6 and concerned about safety and concerned about other
 7 things that will happen like perhaps some legitimate
 8 things, people stirring up trouble, but I have
 9 something to offer with regard to the second
 10 question, the ill effects for the system where we do
 11 go, something not ill but actually quite wonderful
 12 and a good reason why I think we have remained alive
 13 the number of years we have remained alive and
 14 received some state funding.

15 The sheriff without any the statutory
 16 authority in Massachusetts did some acts, made some
 17 choices that led to a lot of rioting at the
 18 institution in one county. Millions of dollars worth
 19 of damage, tons of personal injury. No one died
 20 thankfully. Exactly a year later on Easter Sunday in
 21 2003 that sheriff the week before had decided to
 22 start charging prisoners \$5 a day for staying at his
 23 facility. The flooding starting, the screaming
 24 started, people were furious, there was a giant
 25 lock-down, we knew damage would be done as it had a

1 year before.

2 So a lawyer from my office went to the
 3 prison over the weekend, met with some of the
 4 leaders, met with some of the jailhouse lawyers, and
 5 said, "You have a legitimate case. We will take the
 6 case. Just please, if you can, calm down, let us do
 7 it, we will meet with everyone who has a case filed
 8 and see if we can work it out."

9 We did, we won, and there was absolutely no
 10 violence that weekend. It is not a miracle cure, but
 11 it is not rocket science to figure if people have a
 12 voice, if the suffering that is bubbling up is
 13 listened to and taken seriously, the good effects can
 14 be absolutely tremendous.

15 DR. GILLIGAN: Mr. Krone.

16 MR. KRONE: Yes.

17 New York, Massachusetts, Illinois,
 18 California, so you are pretty much across the
 19 country. Is there any clearinghouse, any center
 20 where anybody who works in human rights, prison
 21 rights type of thing, oversight, that works like a
 22 clearinghouse, a central place where you use to meet,
 23 compare notes, exchange ideas? Is there anything out
 24 there and would it be worthy or worthwhile at all if
 25 you had something like that?

1 MS. WALKER: It certainly would. I
 2 think all would agree, those of us that are lawyers,
 3 the ACLU National Prison Project is a tremendous
 4 resource, they we have a great reserve, as does the
 5 Open Society Institute, it has a wonderful reserve
 6 that we all receive E-mails from, I believe, but
 7 that's the extent of my knowledge. Sure, would it be
 8 helpful if we were more organized and had regular
 9 meetings? Definitely, and I would applaud that as an
 10 idea.

11 MR. SMITH: Let me go back to the
 12 question that Ms. Schlanger, Commissioner Schlanger
 13 asked about access for law students which kind of
 14 dovetails with what you are saying.

15 In Illinois there are provisions within the
 16 rules for your hearing, for your disciplinary
 17 hearing, there are provisions that you may have an
 18 attorney present. The provision is there, it is like
 19 the ACA standard, but I can assure you that they're
 20 not going to let you have a lawyer present at your
 21 hearing. When you get the disciplinary ticket you
 22 have to sign it and it tells you that you will have
 23 your hearing within -- not within, but from 72 hours
 24 forward. In other words, it won't be one day or two
 25 days, it would be at least 72 hours, and then it can

1 be up to seven, eight, or nine days. But what
 2 traditionally happens is that if you want to have
 3 somebody present at a hearing, you have to -- there's
 4 a part down there that you have to sign and send back
 5 through the mail to tell the committee, the
 6 adjustment committee, that you want somebody present
 7 at your hearing, or that you even want to have
 8 witnesses come to the meeting, other inmates. And
 9 what traditionally happens is they deny it, and you
 10 don't know that they have denied it until they call
 11 you for your hearing. You get like 40 minutes'
 12 notice, your hearing is today, stay in from your
 13 detail or whatever the case may be. And then you go
 14 to your hearing and say, "Where are my witnesses?"
 15 And they say, "Well, we ain't got time to call your
 16 witnesses," or "We didn't get it," or something like
 17 that. So the reality is that it is there,
 18 Commissioners, the provisions are there, but the
 19 reality of it happening are nil.

20 MR. GREEN: Mr. Smith, during your
 21 opening comments you offered to say more about
 22 reaction to comments about external oversight and I
 23 got a sense there was something in addition that you
 24 wanted to add.

25 MR. SMITH: Yes, sir.

1 Frankly, I was taken aback by some of the
 2 comments that Sheriff Byrne and some of the others
 3 were saying about external oversight because -- let
 4 me give you a point. There was in the eighties after
 5 all the riots in '78, there were three guards killed,
 6 subsequent to that there was another lieutenant
 7 killed at Stateville, and then there were about four
 8 inmates killed and this happened within about two
 9 years. And medical facilities was bad, everything
 10 was bad. They couldn't get a warden to come into
 11 Stateville from any other institution in the state,
 12 they had to go outside the state to get wardens, and
 13 these wardens would last about six months and they
 14 would quit.

15 So what happened was that Governor
 16 Thompson, many of you know him, Jim Thompson came in,
 17 he wrote the election in about he was going to clean
 18 up the system. The long and short of it, when he
 19 brought people in, new people, whole new staff,
 20 young, aggressive guys in who wanted to make a
 21 difference with the old-line guards, because that was
 22 the problem -- by the way, the governor fired the
 23 major and everybody on his staff because what they
 24 had did is countermand everything that the warden was
 25 saying to do. Every time they would bring a new

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1 warden in these guys are saying, "We're not going to
 2 do it," and these were good old boys and they stuck
 3 together because they knew that this guy wasn't going
 4 to be here, he wasn't going to last.

5 So there was a young warden that came in
 6 named Richard E. Robertis, and I was working in the
 7 library at the time and our guys, you know, we were
 8 saying we're going to file lawsuits and so forth in
 9 order to get certain things done. He applauded that
 10 because he said, "I can't get it done, I applaud you
 11 guys doing that." It was the same thing when we told
 12 him that we would like to have these forums on
 13 Saturday for people to come in and talk to the
 14 inmates. He applauded that, he said, "That's great,
 15 because that way I can get feedback when you are
 16 finished because I don't have the resources to get
 17 out there and see what's going on."

18 Now from my perspective, you know, I
 19 thought that was a good thing that you've got people
 20 coming in and who can tell the chief administrators
 21 what they're not hearing from the line staff, that
 22 seems to be a good thing. I don't understand -- and
 23 they can also see people who are being abused. Now
 24 maybe that's one thing that the line staff don't want
 25 them to see, you know, some of them, you know. My

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1 experience, most officers when they come into the
 2 system they're okay, they want to do the right thing.
 3 Sometimes they get co-opted by the few that are bad
 4 eggs, and I can tell you that anybody that is in the
 5 prisons system more than two or three years can tell
 6 you what officers are abusing people, what officers
 7 are bringing in drugs, they can even tell you what
 8 officers are alcoholics that they put on the night
 9 shift because they know, and maybe those are some of
 10 the things that some officers don't want to know,
 11 don't want the outside to know about. But most of
 12 the chief administrators, they want to know this,
 13 that's been my experience all the years I was
 14 incarcerated, and I don't -- and, secondly, I think
 15 that if you are talking about educating the public,
 16 how better to educate the public about what's going
 17 on in prisons and what's not going on in prisons by
 18 letting outside people coming in and see what's going
 19 on. I mean, it was a liberating force for me, my
 20 transformation took place because of people coming
 21 in, religious people and so forth, and I'm saying to
 22 me, it works. And if the objective is to put out a
 23 better product, why not have some quality control
 24 that's not part of, that's not necessarily part of
 25 the system, you know what I'm saying? Does that

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1 answer your question?

2 MR. GREEN: It answers my question. I
 3 think part of what I have heard, though, at times
 4 people coming into the system from outside can be
 5 interruptive and I don't know if you want to comment
 6 on that.

7 MR. SMITH: I'm at a loss for that.
 8 Prisoners don't need to have their grievances
 9 validated by the outside to cause problems, okay?
 10 Usually what happens is they will, if they don't get
 11 their grievances aired, they will do something about
 12 it by trying to harm an officer or staff member or
 13 something. But to have their grievances validated by
 14 somebody; in other words, to have someone come in and
 15 listen to their grievance, that defuses the
 16 situation, that's been my experience. Again, I
 17 just -- maybe it is because I'm not wearing the hat
 18 of an administrator, but that has been my experience.
 19 I can't talk about empirical data and all that, I
 20 just know what happens in the real world. The guys
 21 who think somebody is listening to them don't cause
 22 problem. When they don't think that they're being
 23 heard, that's when they cause problems.

24 DR. GILLIGAN: Mr. Smith, could I ask
 25 an additional question.

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1 Now that you are on the board of a prison
2 watch group, the John Howard Association, what
3 suggestions or recommendations, if any, do you have
4 to make to that association regarding its prison
5 monitoring work and do you have recommendations to
6 this commission as to what we should recommend
7 ourselves.

8 MR. SMITH: I think, you know, prison
9 is a very closed society, you know, and it is the
10 same thing that I say to the board members. We've
11 got judges on the board and so forth. And one of the
12 things that each board member has to do is visit a
13 prison at least once a year as long as you are on the
14 board and oftentimes they don't know what to look
15 for, you know. They say, "Well, what should we look
16 for, what should we be doing." And I said, "Well,
17 you know, guys are going to give you -- they're going
18 to give you everything." You know, some guys are
19 trying to get some money to spend in the commissary,
20 you know. But most of the time if you ask the hard
21 questions, right, about medical treatment, about
22 abuse, about sexual predators, those -- about
23 visitations, about transfers and classification,
24 education, these are the kind of things that the
25 outside group should be wanting to find out about.

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1 Because on paper, and I don't mean any disrespect to
2 anyone here, I know most of these people want to do
3 the right thing, but on paper is one thing, but when
4 you go inside the institution, you see that everybody
5 is supposed to get a GED, that's the law in Illinois,
6 it is mandated. But it says if funds are available
7 or something to that effect, all right? So, in
8 effect, you've got 500 guys on a waiting list to get
9 GED and you have 40 slots, so it is that kind of
10 thing that the public can say, "Well, wait a minute,
11 we sent this guy in here and you sent him back
12 worse," you know what I mean? "You sent him back to
13 us worse than he was." And I guess to some extent,
14 and I know this is kind of touchy, to some extent it
15 doesn't matter to some people because you are not
16 dropping them back off in their neighborhood but when
17 you are dropping them back off in my neighborhood
18 where I live, you have a guy coming out more angrier,
19 I'm worried about that guy. I don't want him walking
20 down the street where my grandmother is because he is
21 angry now. It is the same thing you talked about
22 with mental health.

23 Well, you can see this every day. There
24 was a guy named T.J. Every day he would come out of
25 his cell, he would take off of all of his clothes,

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1 put them on the gallery, take all of his bedding, put
2 them on the gallery, walk around the gallery two or
3 three times see what the reaction would be. You
4 know, he was spaced out. He put them back. Do you
5 think the guards did know about this? Yeah, they
6 knew about that, but it is was like, "That's T.J., he
7 is crazy."

8 The other thing is the guys who were angry
9 and violent all the time who have known issues and we
10 knew it, the prisoners knew it, but the guards, "He
11 got a mental problem?" "No, he is just an angry
12 black man, he ain't got no mental problem." So these
13 are the kind of things that outside agencies can see
14 and maybe report to the chief administrator because
15 the average guard is not going to do it, he is not
16 going to tell his captain, "You know, I think that
17 guy is crazy," he is not going to do that, he is not
18 trained to do that.

19 DR. GILLIGAN: Dr. Dudley.

20 DR. DUDLEY: I'm glad you just said
21 what you just said because that's one of the things
22 we have been arguing about that seems so real when
23 you are actually in the prison, but I actually wanted
24 to ask you about something else.

25 During the life of the commission we have

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1 heard from quite a few individuals who have been
2 incarcerated for periods of time and in my memory
3 absolutely every one of them, including you, have
4 talked about some transforming relationship, some
5 relationship that you had that really made a big
6 difference and changed things for you, and I have a
7 sense that we haven't heard that as a commission.
8 Absolutely everybody has said that. And we have been
9 talking all around about programs and things like
10 that but no one seems to hit on this issue that keeps
11 coming up and I wonder if you would comment any
12 further on what you meant or what was the essence of
13 that because you use that as part of your whole
14 argument for allowing outside people to come in.

15 MR. SMITH: It is true. It started --
16 first of all, when I started talking to -- there's
17 some people that came in who were religious leaders
18 and -- Christian, Muslims and Christian Science --
19 and these were programs that before then, you know,
20 the only place you could go was to the chapel and
21 that was like for half an hour. But then they
22 started to have ministries, they call them, coming in
23 and you could access these people on the weekend,
24 hour, two hours, and get various kinds of lessons.

25 Then there was the drug counseling program and this

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1 was started by one of the social workers who was also
 2 a counselor and she volunteered, they had a volunteer
 3 program, there were numerous programs that were
 4 started as a result of the riots, okay, to kind of
 5 address on the issues, and she would volunteer to
 6 come in and she would have a drug education course.
 7 I can tell you it was liberating for me to find
 8 out -- it wasn't liberating at first because it puts
 9 you in a circle and they don't let you get away with
 10 stuff, you know, but eventually it was liberating for
 11 me to find out why I was using drugs because drugs
 12 weren't the problem, it was a deeper problem, do you
 13 know what I'm saying? And once I began to get that
 14 connect then I could see myself whole. But as long
 15 as they were talking about drugs as bad, drugs were
 16 good. And, I mean, that's one of the problems you
 17 have with telling somebody young that drugs are bad
 18 and they say how can it be bad, it makes me high, I
 19 feel good. But once you tell them the effects of
 20 drugs and what it does to you and they get educated
 21 about that you can see a change, I think.

22 The other part of it was, and this is my
 23 opinion, you know, and I may be in the wrong place
 24 for saying this, is that I think you if you don't
 25 have a spiritual component, that you can't find your

1 moral center which is what I was able to do with some
 2 of the groups that was coming in, I don't think that
 3 you are going to change. I think the behavior
 4 pattern, the culture that I was raised in and so
 5 forth, it was cool to do those things that I was
 6 doing. And it may not have been socially acceptable
 7 to certain groups but within my group, that was the
 8 way you got ahead, you know. And so for me it was a
 9 spiritual component that helped me transform my
 10 behavior. And at the risk of being politically
 11 incorrect, I thank God for that today, you know. So
 12 I think that when you just deal with -- let me put it
 13 this way. I think that you should make things
 14 available for people in addition to just the regular
 15 social sciences.

16 MR. SCHWARZ: Mr. Beck, did you make
 17 any findings about violence in New York prisons in
 18 your study and, if so, can you share that with us.

19 MR. BECK: Well, in my written material
 20 we had some preliminary findings in there but we are
 21 literally, this data is being collected while I'm
 22 here and we haven't come up with recommendations yet,
 23 but I think there's several interesting components to
 24 what we have and I think it will go to some of the
 25 points you discussed over the day.

1 One is this issue of finding out from
 2 inmates what they perceive, can you rely on that; how
 3 important is it to talk to inmates and find out what
 4 they think. I think it is very important. And I
 5 think it is -- I was, to my experience having talked
 6 to inmates for a very long time that there are
 7 credibility issues with everyone, but there are many
 8 ways to kind of look at that and then figure out
 9 where the truth lies or not. And one thing that is
 10 important in terms of the data that we have, is that
 11 we have found substantial differences among the
 12 prisons and that really takes out the sense of our
 13 prisoners lying. Why would we have in one prison
 14 only three percent of the people that we surveyed say
 15 that they ever had a confrontation at that prison and
 16 in another prison it is 33 percent, and these are
 17 people that are in that particular prison, people
 18 move around a lot, so they're in a particular prison
 19 11 months at one prison and we see a 10 times rate.
 20 Well, that suggests that you have ways to validate
 21 that data. And we have a series of about 11 or more
 22 preliminary results and those results are, a couple
 23 of them that I want to point out. One is there's a
 24 significant break of violence, both inmate on staff
 25 and inmate on inmate, and I think it is very

1 important that you make connections between both, you
 2 don't just look at one, and I find that there's a
 3 real connection between that. If there is a real
 4 tension within a prison, I think it manifests itself
 5 in both ways. As a matter of fact, I have had
 6 inmates say to us when we have focus groups that say,
 7 "You know, we kind of stopped fighting, punching out
 8 the staff because we know we're really going to be
 9 harmed and so we take out that tension on other
 10 inmates because it is our only outlet." So if you a
 11 see a high rate of inmate-on-inmate, you have to look
 12 at what is causing that.

13 We did look at drugs and gangs and we had
 14 some interesting data on that. I think in New York
 15 we have less of a drug problem -- excuse me, a gang
 16 problem than you do on the West Coast, but we saw
 17 differences in different prisons and is that because
 18 the population is different? No, it is not. 60 some
 19 percent of the people in New York come from New York
 20 City in the state prison system. But what it is when
 21 you don't have mechanisms that work where they see
 22 other associations, you were talking about this
 23 yesterday, that are effective, other ways you can do
 24 it; vocational, jobs, other things, when you feel you
 25 are shut off, then gangs become an important

1 instrument for protection, for support, that's how
2 you validate yourself. And so we did see that gangs
3 were an element, they exist, but the real question is
4 are they a source of violence and at the prisons that
5 we found where there is great tension, they were much
6 more a source of violence.

7 Another area we haven't really talked about
8 is a race question. Race is a crucial issue. If you
9 don't talk about race, you are not talking about the
10 criminal justice system, in my opinion. It is a
11 racist system. Certainly in New York we have, I will
12 give the numbers, it is about 80 percent are people
13 of color, and yet we put them in prisons where three
14 and five percent of the prison staff are people of
15 color, and often it is an urban population that is
16 being incarcerated and it is a rural population that
17 are looking at them, how can you have -- and this is
18 about effective communication and respect. How can
19 you take a person that's grown up in an all white
20 community, rural community, and now they're going to
21 be dealing with people of color, that the only people
22 of color they see have been convicted of a crime and
23 they're in an environment where they have total
24 control over that person and there's no respect. And
25 if there's one thing I got from our study, it is that

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1 things fall apart where the white shirts are not
2 there, where the commanding officers are not around,
3 and I'm not quite sure exactly why that is, but the
4 respect is important. When you talk to old time cons
5 they will tell you they remember in the seventies
6 people called people sir, they remember when people
7 were addressed by their last name, you know; Ms.
8 Robinson, Mr. Maynard. It is not that way anymore.
9 That's why I mention the lack of respect I think can
10 lead to abusive environments were the tiny,
11 degrading, everyday humiliating name calling that can
12 occur is allow to occur, and without cameras that
13 record, especially in high security areas, the
14 officials cannot find out about these things, it is
15 not going to be reported with any regularity and it
16 is not going to be believed unless it is seen and
17 heard so I think it is critical.

18 MR. SMITH: I would dovetail on what
19 she said. It is true. The quickest way to get hurt
20 in prison is to disrespect somebody. This is from
21 inmate to inmate. And usually when somebody is hurt
22 or there's a stabbing or something going on they
23 don't say exactly what he did, all they say is he
24 disrespected me, and it is the same thing with
25 correctional officials. Oftentimes the chief

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1 you have violence when you don't have mutual respect
2 and so inmates would say, "Why is there not violence
3 here? Because they respect us and therefore we
4 respect them back." So these are not rocket science
5 things, but they're really cause and effect and we
6 see, I think, some of those elements.

7 MR. SCHWARZ: Can any of the other
8 witnesses comment on his last comment about respect
9 or mutual respect being important to avoid violence?

10 MS. WALKER: Very briefly I would echo
11 what Jack has just said, that when prisoners are
12 treated with respect, they respond in kind. For all
13 of the complaints I get from prisoners about abusive
14 guards, I also always ask is there anything good
15 going on. We have a prison liaison project where we
16 go out to all the maximum-security prisons and
17 medium-security prisons and interview prisoners who
18 are good reporters, reliable reporters known to us,
19 some new prisoners, who care about more than just
20 their own issues and we hear good things. "This CO
21 has been like a father to me," "This guy is an honest
22 straight shooter," "This guy I can rely upon," "This
23 guy is a decent human being," so in those units when
24 people are in charge, things go well. Typically it
25 is the day shift. It is the second shift where

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1 administrator or the sheriff or whomever, because I
2 was in county jail for a lengthy period of time, they
3 don't know what's going on with their staff all the
4 time. I mean, for the most part, like she was
5 saying, the day shift you've got all the brass, they
6 would call it, on. And that's why they act out, the
7 officers act out, because there's no brass there to
8 correct them, in my opinion. And what happens is
9 that when the shift changes in the evening there's
10 less captains, you have maybe one shift commander and
11 there's no major around and there's no superintendent
12 around, you've got a duty warden, and so guys get
13 away with more, and they do. And that is very true
14 that -- when I worked my way up from max to minimum
15 there was a superintendent who demanded this, he was
16 straight, no mince. He demanded that you respect the
17 officers, he demanded that the officers respect you,
18 and when the guys knew that was coming from the top,
19 they responded differently.

20 DR. DUDLEY: I would like to -- I agree
21 with what the last three of you said and I would like
22 to particularly go back to what Mr. Beck was saying.

23 I am convinced that what you are saying is
24 not only central to virtually every issue that we
25 have been discussing during the life of this

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1 commission, although we haven't been really
2 discussing it so clearly in that way, although I
3 think it obviously underlies everything that we have
4 talked about, and I wanted to go back to an earlier
5 question that came up because I think it is also
6 particularly relevant there.

7 You know, we have been talking a lot about
8 the mental illness issue and the identification of
9 the individuals who are mentally ill, particularly
10 those who deny mental illness when they come in and
11 those who otherwise were just not formally diagnosed
12 and therefore didn't know they were mentally ill or
13 who had problems like the rapes or whatever and the
14 brutality and developed psychiatric problems
15 secondary to that.

16 I also think that the problem that you are
17 describing helps explain this enormous dichotomy that
18 we have been hearing about how great the assessment
19 processes are, and then at the same time the reality
20 that there are all these mentally ill people in
21 segregation as opposed to in treatment where their
22 illnesses are missed, they're not diagnosed, they're
23 not being picked up, and I suspect it is the same
24 issues. You have not only corrections officers who
25 are totally unfamiliar with the community and

1 therefore find it difficult to identify those who are
2 suffering from mental illness as you all have
3 suggested, particularly if any behavior is attributed
4 to the fact that they are bad inmates and you are
5 otherwise unfamiliar with this whole population of
6 people of color, but even the professionals make the
7 same errors and, therefore, the diagnoses are missed
8 in the assessment process and people are treated as
9 bad as opposed to ill, and I'm wondering if you have
10 any thoughts about that.

11 MR. BECK: I actually would like to
12 lead. It is not part of this study but we did a
13 study that came out in 2004 on mental health issues
14 in the house of corrections, it is a whole report, it
15 is on our web page, it was a massive study that we
16 did look at mental illness in New York prisons and
17 there's a couple of points.

18 I think it is torture to take a mentally
19 ill person and put them in disciplinary segregation
20 and I wish this commission could see that. It is
21 torture because it is entirely predictable that that
22 person is going to deteriorate and end up cycling
23 back into crisis center after crisis center.

24 An example. I was at Attica a couple of
25 months ago. They have a special program within the
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1 Disciplinary Segregation Unit, it is called the
2 Special Treatment Program. They take these
3 individuals out and they put them in little cages for
4 their therapy sessions, five separate little phone
5 booths that are cages. That's therapy.

6 I saw this man, he had scars on his arms
7 and across his head. He is spending 10 years in the
8 box. That's what we call disciplinary segregation.
9 He had been to the psychiatric hospital 21 times
10 during this time period cycling back and forth. And
11 we have a residential mental health component called
12 the Intermediate Care Program. He hadn't been there
13 since 1977. He has been in the box this whole time.

14 It is entirely predictable, I have some
15 data which is not part of this but another study,
16 where it is 21 times greater that someone in
17 disciplinary segregation will end up going to one of
18 these psychiatric centers than someone who is in the
19 regular mental health facilities within the prison.
20 And so, you know, that is torture when you know that
21 someone, it is predictable that you will seriously
22 harm someone. And I don't mean to overstate it, but
23 I think it is a reality. This is not just the
24 difference between policy and practice, this is
25 policy, that they take people with severe mental

1 illness and they place them in disciplinary
2 segregation. I have studies where we have gone in
3 and more than 50 percent of many of the people in the
4 disciplinary segregation in New York are on the
5 mental health caseload.

6 Now something has been done, and it is
7 another thing about oversight, and I want to get in a
8 little piece about litigation. There was kind of a
9 little bit of a perfect storm in New York. We did a
10 major report on mental illness. There's a coalition
11 of mental health providers, other groups, NAMI and
12 others, that are concerned about it that created a
13 whole thing to look at this and then there was
14 litigation. Litigation was started, it was not part
15 of us, but often when monitors do their job and we
16 point out what's going on, if, if the system doesn't
17 respond to monitorships and their findings,
18 litigation is still the threat that's out there.

19 So what happened with this perfect storm?
20 A year and a half ago the governor came up with \$13
21 million, half of it to go to the department, half of
22 it to go to mental health to try to start to create
23 some sort of solutions. You know, if you are going
24 to do monitoring, I believe there are two main,
25 essential components. We should be working with the

1 department, we should be attempting to communicating
 2 effectively with them, we should work in the sense of
 3 we have to make our findings that we should be
 4 sharing with them even before we produce them so you
 5 have an opportunity to say, you know, you are wrong
 6 in this area, it could corrected, or we are going
 7 this already, give us credit, help us on that, and
 8 then narrow that down and have them come up with the
 9 corrective plan, that's on the one part. But we
 10 can't enforce monitors generally on the outside.
 11 Monitoring agencies are not going to necessarily have
 12 enforcement mechanisms other than what I would urge
 13 is the requirement that at least the department
 14 respond to the findings but we're not going to be
 15 able to enforce them, so what is the enforcement
 16 mechanism. Ultimately it is the risk of litigation,
 17 that's what unfortunately is the last and the
 18 ultimate resort. What you hope is that there's going
 19 to be a risk/benefit analysis because once you have
 20 written a report and you have sent it to the
 21 commissioner he can no longer complain I'm ignorant
 22 about what's going on. That risk/benefit calculus
 23 will then include, you know, I can be exposed to
 24 litigation about this, I can have a consent decree
 25 that I don't want to have, and, therefore, I am going

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1 to do something and correct the problem. So I
 2 believe in that respect litigation plays a role in
 3 any monitoring because it is ultimately an
 4 enforcement mechanism. Now I did litigation for 23
 5 years and I don't believe it is the panacea and I
 6 have a lot of problems about the PRLA and all of
 7 that, but it still is, unfortunately, in our current
 8 system, it is the only force that's going to deal
 9 with the recalcitrant institution. And I don't
 10 mean it is because the administrator is bad, often it
 11 is a function of I don't have the resources to do
 12 what you are asking me, I can't do it on my own and,
 13 therefore, litigation is going to force that.

14 MS. WALKER: Very briefly, the
 15 Massachusetts statistics echo those of New York. The
 16 Department of Mental Health in Massachusetts does a
 17 quarterly evaluation of the residents of the
 18 segregation units and in the maximum-security level,
 19 50 percent of the prisoners have opened mental health
 20 cases in segregation unit where many of them have
 21 live for years. Many have lived -- there's one
 22 person who has lived in our departmental disciplinary
 23 unit since it opened 13 years ago. This is a person
 24 with clear mental illness.

25 These have become high-tech torture

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1 chambers. If you talk to someone on the outside;
 2 well, there aren't any deaths anymore. It is awfully
 3 hard to kill someone but yourself when you are locked
 4 in a cell 23 hours a day. So it is a poor solution
 5 to the problem, the segregation of the mentally ill.
 6 We are contemplating litigation in Massachusetts as
 7 well, and it is a funding issue, but it has also got
 8 to be a priority issue.

9 DR. DUDLEY: But I guess I'm concerned,
 10 you are talking about those who have been identified
 11 as mentally ill. I'm talking about the people that
 12 Mr. Smith is talking about who no one is even
 13 identifying, over and above the population that you
 14 are talking about, because -- go ahead.

15 MR. BECK: But there's an additional
 16 problem I'm saying of what often people talk about on
 17 the mental caseload, at least in New York. Well, on
 18 the mental health caseload, it doesn't necessarily
 19 mean that you have a mental illness, but it means
 20 that you are receiving their services. But if you
 21 have a person who is quite disturbed but refuses to
 22 take the psychotropic medication, they're going to be
 23 kicked off the mental health caseload. It is not
 24 that they don't know that they're ill, but they will
 25 not meet the very limited treatment modality that is

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1 being offered. Now are there others that do that,
 2 yes. As a matter of fact, we have been supportive of
 3 legislation that will propose, that would give
 4 training to staff to be able to identify that person
 5 in their general population, there are a huge number
 6 of people in general population with mental illness
 7 and for them to recognize is this confrontation
 8 really because I have an inmate that is just getting
 9 in my face or is there something going wrong here; to
 10 also look at people that are on medication that have
 11 gotten off their medication and what are the symptoms
 12 of that so there can be interventions to avoid it
 13 before you have what we call in New York the ticket.
 14 You get a ticket and you end up in the box. No, the
 15 idea is to have intervention. Well, staff needs
 16 training to do that and obviously you need resources
 17 to promptly respond.

18 MR. SMITH: I'm going to try to answer
 19 you, Commissioner.

20 The procedures are there. They got crisis
 21 management teams, et cetera. The problem is here.
 22 Unless you are cutting yourself or cutting somebody
 23 else, you are not going to get no assistance. Now if
 24 you start cutting on yourself, they will send a
 25 crisis management team there and then take you

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1 somewhere and talk to you, whatever the case, tell
 2 you not to do that anymore, you know. If you are
 3 cutting somebody else, they will lock you up and tell
 4 you not to do that anymore. But if you've got just
 5 mental problems like so many guys, I think the
 6 statistics from John Howard says something like 16
 7 percent of the general population, sometimes, in my
 8 experience, because I was working in the law library,
 9 sometimes the guy just needs somebody to talk to him.
 10 You know, he doesn't need -- and since they started
 11 bringing in the outside medical, I mean the contract
 12 medical people, they don't have their own doctors
 13 anymore, they got the contracts, they taking guys off
 14 their drugs so, you know, there's another problem.

15 And terms, I keep hearing people saying
 16 things about, well, the budget is not there, they're
 17 not going to do it. I remember things that my
 18 grandmother used to tell me. I didn't always listen
 19 to her, but she used to tell me, "Look, people are
 20 going to tell you that what you are doing," and she
 21 was talking about doing right. She said, "People are
 22 going to tell you that don't do that because it is
 23 not cool or whatever but do it anyway because it is
 24 the right thing to do." So if there are problems and
 25 situations that need to be addressed, do it anyway,

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1 let them worry about the money.

2 MS. HALL-MARTINEZ: I just wanted to
 3 add very quickly two sentences.

4 Obviously a risk factor for sexual assault
 5 in prison is that the person has a mental illness or
 6 shows some signs of it and then is preyed upon by
 7 other inmates. Also, we're talking about
 8 disincentives for reporting. In many prisons, a
 9 person who reports a rape in a timely fashion is then
 10 pulled out of their cell and put in ad seg, put in
 11 23-hour lock-down, which is obviously not a very
 12 sound response from a mental help perspective to that
 13 person's trauma.

14 MR. CRONE: I have a question. We were
 15 talking about mental health and as you said before,
 16 the policy might be there but what is the practice.
 17 Saying ain't doing.

18 It has been about eight years since I got
 19 off the maximum-security yard and I can tell you, in
 20 Arizona you've got to see a psychiatrist once every
 21 third Tuesday, a psychiatrist would come in the yard,
 22 you go there, tell them you had a problem, they would
 23 give you some kind of drug, that's the last you see
 24 of them. There was no place to put the guys that had
 25 a mental issue anyway, it is bed space, they have

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1 nowhere to go with them. So I don't know how it was
 2 in New York or some of the other states you may work
 3 with, but that's one of the problems we were
 4 confronting here. Even though they know it, even
 5 though they know they've got a problem, the
 6 correctional people know they've got a problem, they
 7 have nowhere to go, and that is to be something that
 8 we have to address as a legislative act because our
 9 hospital I believe in Arizona at that time had 200
 10 beds and the only last mental hospital Arizona has
 11 still. Is that common with what you know, is this
 12 something we need to address as far as getting the
 13 legislature, saying give them a place to put them,
 14 because if DOC doesn't have a place to put them, it
 15 is just a matter of bed space.

16 MR. BECK: I can talk to -- the data in
 17 New York is really startling in this one area.

18 In 1981 when we had 20,000 people and we
 19 have gone up to over 70,000, we're at 63,000, and in
 20 1981 they opened the forensic mental hospital with
 21 189 beds. Today we still have 189 beds in the
 22 forensic hospital. We then have this intermediate
 23 care program which is the in-facility residential
 24 mental health program, but there's only about five to
 25 700 beds. We estimate that we have 3,000 people with

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1 persistent, serious mental illness. We have 7,500
 2 people with mental illness, but I'm talking about the
 3 serious ones, the ones you would want to be in
 4 resident, we have more than 3,000 and we have 700
 5 beds. You are right, there are not adequate
 6 resources and it is a real problem, but this goes to,
 7 particularly this commission -- Al Bronstein, I have
 8 to absolutely agree -- we are incarcerating the wrong
 9 people and we have to deal with this question of the
 10 mentally ill, why they are in there to begin with.
 11 It should not be the last asylum and that's what
 12 prisons are. And what I would say, the last asylum
 13 is not just prison, it is disciplinary segregation in
 14 prison.

15 DR. GILLIGAN: Well, that's going to
 16 have to be the last word of the last panel of the
 17 last day of the last hearing of this commission.

18 I want to thank you all very, very much for
 19 your time, the time you have given us here and even,
 20 more importantly, what you doing out there. I really
 21 appreciate that. So thank you very much.

22 Before we draw to a close I would like to
 23 turn the chair over to the co-chair of this
 24 commission as a whole for some last words about our
 25 efforts here.

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1 Judge Gibbons.
 2 JUDGE GIBBONS: At this time, yes, we
 3 are bringing to a close the last of our group of
 4 hearings.
 5 We thank all of the witnesses who have
 6 testified over the last two days, as well as all of
 7 those who attended and listened to the hearing and
 8 thus shared our interest in this very important work.
 9 The commission will be issuing its report and
 10 recommendations this spring. We are hoping to have
 11 it done before June. And we hope that all of you
 12 will read it and help to publicize it. Thanks,
 13 everyone.

14 (Hearing concluded at 5:05 p.m.)

1 State of California)
) ss.
 2 County of Los Angeles)
 3

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

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

12
 13 IN WITNESS WHEREOF, I have subscribed my
 14 name on this 23rd day of February, 2006.
 15
 16

17 _____
 18 SUSAN A. SULLIVAN
 19
 20
 21
 22
 23
 24
 25

A				
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