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

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9:02 a.m.

MR. MAYNARD: Good morning everyone.
We're going to go ahead and get started.
I want to thank everybody for being here today. First I would like to welcome, introduce Jody Kent, who is the ACLU Jails Project Coordinator in L.A. County.

Mr. Kent.

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

The ACLU of Southern California has been monitoring the L.A. County jails since the Rutherford versus Pitchess decision in the late 1970s. The Federal District Court held that certain conditions in the jails violated the Eighth Amendment and entered into an order requiring conditions be improved to meet constitutional standards. The ACLU staff field information from inmates via phone messages and letters daily and during jail visits several times each week. We hear from over 1,500 inmates each month about living conditions, medical services, and other issues from all the different county jails. I also meet regularly with sheriff's department staff to address these issues and others.

The continuous ACLU presence in the jails is essential. Inmates rely heavily on the ACLU having access to the jails which allows us to expedite medical treatment for inmates, provide comprehensive responses to inmate complaints, and to advocate for improvements on a systemic level. Daily we are contacted by the inmates, some needing insulin for their diabetes, others seeking psychiatric medications and for other illnesses, and often we receive calls from inmates needing special diets so they can eat without being sick. Most of the 20,000 inmates in the L.A. County jails are locked down nearly 24 hours a day in the overcrowded and understaffed housing areas. Approximately 3,500 to 6,000 inmates are housed the Men's Central Jail in Downtown L.A., which is the largest jail in the country. It is overcrowded, understaffed, and its physical structure is outdated. Inmates are forced to stay in cramped cells all day and all night because there are not enough deputies to supervise daily exercise or recreation. As a result, tension is high, which we have seen this week.
In addition, the inmate population in the jails has shifted so that the county jails now are facing more serious charges than those for which the jails were built. It is a demoralizing environment, but inmates are reminded that they do have rights, they must be treated humanely, and deserve basic services such as showers and exercise due to the ongoing ACLU presence in the jails. Inmates have also told me they feel safer knowing that the ACLU is there consistently, and throughout the riots this week family members and loved ones have called the ACLU seeking information and help as a trustworthy alternative to calling the sheriff's department.

Extensive ACLU monitoring works because we also learn to develop a firm understanding of the challenges that custody staff face daily such as staffing shortages, outdated technology, and the risks of supervising an increasingly high-security population. I spend eight-hour shifts in the jails shadowing custody staff, working on the front lines and in supervisory roles. I also meet regularly with the sheriff's department staff to address inmate complaints and systemic issues. At these meetings we receive additional information about the challenges. Due to our extensive monitoring, county and state government officials often call on us to give us information about conditions in the jails.

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

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

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

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

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

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

MS. KENT: Yes.

JUDGE GIBBONS: Thanks.

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

MS. KENT: Well, the only thing we can really do, none of us can control who is actually creating the dangers in the facilities, but we can control the conditions in which they live and I think that because of the understaffing and the overcrowded conditions that exist that require inmates to be locked down 24 hours a day, tension is inevitable. Obviously inmates are under regular stress as it is fighting their cases. Being housed in overcrowded cells where they're forced to sit on their bunks all day. Such opportunities allow ACLU monitors to better understand the day-to-day tasks required for custody staff working in very grueling conditions.

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

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MR. MAYNARD: Thank you, Ms. Kent. Does anyone have any questions of Ms. Kent?
day and all night only exacerbates things.

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

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

MS. SCHLANGER: How many folks at the ACLU, what's the staffing of the oversight piece of the ACLU? How many people at the jail would you think kind of -- how many hours a week does the jail

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are doing things separately but with the same end goal which is to improve conditions over all, so we will touch base every couple months. Obviously with issues like the riots, we have to kind of put our heads together to try to come up with what kind of solutions would best work.

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

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

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

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spend dealing with you and how many hours a week do people spend dealing with the jail?

MS. KENT: You are looking at the staff right here. I am the staff person, the only staff person who works full time on this project, but I try to ensure that the sheriff's department is spending a great deal of their time working with me as well.

I'm in the jail several times a week and if I'm not there, I'm certainly on the phone with them quite a bit and in meetings probably three or four times a week as well, so I try to do everything I can to keep them busy.

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

MS. KENT: Our access is unfettered access, I can go in at any time, anywhere, with only a few exceptions, which are basically when they tell me it is not safe for me to go somewhere. I am always escorted by a deputy wherever I go, when I'm talking to inmates I ask for confidentiality which I generally receive, and as far as working with other monitors, a lot of it is done informally. I mean, I think that we are, Merrick Bobb's office and mine,

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are developing trust, both among the inmates and among the staff. I think somebody spoke yesterday about how we have to have legitimacy and I think that's the case on both sides, you know what I mean? In order to be a productive monitoring body, in order to see systemic change, you have to convince both sides, the inmates and the staff, that you are there to make things better for everyone and that you are developing these relationships so you can get the information that you need in order to be a good advocate, but then you can also use that to advocate at the county and state level when necessary. And to have those relationships, to have somebody that's in there regularly that people recognize and trust ,I
think that it strengthens the legitimacy that's required in order to bring about systemic change.

MR. MAYNARD: The media reported that the segregation of the inmates was approved by the ACLU. Is that your understanding?

MS. KENT: Emergency circumstances, yes.

MR. MAYNARD: How long do you think that will be in effect?

MS. KENT: The latest I heard is that the sheriff does not plan to segregate the entire population. I think they segregated what they call the affected areas of the facility on Saturday. I think the goal is to identify the people who are so-called shop callers. One thing I don't think people understand or realize is that the majority of the inmates in there don't want to participate so if those people are identified who are instigating or disrupting the peace, you know, once they're identified and rehoused, I think the racial segregation will be irrelevant.

MR. BRIGHT: Based on the experience that you've had could you talk about the racial tension that's there quite apart from the media situation and what, if anything, you and others have needed in order to calm things down a little bit. I was also told that it sounds like the inmates who are in effect?

MS. KENT: You know, obviously racial tension exists on the streets so as a result, it is going to be there in the jails.

I think, again, the bigger issues here are what kind of conditions the inmates are living in and because the conditions are so bad the inmates are living in extremely tense conditions and, you know, inmates will fight over things like who gets the toilet paper and those things are not about race, but once a black person tells a brown person they can't have toilet paper, it becomes about race. Inmates that are locked up 24 hours a day, it is easy for these minor things to be interpreted as racially motivated and that just, you know, lets things go out of proportion.

DR. DUDLEY: Is the intervention of segregation coupled with any other intervention?

MS. KENT: Right now, you mean?

DR. DUDLEY: Yes.

MS. KENT: I was told this morning they're sending clergy up to the facility to meet with the inmates to try to get a sense of what's needed in order to calm things down a little bit. I would like to give you quick snapshot as we entertain and discuss what is occurring here. California has one of the largest prison systems in the world. We've got about 167,000 inmates, another 115,000 on parole. The prison budget itself has skyrocketed. It is now over $8 billion. In the last two years alone the prison budget has gone up by $2 billion. Right now in California, approximately one out of every $10 paid by taxpayers is going to corrections. And yet as I look at the situation lamentably, the prison system is in crisis. The juvenile facilities I would declare to be an utter failure. We have, of course, been taken over by a federal judge into receivership, actually a move that I supported and I applauded given the lack of leadership to attend to the health care needs of inmates. Even while incarcerated, inmates are protected by the United States Constitution, and as was discovered in this process, one inmate was dying per week in the California state prison system.
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<td>1 preventable deaths. This was something that Judge Henderson declared was simply a neglect of leadership in the conditions of confinement of inmates. There are so many issues. I did participate with Governor Schwarzenegger this past year, we did successfully bring about a reorganization of the state prison system, but we all know that reorganization is not the form but it can provide a powerful template from which we can emanate. In that reorganization we also reintroduced another part of corrections and we called the department the California Department of Corrections and Rehabilitation. I was very proud to have worked with the governor to restore that arm into the state prison system. It is about rehabilitation. The jury is still out, but much of the evidence coming in this year, however, shows a very dismal response to reinserting the &quot;R&quot; into corrections. &quot;R&quot; is not about rhetoric, it is about rehabilitation, and at the end of the day when we face, whether it is violence or health care, reentry, it is about population management and what we do. Out of the 167,000 inmates in California, there are approximately 38,000 who are assigned to TSG Reporting - Worldwide 212-702-9580.</td>
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<td>1 rehabilitation programming. 38,000 out of 170,000, it is no surprise then that we end up with a failure rate, a recidivism rate of over 70 percent, so we've got many challenges. I look forward to the testimony today. I'm very excited in particular to hear from my friend, Merrick Bobb, in terms of the conditions at the L.A. County jails. Certainly the landmark case that went to the United States Supreme Court was filed by an African-American inmate incarcerated at Corcoran who challenged this administration on the practice of housing inmates on the basis of race. Issues of racial tension certainly are national issues, of national importance and significance, but it was made very clear, though, that we have opportunities to house on the basis of gang membership but should not be looking solely at skin color when an inmate walks in the door, so these are continuing challenges. Right now California is facing how to integrate its prisons. This is 55 years after Brown versus Board of Education, something that I was stunned about when I first learned about the Johnson case in the Supreme Court. There are many other issues we can discuss TSG Reporting - Worldwide 212-702-9580.</td>
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<td>1 but I'm glad to be here, I thank you all for coming out to look at the work we are doing on the commission, we look forward to participating with you as we endeavor to prepare reports that won't just sit on the shelf but reports that can be utilized by legislators, by oversight officials, by prison authorities, by the community and by inmates and families and victims themselves in order to truly advance the safety of the public and the community as we discuss incarceration. So thank you so very much, it is a beautiful day, we planned it just for you. You won't get this kind of weather in February throughout the nation, only in California and in my hometown of Los Angeles, so thank you so very much. MR. BRIGHT: Thank you very much. The next panel, we have a very distinguished and interesting panel which we have asked to discuss how meaningful reforms can be implemented. I would like to introduce and welcome Scott Harshbarger, Merrick Bobb, Director Dora Schriro. We have asked them to identify some of the main areas of consensus with regard to culture and attitudes of corrections practice. Scott Harshbarger is a former Attorney General of Massachusetts, recently the chair of both the Massachusetts Governor's Commission on Correctional Reform, as well as the Department of Correction Advisory Council. We are going to hear from Merrick Bobb, the court-appointed monitor for the past seven years of the Los Angeles County jails which is the largest in the nation, and he is also President of the Police Assessment Resource Center. And, finally, Dr. Schriro is the Commissioner of Corrections for the State of Arizona and is there after having served also in the State of Missouri. I would like to welcome you here. Start with Mr. Harshbarger. MR. HARSHBARGER: Thank you very much. It is a great honor to be here with so many distinguished elected and appointed officials, experts in law enforcement and corrections, academics and advocates. To say what I have to say in seven minutes is one of the great challenges of our time. I will attempt to comply with that because I want to focus on three things beginning with my theme in the statement that I presented to you. I want to talk briefly about my experience TSG Reporting - Worldwide 212-702-9580.</td>
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as Chairman of the Corrections Commission for the last two years, as well as focusing a bit on the role of the independent oversight committee, and then hopefully at that time talk about what I think is the real issue here which is the politics of corrections and how we could deal with that issue far more effectively than we have to date.

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

From the first GCCR report there are 18 recommendations, and you will recall just as a footnote, we were appointed following the murder of the defrocked priest, Father Gagan, in Massachusetts. We had the benefit of many, many people, including the exceptional independent investigation led by George Camp and Mark Delaney, to find the facts and

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plans for reentry, change the sentencing legislation and initial practices, restructuring of the labor/management relationships, restore managerial rights and capacity, as well as budget reallocations, the creation of an independent inspector general and independent advisory council with staff and resources, as well as multi-agency partnerships for dealing with female offenders' mental health and health care which DOC simply could not do alone.

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

No commission, however constituted, can

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obtained a mandate for top to bottom review of the department and that's what we attempted to do. We focused our recommendations government, leadership, culture, labor/management contracts, budget allocations, the serious deficiencies of classification, discipline, grievances, appeals, and procedures of policies generally, the need to change sentencing practices and regulations within the DOC to give priority in preparing serious long-term offenders for reentry, and the serious deficiency in caring for female offenders with mental health and health care issues. This independent, nonpartisan commission, the majority of whom had come from prosecutorial backgrounds and corrections backgrounds, as well as the justice system, focused our entire effort on trying to ensure that the major criteria was public safety, accountability and fiscal responsibility rather than other values.

As we went through this over a two-year period our final report focused on six key areas that the Department of Corrections could not achieve alone, whatever else they were supposed to do, and these recommendations were set forth in our final report. The legislation needed to ensure post-release supervision, comprehensive statewide
dangerous, difficult job with very few rewards and we are lucky we have as many good people doing it as we do, but I believe that reform is in the interest of correctional professionals as much as it is inmates and the communities.

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

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

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

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<td>1. What I do is not to resolve or look at individual inmate complaints, that job falls to the Office of Independent Review which Jody mentioned earlier. Their responsibility is to assure that the investigations of individual complaints are fair, thorough and complete, and they certify in a way that those complaints are thoroughly and are fairly resolved. They do not dictate in any way the result, they cannot, but they can make recommendations to the sheriff. Jody and the ACLU have had a valuable presence in the Los Angeles County jail system for many years and they act as a contact point and a facilitator for inmate services that have not been provided or are lacking. So, for example, if a given inmate has not been able to get to the doctor or the conditions of confinement are particularly problematic, the ACLU will use its good offices to intervene and try to facilitate a decent resolution. My role is different. As monitor, I look at the system as a whole, the jail system, and try to make an assessment whether they’re working or not and what could be done to improve those systems, so I will take each stage of the confinement process. Okay. I will look at intake. I will ask myself how...</td>
<td>1. does it happen, how well is it done, how well are inmates, health or medical health problems dealt with, are they segregated out early, where do they go, what kind of treatment do they get. Then I will look carefully at the classification system and try to decide whether the Los Angeles County jail system has a functioning and correct classification mechanism. It does not. We have found over time that there have been many, many classification errors; that there is a lot of confusion over what system of classification to use. It is complex, it is cumbersome, it is internally inconsistent, so I have worked to try to think of ways to make that classification system more rational. Housing conditions within the Los Angeles County jail system are difficult and also have failed significantly from time to time. The current riots or disturbances we’re experiencing is a direct result of that. The Los Angeles County jail system was built to house misdemeanants serving sentences of a year or less. The operating assumption behind the jails was that 70 percent of the inmate population would be misdemeanants serving short sentences. At this point, 80 percent or more of the inmates are either felons awaiting trial or sentenced prisoners...</td>
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<td>1. post-conviction who are awaiting transfer to the state prison system. Indeed, in the Los Angeles County jails today there are some 3,000 state prisoners who are awaiting transfer and I would hope, I would suggest that the state help out in this particular situation by giving those people to the state prison and reducing that condition. There’s talk in the current circumstance of segregation by race or ethnicity. I think that may be necessary as a very temporary measure but what I would rather see happen myself is a classification and segregation by security risk. On the North Point System I would very much like to see the eights and nines not mixed with five and sixes and ones and twos and threes. Because the system was set up, as I say, for misdemeanants, there are lots of dormitories in the Los Angeles County jail system and very few hard-locked cells. That presents a great challenge to the sheriff, of course, in terms of getting people out of the dorms, into hard-locked cells to quell the disturbances. My time is up but I would be delighted to answer any questions you have and to talk further about the role that a monitor can play in helping to assure safe and secure institutions.</td>
<td>1. MS. SCHRIRO: Good morning, ladies and gentlemen. I'm Dora Schriro, I'm the Director for the Arizona Department of Corrections, and I have been a jailer for some 30 years or so. I think this is extraordinary work. I came to the field looking to make a difference with my colleagues and I'm ever so pleased to be able to talk to you this morning about some of the ways in which we make change happen. For us, the conversation is really about how one creates public value in the public sector and how do you use that, particularly in the environment as difficult as corrections can be. I would like to talk to you briefly about the method that we developed first in Missouri where I served and is substantially improved here in Arizona and continues to get better with time, but then to spend the bulk of my brief comments on the kind of characteristics of an organization that is really positioned to make and sustain that positive change happen, that's some of what we need to be doing for ourselves, and looking to the academic community and others to help us in that regard. For us, our approach to problem solving is what we call a parallel universe. We recognize that...</td>
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1. virtually everyone who comes to prison is going to be discharged at some point in time, so no matter how
tough we are with sentencing, sooner or later
everybody comes home and we look at the data, it is really quite surprising because the average length of stay is not nearly as long as we would expect.

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

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

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

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

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

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

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

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

Third is that prisons must be a safe place, and when I talk about safe place I'm referring not only to the physical safety, but psychology safety.

Staff and inmates alike are at risk of great criticism, and in a paramilitary organization anybody can pull up anybody else and so it is kind of a precarious place to be. And so creating an environment in which practice does make purpose and where the attempts to get better are rewarded and recognized, as well as those deliberate missteps are addressed as well.

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

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

The fifth of the factors is there must be wide use of scarce resources. We come to learn quickly in our business that we have to get really good at making stone soup. There's never going to be enough money to do the things that need to be done, and yet we can do so much more wisely with what we have, and some of the resource development that I consider in my leadership capacity and that I consider with my community leaders is how do we use our time well. Well, from the first day to last day, every moment is focused on this tedious preparation.

The second is the money is used wisely and so based on evidence-based practices, zero in not on the lowest people who literature says are going to screw up if you mess with them, let's focus on the mid- and higher-ranked folks in terms of needs and risk and level our resources there with enough time to get it done. But staff is an extraordinary resource and what they really want to do is to be a significant, a

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The inmates are restricted by either statute or percent of the inmates in the prison, 85 percent of 23
commissioner, for example, we discovered that 85 percent of the inmates which is a blue state, the reality is that there is no constituency now for any of the reforms that we have proposed. We have a Republican governor. The governor is the governor. So the governor is there and it is a democratic legislature. These entities are not talking about these issues, and yet the question I go to with my common cause hat is this. Where are the fiscal conservatives on this. I mean, here is half a billion dollars that we cannot measure and the outcome is simply not producing what it should. Who ought to be caring about how we deal with this efficiently. Where are all the district attorneys, where are the mayors, where are the people -- they're coming back to communities and causing many of these community safety problems.

Now we talk about reentry but what I found is there's no money allocated for this purpose,
when I came. It wasn't good for them, it wasn't good for us. We took a hard look at our intake process and streamlined it and we cleared up all of our backlog and now we take every state-ready inmate the day the sheriff is ready to transport them to us, whereas we used to spend several million dollars a day paying bed days to the counties. That's now money that I have recouped that I can re-deploy to some of my other initiatives because it is not being spent in that way.

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

MR. BOBB: I would like to briefly address the reentry problem again from the perspective of Los Angeles County. I told you there are about 500 inmates coming in and going out of the jail on a daily basis. There is no real discharge planning at this point for those inmates coming out of the system, albeit the sheriff's department does have a small unit that attempts to do some of that. But what happens in Los Angeles County is that they're released, they're not taken back to the communities from which they came, they wander over to skid row or are dumped in skid row. There are instances sheriff's departments and other departments in the county are just taking inmates down to skid row and dumping them, hospitals are dumping people on skid row, and what we're doing, and this is switching hats, I'm switching now to my position as the president of the Police Assessment Resource Center, PARC, in conjunction with our parent organization, Vera, is proposing and is generating support for an administration project that will provide that kind of resource, discharge planning for the jail itself, providing them with services before they get out of jail, examine their benefits to see whether they qualify for Medicaid and other benefits.

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

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

MR. HARSHBARGER: I have dealt with the
external reality of this for 25 years. I have never
seen a time when, and perhaps in the mid-seventies at
best, when we seriously talked about rehabilitation
being a meaningful goal even for our juvenile system,
let alone for our adult system. We had models that
showed the work. We had the Massachusetts Experiment
in juvenile corrections which to this day remains a
successful example of preventing and limiting
juvenile delinquency and juvenile crime that is still
not adopted in most states. So the challenge I think
from my perspective is not how do you improve the way
you are doing it but if we look at any other area we
would say the present thing we're doing is a
disaster, it is simply not working. That is, the
burden ought to be on those who say we need to be
tougher, and tougher does not include corrections,
rehabilitation, and all of things we're talking
about. Maybe it is a language change that we ought
to adopt.

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

One example. I look at the police

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

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

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would be, did you write it? What did you do with it?

MR. HARSHBARGER: We did. We planned
the next phase to focus on that and if others
didn't pick it up, we felt one of the roles of the
independent advisory council would be to propose
these specific legislations.

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

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

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

JUDGE SESSIONS: Well, there are people
who oppose.

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

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

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

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

MS. SCHRIRO: Just in response to Mr.
Schwarz's question, and it is nice to see you again.
Years ago I was in New York City Corrections.
First, I think in any field there's a
temptation to exceed one's reach but in our field it
is important that we know those things that we can or
should control and those things that need to be in

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

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

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

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

Last, I think there is a terrific amount of evidence-based research out there. Every organization in our correctional system has the most modest of research units but those one or two people prove some really phenomenal stuff and I think if you were to solicit recidivism studies from virtually any state correctional system, they will have something to share with you. And there are any number of university folks who are also doing recidivism studies and other studies about what works and why it works, and so perhaps when you are at the end, that's a next chapter or some other addendum very worthwhile pursuing and adding to your valuable work.

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

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

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

MS. ROBINSON: Scott Harshbarger, I think, has really framed some very important themes for us with this whole issue of developing constituencies and I know, Scott, you and I have had this conversation over a decade or more about how to build constituencies broader than the criminal justice system itself for bringing change and how the public, the country deals with crime. And harking back to Fritz Schwarz's question, I agree, as the commissioner raised, that there really is a great body of evidence-based research available on the question of whether a rehabilitation program really can be successful in helping prisoners change their behavior and become the law-abiding citizen back in the community and change their behavior in terms of using drugs and alcohol. And one of the things that really strikes me is that there is such a wonderful growing body of professionals in the corrections field, and you see that reflected in the NIC's work, et cetera, around the country who are doing the kinds of things, you can see what they're doing in Arizona, and maybe one of the things that the commission itself can do is try to think about how do you bring together the kind of other allies that Scott is talking about to try to bring some juncture and gather together people who can give support to that. Isn't that really the key? And I would like to have some brainstorming further on the part of the panel about how you bring to light and spotlight the kind of experimentation that is going ahead in states like Arizona, to show that kind of experimentation, it is terrific to hear this kind of work. And, Dora, I have to say as a comment, I love the kind of work you are doing in having prisoners renew their own prescriptions and use alarm clocks. I did think, gee, we can use that on our own teenagers, have a side industry going here.

But, seriously, the kind of successful or we think successful models that are underway to give more attention to this kind of thing, I think legislators, Scott, would be fascinated to learn about that in other parts of the country and I would.
love to get some of your reactions on that. Couldn't
people be excited about this kind of thing?

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

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

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

MS. SCHRIRO: I think first that in
some ways I'm going to encourage us to strive for
more than reducing recidivism. That's always been
the traditional measure of success in corrections,
what separates us from other social service
organizations and how they may succeed. We set our
standards really high and what we have asked of
ourselves, the making a commitment to safety now and
later, is that we look to the population to develop
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and corrections are willing to take these jobs on. I
mean, we are mental health providers in corrections
because nobody else is doing it. We are having
problems with housing in the community on reentry
because nobody is providing any kind of housing
programs. It is that social safety net in every
state that has sort of been eroded away is why this
problem comes up.

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR ROMERO: Thank you for your presentation.

I'm looking especially at the development of coalitions. In California, to some extent, we're talking about corrections and rehabilitation to a large extent because we had the Terminator elected and not every state has a movie star running for governor of the state, thank God, but in California nobody can question him as being soft on crime. As
an elected official, it is real. I'll say I've had
everything thrown at me; that I love rapists, sexual
offenders, you name it, I am soft on crime.

The issue that I have found to work is just
to accept it as a given, move forward, because to me
I think that regardless of the policies we embrace,
the most fundamental, important policy in any state
is the budget, it reflects the priorities, and when
you simply open up the books and you start looking at
how the money is spent, I can get some of the most
right-wing Republican dear colleagues to look at
those and side with one of the most liberal Democrats
in California saying there's something wrong here,
coupled with commissions like the Little Hoover
Commission who have labeled our parole system as a
billion-dollar failure. So I think it is something
we have to do because you have to -- I don't want to
say go under cover because I think backbone is
essential, but show me the money, show me the
taxpayer accountability, and to a large extent I
think some of the things we have heard about
California is saying California is about law and
order but it is not about being tough on crime, it is
about being smart on crime, and I think it is
something we really have to figure out how we work
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research many other groups of individuals have done
have shown that there are rehabilitation programs and
violence prevention programs that do cost money put
into place, but when they are put into place save the
taxpayers money. A great number of us have shown
that the taxpayers can save $4, $5, $7 for every one
dollar spent on a wide variety of violence prevention
programs from the intensive rehabilitation programs
in prisons, to substance abuse treatment programs, to
programs for families in high-crime neighborhoods,
et cetera. So the question is not whether we can
afford these programs, the question is whether we can
afford not to have them because they reduce
recidivism, they reduce initial crime so much. On
the other hand, the public hasn't been educated about
this, so we need to think how can we educate the
public better and, finally, how can we educate
ourselves better.

One anecdote. When the sheriff of
San Francisco, Mike Hennessey, a few years ago
started an intensive program to replace retributive
justice with restorative justice what he did was to
get a grant to do research and evaluation of this
program which I conducted for him. What we found, we
were able to demonstrate an 83 percent reduction of
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I would start with Mr. Harshbarger. The advisory council members which includes many very appropriate and remarkably capable people on it did not include the people who actually educate the people; the editor of the Boston Globe, the presidents of the major universities, the leaders of the major religious organizations, the catholic cardinals, bishops, et cetera, et cetera. Is there any reason we shouldn't include throughout the country on advisory councils to departments of corrections the major educators of the public so we can get some public support and political support so that the public can learn, in fact, that what we're doing now is not only improving their safety, it is actually also costing them more money compared to what we could do if we had programs that work?

And finally to put an emphasis on the idea that there's no point in doing any kind of innovative programming in the correctional system unless it is always accompanied by research, by an evaluation that which I watched solve major racial issues in high Neighborhood Initiative and reduced urban crime in Boston, and that could have been done in many cities, but the trouble was we eroded away, a example, the after school program, the conflict resolution program which I watched solve major racial issues in high school. I saw the intervention of mediators in conflict resolutions in jails. It was remarkable in teaching inmates and young people to understand how to understand problems without violence. But the question was evidence-based practices. The leaders here, that's all they talk about, but it doesn't seem to move yet the legislative process.

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

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

Mr. Harshbarger: They're terrific observations and comments and since I suspect we have a time limitation here, no one wants us to take the rest of the day.

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

Secondly, I am still hopeful and optimistic about our democracy but I'm also not convinced that evidence alone carries the day. I have seen too much even in areas in the last 10 years, I have watched with real concern as we took things like, for example, the Comprehensive Multidisciplinary Safe Neighborhood Initiative and reduced urban crime in Boston, and that could have been done in many cities, but the trouble was we eroded away, a example, the after school program, the conflict resolution program which I watched solve major racial issues in high school. I saw the intervention of mediators in conflict resolutions in jails. It was remarkable in teaching inmates and young people to understand how to understand problems without violence. But the question was evidence-based practices. The leaders here, that's all they talk about, but it doesn't seem to move yet the legislative process.

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I don't know whether, to answer the senator's question, corrections departments are not uniquely open to allow others in to help, or if it is a chicken-and-egg situation; because we're not invited in we do all our studies separate from it, or
through the political process. If you are going to
make change, we have to all commit ours in getting
into that fray as well.

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

(Recess)

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

Our next panel this morning will highlight
the corrections profession's best practices around
internal oversight and accountability. I'm pleased
to announce our three distinguished witnesses;
Director A. T. Wall, Director Harley Lappin, and
Sheriff Michael Ashe. These distinguished panelists
will explore how corrections administrators aim to
hold themselves and their systems accountable through
sound management practices, effective grievance
procedures, data collection, analysis and
dissemination, internal auditing and professional
accreditation. We'll also address the challenges of
changing the culture and perception of corrections to

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

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

So we recognize that correctional institutions, like all other organizations where power is the defining characteristic, have the potential for abuse, we know that, and so as corrections administrators we have an obligation to move aggressively and proactively institute checks and balances and they include a variety. First, communication. Multiple channels to communicate problems; management presence touring housing areas, being present at meals, written communications, request slips, grievance policies that are locked into deposit boxes that can only be opened by special staff. Authorized links to outside authorities, the court's elected officials, the ACLU, the director. Telephone contacts. Unrecorded collect calls to our investigative units. In-person contacts. Regularly meeting with family members, former inmates to discuss issues of concern, the core of accountability. Investigations. Strong foundation and written policy; clear, explicit, what are the rules. Mandatory reporting. Requirement to cooperate fully. Strict prohibitions on retaliation. Uses of force, cell extractions requiring written reports and mandatory reviews up the chain of command. Security cameras, videotapes, audits, investigate protocols whereby Internal Affairs reports directly to the director, all investigations are investigated, training of staff, and...
trainings, substance abuse treatment, faith-based programs, reentry programs provide opportunities for inmates to prepare themselves for a successful reintegration back into our society and to avoid further criminal misbehavior. These programs also allow inmates to be productively occupied during incarceration which allows us to run prisons more safely.

In furtherance of the mission, the Bureau of Prisons has several relevant core values which are deeply ingrained in the agency's culture. First, a recognition of inherent dignity of all human beings.

Second, the expectation that the correctional staff will treat inmates fairly and with respect.

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

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

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

Some of the more important indicators that are reviewed are assaults, use of force, staff and inmate safety, capital costs, inmate program participation, union grievances, allegations of staff misconduct, inmate administrative complaints and others. One of the most important tools used by management to gather information about institution operations is the Prison Social Climate Survey.

Administered annually since 1988, the survey provides an opportunity for staff to confidentially report their impressions about the conditions and operations at the facilities where they work. The survey items cover all aspects of the work environment for safety, to job security, to job advancement, to sexual harassment.

Institutional character profiles conducted
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| by regional teams of administrators and the regional director are done on a minimum of every three years and provide a great deal of descriptive and subjective information about institutions. The character profiles include observations of institution operations, interviews with randomly chosen inmates and staff, and input from outside agencies and organizations. The Duty Officer Program assures that significant incidents at our facilities, including those affecting inmates in community programs, are reported to appropriate officials promptly and consistently. In this way senior staff throughout the agency are made aware of serious incidents such as homicides, suicides, escapes, disturbances, and the institution's response. The sharing of information promotes the openness and honesty among senior staff and allows the agency to make the greatest use of the knowledge that it gains in resolving these incidents. The bureau is fortunate to have relatively few major incidents in our facilities, in part because of our efforts to proactively identify and resolve potential issues. Serious instances having criminal implications are referred to the Federal Bureau of Investigation for prosecution. Both inmates and staff are encouraged to report incidents of misconduct or otherwise inappropriate behavior. The Administrative Remedy Program is the internal grievance process through which inmates may request consideration for review of any issue related to their conditions of confinement. This program requires timely investigational response, including redress as appropriate. Procedures exist for expedited handling of issues that inmates view as sensitive or emergency in nature. All the allegations of staff misconduct, including allegations that a staff member has abused an inmate, are referred to the Office of the Inspector General which then refers back to the bureau's independent office of internal affairs those that they want to investigate. The Bureau takes all allegations of misconduct seriously and certainly investigates every allegation thoroughly, including referral of cases for criminal prosecution when warranted. There is zero tolerance for abuse of inmates.

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| I would like to mention another oversight procedure and that is all of our facilities, the vast majority, have community relations boards. These boards are made up of local public officials, citizens, legislators, sometimes the media, business people, and routinely are staffed at those facilities, meet with the community relations board, use them as a sounding board to discuss issues of concerns, to enlighten them as to procedures and issues applicable to prisons, so that's one more that I didn't have on the list that I wanted to mention.

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

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

MR. RIPPE: Thanks, Director Lappin.

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

TSG Reporting - Worldwide 212-702-9580 | efforts in terms of your leadership and dedication for zeroing in on this particular subject, and I also would like to just acknowledge Scott Harshbarger regarding his leadership that he has provided in the State of Massachusetts and, here again, we talk about leadership. It is one thing to have a title, but it is another thing to obviously step up and do the work in terms of the substance that he provides and the integrity and so on.

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

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

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<td>custodial kind of model which I don't think was that</td>
<td>common sense and leadership and a determined and</td>
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<td>atypical in terms of our particular county, I just</td>
<td>sincere will to bring about change from the</td>
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<td>think that there have been great strides, if you</td>
<td>standpoint of affecting public safety.</td>
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<td>will, being made in corrections and so your efforts</td>
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<td>are to be applauded and I can't help but think</td>
<td>In doing that, I would just like to</td>
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<td>because of your work we are going to continue to move</td>
<td>elaborate on this third point that I have, and this</td>
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<td>inches further, you know, in our goal of</td>
<td>for staff to be held accountable, we must hold</td>
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<td>understanding the issue and bringing about public</td>
<td>inmates accountable, and I certainly heard the</td>
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<td>safety.</td>
<td>commissioner from Arizona touch upon this.</td>
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<td>What I would like to address is really</td>
<td>First of all, we have to look at a typical</td>
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<td>seven principles that I think are very, very</td>
<td>inmate, and I think what we have in the Hampden</td>
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<td>important in terms of bringing about accountability,</td>
<td>County is not that different, if you will; nationally</td>
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<td>positive, humane, safe, secure facilities. And the</td>
<td>as well. Fifth grade education; 85 percent come</td>
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<td>first principle would be the sense of balance, being</td>
<td>there with drug and alcohol issues, 93 percent lack</td>
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<td>firm but fair, if you will, having strength</td>
<td>any marketable skill, 78 percent at the time of</td>
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<td>reinforced with decency. I as Sheriff certainly</td>
<td>arrest aren't employed. So looking at that profile I</td>
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<td>don't want to run a hotel, but don't want to run a</td>
<td>must say that I as Sheriff am committed to trying to,</td>
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<td>cesspool of stagnation, frustration, and new crime.</td>
<td>if you will, use new language, if you will, and I</td>
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<td>The second point, as I mentioned earlier,</td>
<td>think one of the things we've talked about is that</td>
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<td>the focus is on corrections, not on warehousing</td>
<td>the population we deal with doesn't, if you will,</td>
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<td>people, and what I'm about to sort of identify for</td>
<td>generate much empathy, if you will, from the public.</td>
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<td>you is my 31 years in office in terms of, if you</td>
<td>Obviously they steal our cars, they maim our loved</td>
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<td>will, I don't think I'm doing anything revolutionary</td>
<td>ones, et cetera, so it is very difficult to do that.</td>
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<td>but really, if you will, just being conscious of the</td>
<td>On the other hand, the idea about public safety is a</td>
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<td>population we're dealing with in trying to bring</td>
<td>key thing and there's no question that certainly</td>
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<td>years ago out of sight, out of mind, and the idea</td>
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<td>about incapacitation was in vogue. I must tell you</td>
<td>touch upon the fact of a test, LSI, Level Service</td>
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<td>today the sense of taxpayer dollars being invested</td>
<td>Inventory, where we're looking at eight criminogenic</td>
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<td>into this particular area is of great concern and so</td>
<td>factors, and then, as well, making inmates aware of</td>
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<td>certainly the reintegration and that balanced</td>
<td>the rules and regulations. But the key thing is the</td>
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<td>approach is obviously so, so important in terms of</td>
<td>fact that we're there to provide services for them</td>
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<td>our work.</td>
<td>and opportunities, if you will, challenges that are</td>
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<td>And on this issue, I would just say that</td>
<td>going to be available to them within the facility.</td>
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<td>one of the things we're all talking about, we're all</td>
<td>So this firm but fear kind of approach in terms of</td>
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<td>representing and you stand for it as well, is the</td>
<td>with myself and the staff uniting to impact the</td>
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<td>professionalization of our facilities. And so based</td>
<td>inmate, we want to challenge him, I want to place</td>
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<td>on that profile, I as Sheriff over the years, and I</td>
<td>demands on him, I want to, if you will, strive him</td>
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<td>must tell you it is not like being a genius and</td>
<td>towards excellence is an excellent point because we</td>
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<td>saying here is the answer, I would just say that</td>
<td>certainly know in sports and in classrooms around the</td>
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<td>myself and the staff have evolved this over the</td>
<td>country we see that striving towards excellence and I</td>
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<td>years, in 31 years. First of all, it is the</td>
<td>think in the past we haven't seen this in corrections</td>
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<td>establishment of that profile, but let's</td>
<td>and I think that's one of the aspects of our work.</td>
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<td>individualize the inmate; let's look at, for example,</td>
<td>One of the things that we put in place on</td>
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<td>what are the deficits that he brings to this</td>
<td>this idea about challenging the inmates and putting</td>
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<td>situation. So one of the things we did is establish,</td>
<td>demands on them was we put together a couple years</td>
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<td>if you will, an orientation system that's very, very</td>
<td>ago a mandatory basic and intensive regimented</td>
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<td>professional.</td>
<td>program where we -- I call these the core principles</td>
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<td>I can remember the old system, the inmates</td>
<td>that all inmates based on that profile as they came</td>
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<td>educated the other inmates. And one of the things</td>
<td>in, we put forth a five-week mandatory program. One</td>
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<td>that we really worked hard at was to establish a very</td>
<td>of the things in my visits though the various pods on</td>
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<td>professional orientation system, and I would just</td>
<td>weekly visit is that I found that there was a great</td>
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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. 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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surroundings, and respect for the authority vested in staff in the name of the people.

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

MR. RIPPE: Thank you, Sheriff.

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

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

A.T.

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

I'm also accountable to the larger public, that's a little bit of a diffuse sort of concept, but it can be expressed in a variety of ways. Local officials, advocacy groups, families of offenders, inmates the tools when they get out on behalf of...
Some of the considerations that I think have to be asked are how clearly, what are the goals of oversight, how clearly are they stated, what is the purpose, what are the conditions under which oversight is going to be exercised; is it proactive and preventive or is it remedial; where does it fit into the department's history and culture, what's the motive of the people who serve, what's their experience, what's their skill, who oversees the overseer, because the fact of the matter is that oversight can run amok; ego, grandstanding can all get in the way. What's the composition of the oversight, what's the relationship between oversight and the established correctional leadership, those are all considerations that have to be answered individually for each jurisdiction in which it is contemplated.

MR. RIPPE: Thank you.

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

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

MR. RIPPE: Judge.

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

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

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

JUDGE SESSIONS: So a tremendous mushrooming.

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

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

MR. LAPPIN: Absolutely.

JUDGE SESSIONS: Tell me about the TSG Reporting - Worldwide 212-702-9580

members are reliant employees in the federal prison system and move as I did up through the system as warden and so on and so forth. Some systems aren't able to do that for a number of good reasons and if you can't do that, you've got to be able to go out, reach out and find those folks who are capable to come in because in my opinion, again, that leadership, that cohesiveness between that senior management at that facility is critically important to carry out what systems you then decide to put in place and to do that, you've got to have some resources. And I have to say we were very fortunate through the course of the eighties and nineties as that growth occurred, the administrations, all of them, and the Congress recognized that the change in parole and the change in determinate sentencing and mandatory minimums and the federalization of drug laws and firearms laws was going to significantly impact the growth of the Bureau of Prisons and during the course of that time we received those resources. Not so much so since 9-11, we're struggling too now resource wise just like states are, have or have over years. So, again, I sympathize with what they faced for many years but it takes resources and a commitment from the legislators, from the TSG Reporting - Worldwide 212-702-9580

Bureau of Prisons standards and what they might do and cover that would help states individually meet those standards that you find acceptable from the federal. The leadership role is what I'm looking at.

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

We have been fortunate in the Bureau of Prisons to develop our leadership from within in most cases and most of our wardens and executive staff.

administration, to support those types of initiatives.

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

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

JUDGE SESSIONS: Yes.

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

JUDGE SESSIONS: I will repeat the second half of the question. What interplay is there between federal and state in connection with...
standards for prisons?

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

JUDGE SESSIONS: Mr. Ashe.

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

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

JUDGE SESSIONS: Thank you.

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

JUDGE SESSIONS: Well, we all know that standards are always set above where you are and you are trying to adhere to them and gain that kind of institution that meets those standards and they're intended to be high and should be high. I don't know where we are on it and I want to know.

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

JUDGE SESSIONS: Good.

SHERIFF ASHE: That's the key.

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

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<td>others, nor are all systems as committed as others.</td>
<td>at programming and the assignment of people to different programs? Is there some internal monitoring that looks at the appropriateness of these programs as it relates to fit for different inmates so that, in fact, the programming does increase their possibility of functioning on the outside as opposed to that it is an interesting program but it doesn't make any sense for Inmate A or Inmate B. So I'm trying to get a sense of does internal monitoring and evaluation of what goes on go on at that level as opposed to yes, we have the program; yes, it is running smoothly. Is my question clear?</td>
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<td>JUDGE SESSIONS: Thank you.</td>
<td>SHERIFF ASHE: Yes.</td>
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<td>MR. RIPPE: Richard.</td>
<td>The mental illness has been talked about a great deal here and I just wanted to again reinforce that, and certainly in the State of Massachusetts with the de-institutionalization that took place back, if you will, in the late seventies and early eighties is that a good nine to 10 percent, for example, of my population had severe mental health issues. So today I have 2,025 inmates and so I'm looking at a good 200 to 225 inmates have severe mental health issues and it is a crucial issue.</td>
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<td>DR. DUDLEY: I'm trying to get somewhat more of a concrete sense of internal monitoring and review of programs that are part of the system so, for example, if you are looking at the mental health aspects of the system, in addition to determining that it runs smoothly, for example, is there -- does internal review and monitoring attempt to determine, for example, whether inmates who come in denying a history of the mental illness or inmates who don't have a documented prior history of mental illness but who in fact are mentally ill are picked up through your evaluation practice as opposed to simply those who come in announcing that I'm mentally ill, I have a history of mental illness? Or when risk assessments are done is there an assessment of whether this bears any relationship to the mental health assessment so that people are not mistakenly classified as simply bad where in fact they're ill and have no ability to control their behavior and so that there's some understanding of what we're doing with risk assessment in contrast to or in collaboration with mental illness, or are we looking</td>
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<td>that particular group. I can honestly say years ago that one would be decompensating, for example, in the facility and there would be little or no help that would be provided. If anything, they saw this as a behavior and disruptive issue. And, again, it has only been in the last 10 years that, if you will, there's been stepping up, if you will, from the legislators in terms of providing some services. So the answer to your question is, first of all, is the leadership needs to identify that this is an important and significant issue and to develop strategies, and, of course, strategies in this case, as in every legislative group, there's always a group that's very interested in mental health and it is so important to bring that to their attention. Our case in the State of Massachusetts is that we had the chairman of Ways and Means who recognized this as an issue and provided, if you will, X numbers of dollars so that we could obviously enter into a partnership with the behavior health network so that when an officer, for example, does see, for example, somebody decompensating in his/podular living area, that he can notify the forensic services and they can send in a clinician to obviously assist and help. And so naturally the</td>
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first thing is that services are there. Of course, it is different degrees for different facilities. And then, plus, go back to the judge's point, that there is a standard there in terms of the services being provided and so on, not only internally because we do have standards teams that monitor what we're doing on a day-to-day basis, we provide not only just every three years the luxury of having ACA come in, but we have internal standards, people within our facility who are monitoring this on a day-to-day basis and bringing it to our attention when that standard is not being met, and so I just wanted to clarify that. |
| MR. LAPPIN: The answer to your question, at least in our system, is yes, but it varies on how depending upon the type of program you are looking at, but let's take mental health as an example that you mentioned. The audit process would look at is every inmate screened as they come in the door and if screened and there's an indication of some type of mental health concern, suicide, so on and so forth, what then occurred that ensured that we provide adequate assessment and treatment and support to that individual. As that auditing comes in they're going
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<td>1 to step back over the last two or three years and look at it, what incidents that occurred that would reflect that maybe that didn't happen, did they have suicide attempts and, if so, what was the evaluation of what occurred, how did the staff manage it, so they do a case history on certain cases. But then they randomly look at the inmate population in a given institution to determine, first thing, are the basic policy requirements as far as review and evaluation being done at the onset of that person's period of incarceration and if an indicator is evident, how is that managed. And then, of course, you have inmates that may become ill after incarceration. How are those inmates identified, and if identified, how are they tracked, how is that managed, so they're looking at those types of specific steps on things like health care. Let me take -- we're moving as well just like everybody else towards a more performance-based evaluation. There are some programs that are more conducive to that, so let's take the prison industry. Many of our prisons have industry programs. It is not just good enough for us to provide the program to keep inmates productive. That's certainly a good reason to do it and keep the prison safe but what TSG Reporting - Worldwide 212-702-9580</td>
<td>1 impact does it have. So we tie to that what's the impact of recidivism of an inmate working in an industry. Our research reflects an inmate who works in the prison industry for six months is about 24 percent less likely to come back to prison and more likely to get a job. And so we've tried to do that for other programs, GED, getting a GED, getting a vocational training certificate, completing drug treatment. So in some programs that's more tied to what's the outcome, is this having a impact, rather than what are you actually doing even though there is a standard practice for most of those things. So, again, it depends on the program, but they do drill down if there's an indication there that there's a concern or area of weakness to try to determine what was the area of weakness and what needs to be done to correct that. MR. WALL: Commissioner, I think that safety can be defined in a number of ways and certainly one is whether someone with special needs such as mental health issues is treated appropriately. As my counterparts have said, we do have standards, the National Commission on Correctional Health Care is very credible in that respect, we do audit for compliance with those TSG Reporting - Worldwide 212-702-9580</td>
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<td>1 standards. Same in environmental health. Safety can be defined as is the institution sanitary. I should say that I also take the terms &quot;safety&quot; and &quot;abuse&quot; very literally because if inmates or, for that matter, staff don't feel protected from harm inside those institutions, protected, if they don't feel that their lives and their bodily integrity are safe, then nothing good can happen there, that's the foundation. DR. DUDLEY: What I'm trying to ask is to the extent that you have in the federal prison system, for example, program options that might prepare you differently for the outside -- I understand what you are saying about demonstrating that program X has been helpful with regard to recidivism -- but as the question asks, how do we track persons to Program A versus Program B? In other words, would the outcomes be higher if did a better job of deciding who should get a GED program versus who should get factory, industry, and do we look at it at that level. Similarly with regard to the mental health programs, I understand what you are saying about the provision of treatment, providing mental health services and looking at the quality of services for those who are identified to be mentally ill. I'm trying to understand how do we look at the question of whether we're in fact identifying people who are mentally ill. In other words, do we go back and see that, you know, are there people who through our risk assessment have ended up in a level of placement and that by review we realize that we ultimately missed; that they were, in fact, mentally ill and should have been tracked to the mental health system as opposed to a shoe, that's the kind of question I'm trying to understand. MR. LAPPIN: I see that as a daily operational expectation. The bottom line is as well, if we miss people we're going to know because we're going to have people who go into either a health crisis or a mental health crisis, and we certainly monitor the number of suicides we have and see if there's a trend in a certain location or certain type of facility. But day in and day out, have we tied the appropriate treatment plan to an inmate's needs, it is not an easy task as I'm sure you all realize. We're making progress. In that regard, we are piloting now a system to assist the inmates upon entry to identify what needs they might have and then that information gets carried over to the case managers who try to</td>
<td>1 impact does it have. So we tie to that what's the impact of recidivism of an inmate working in an industry. Our research reflects an inmate who works in the prison industry for six months is about 24 percent less likely to come back to prison and more likely to get a job. And so we've tried to do that for other programs, GED, getting a GED, getting a vocational training certificate, completing drug treatment. So in some programs that's more tied to what's the outcome, is this having a impact, rather than what are you actually doing even though there is a standard practice for most of those things. So, again, it depends on the program, but they do drill down if there's an indication there that there's a concern or area of weakness to try to determine what was the area of weakness and what needs to be done to correct that. MR. WALL: Commissioner, I think that safety can be defined in a number of ways and certainly one is whether someone with special needs such as mental health issues is treated appropriately. As my counterparts have said, we do have standards, the National Commission on Correctional Health Care is very credible in that respect, we do audit for compliance with those TSG Reporting - Worldwide 212-702-9580</td>
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encourage inmates to participate in those programs. Obviously with something as critical as health or mental health, we're going to move that inmate in that direction, but let's take your example of the person being managed in segreg versus in a hospital. One of our controls is that the warden and his executive staff will look at every single case in segregation every week and if there's an inmate in there who -- and that team would include a psychologist and medical staff member so that we can say why is this person in segregation because you are right, those kinds of folks can fall through the cracks very easily. But one of our controls is you will look, you will know who is in seg and for what reasons and if we identify inmates who are there for mental health reasons, and maybe that's the right place for them given their situation, but even if they there, are they getting the appropriate treatment and care given that condition is an operational issue that occurs as part of the policy requirement and controls that we have in place to ensure those things are happening.

SHERIFF ASHE: Doctor, certainly I know you are aware of the first 24 hours in terms of the assessment and the services being provided. I would love to talk more about the reports that are available with respect to those records?

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

JUDGE GIBBONS: Is there public access to those records?

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

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

MR. LAPPIN: There could be privacy concerns.

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

MR. LAPPIN: There's no privacy issue.

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

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

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

MR. LAPPIN: I'm not familiar enough.

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

MR. RIPPE: Thank you.
accountability of that other than internally within your own sheriff's department that we have there.

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

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

JUDGE GIBBONS: And available for public inspection?

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

JUDGE GIBBONS: Thanks.

MR. RIPPE: Dr. Gilligan.

DR. GILLIGAN: Both yesterday and today we have heard comments indicating that sometimes outside inspectors, say, independent of the institution or the correctional system coming in have been observed to precipitate crises or violence or ongoing violent incidents in prisons; hostage taking incidents, riots, suicidal crises where an inmate threatened to jump from a tower, one incident where a correctional officer was psychotic and was holding the whole institution at bay with weapons. In all of these situations it turned out that the only way we were able to get these situations resolved really was with the help of people that came in who were independent of the institution or the correctional system. What the inmates in crisis were asking for was somebody to listen to their grievance who was outside the institution in which it occurred, so I was powerfully impressed with the degree to which people independent of an institution may serve to diffuse or bring to a close an ongoing violence crisis. But it is precisely because I think that can be so helpful, I would like to get your help in understanding more clearly what goes wrong when the crisis resolves successfully.

opposite happens, what should we know about or how should we train and supervise inspectors who are coming in to find out what's going on within a prison before there is an incident of this sort, before there is a riot or a hostage-taking or whatever, the desperate means of trying to get people's attention. Maybe Mr. Wall, especially since you mentioned, you referred to one incident. I'm still interested in understanding in more detail what were the details, what were these people saying or doing that seemed to provoke violence on the part of the inmates.

MR. WALL: Certainly there are various kinds of situations in which outside intervention can occur. You are describing an acute episode of an individual crisis. Other types of oversight would be preventive in nature; somebody who simply sort of comes in and screens the operation. Then there are those which are exercises in response not to a particular crisis, but a systemic kind of crisis; the classification system has fallen apart, the health care system is inadequate, so on and so forth. And I think that you have to look individually at the nature of the need for outside oversight. One size can't fit all. There are times when it certainly has proven helpful. There are also many times, by the way, where that kind of crisis resolves successfully from within; hostage-taking, suicide attempt, barricading one's self in a cell block. Those things are very often resolved very effectively within an institution. With regard to those cases where I think intervention can and has run amok, it really does depend on the skill, the knowledge, the professionalism, the savvy of the people who are invited in or who invite themselves in in the case of elected officials.

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

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

MR. LAPPIN: I will just go back.

I will agree with A.T. that although we have not had a lot of experience with that, I think folks coming in a little naive is a concern and, therefore, in those scenarios where we need to have outside assistance, we need to be more proactive, identify who those individuals are and work with them in advance, and let me use the example of, and the accountability that you talked about, and what I'm wondering which of the things you told us about was new and related to all of that and how that's all working.

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

MS. SCHLANGER: My question is about all of those different types of internal review and accountability that you talked about, and what I'm really curious about is how much is it fair to expect from that kind of system and how much is too much to expect so let me tell you what's kind of prompting that.

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

And then I had a question related to that which was I gather, again, from yesterday's testimony, that some reforms were instituted after all of that and I assume they weren't reforms that told people that they shouldn't, that told correctional officers not to beat up inmates, I assume that they were accountability reforms, and I
in, so it is obvious based on that intelligence that
there may be a problem tied to employees or employees
who are not clearly meeting our expectations. And
believe you me, we would like to have the best
methods of selecting folks from the beginning and
although we have good systems, we're not perfect and
sometimes we hire people that we probably shouldn't
have hired. Or as A.T. mentioned, when they get into
that position the sense of control and authority
changed them and they do things they shouldn't do.

So I think for me, the character profile is an
example. We are in there talking with staff and
inmates. This is not an issue of is this program
performing, this is a character profile. A cultural
assessment is how effective is the leadership at that
facility in gaining information from their staff and
inmates, is there open communication, and in doing so
we would glean, hopefully, insight into what someone
may or may not be doing and you open an investigation
and then you just like investigators do, they
investigate, and we do as much as we can to prevent
that from occurring or eliminating those folks from the
facility. And the aftermath, and most of us have
been there, we have had staff that have done things
they shouldn't have done. I was just in L.A.

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

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

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

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

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yesterday, you saw it in the paper. We had some
correctional officers arrested for bringing in
cigarettes and bringing in cell phones.

That impacts those employees there. The
majority of those employees who are dedicated,
hard-working public servants whose peers have
deceived them, who some of those employees don't
believe that could have happened, that the
management, the administration is wrong, so there's a
wealth of emotions that occur in that work unit and
it is leadership's job to address those issues and in
addressing those issues continue to train, continue
to set the expectations, continue to put in place
the, reinforce the standards that we have established
across the board so that we have less of that and
when we suspect it is happening, that people are
forthcoming in telling us. So it is a combination of
things but to me it is really -- that's why, again,
it goes back to leadership, it goes back to the folks
who are there day in and day out managing the staff,
managing the inmates, the familiarity with their
staff and their inmates. If we have a good job of
that, we have less of those of issues. When we slip
and don't we know quickly, then we step back and hold
them accountable. And sometimes when those things
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MR. WALL: I think any good system has
after-action reviews. You are talking about various
forms of accountability. One is auditing and
reviewing records, those are prophylactic and
diagnostic, and then you have an investigation when
something happens that wasn't detected, that wasn't
detected before it ripened into abuse, and in those
cases, yes, clearly the investigative process is the
key, you have to have multiple channels for
reporting, so there are a variety of ways that what
happens in there can get up to you or to the level of
the person who can take action. You have to have a
credible investigative process, a very aggressive
one. And as I said before, there absolutely has to
be proportional consequences, serious consequences.
That's when people know you mean it.

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

MR. LAPPIN: We would like to do a
better job of knowing in advance when those things
happen and certainly some of the controls that we put
in place -- I was a warden who was on the receiving
end of those controls -- and it was basically an
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<td>1. assessment of your leadership and your ability to understand the staff and the inmates and it is a bit intimidating. And I have also been the giver of those. I have gone out and it is hugely resourceful for the first person overseeing those prisons and those wardens because those are the types of issues you get to in advance of that. Your staff are telling me, the inmates are telling me, and I tend to believe that that's an issue here and it is really a heart to heart between the person who supervises that work on what needs to be done in advance of there being a critical situation.</td>
<td>1. organizations, and when there she was a member of a number of governor committees, including the Home Office Task Force on the Implementation of Human Rights Advocacy. Ms. Owers is going to describe the role of the inspector in prisons in the independent scrutiny of conditions and treatment in prisons and other places of detention, and she will describe the methodology that's used based on a set of expectations of accessing prisons and detention facilities and comment on how her tools for measuring outcomes may be applicable to other countries and cultures.</td>
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<td>MR. RIPPE: Gentleman, on behalf of Judge Gibbons, the commissioners and everybody here present, we want to thank you for a very insightful and most useful panel in the work of the commission. Thank you very much. (Lunch) MR. SCHWARZ: Our next speakers will give us an examination of independent prison oversight. Anne Owers was appointed Chief Inspector of Prisons in Great Britain in 2001. Before that she was for nine years the Director of Justice for one of the United Kingdom's leading human rights organizations. We have far from cracked our problems in prisons. We have now cracked it in the United Kingdom and we're about to tell you that this is the way to do things. So thank you very much for being here and we look forward to listening to you and then questioning you. MS. OWERS: That you very much, Commissioner, and thank you very much for inviting me. It is a great pleasure to be here and it has been a great pleasure over the last two days to learn about what's going on here too. The first thing I really want to say is that I don't see that I am coming here to say that we have now cracked it in the United Kingdom and we're about to tell you that this is the way to do things. We have far from cracked our problems in prisons. We have far from cracked our problems in prisons.</td>
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<td>have a lot of the same problems that I have heard being described over the last two days in prisons here; problems with mental illness, problems connected with substance abuse, problems of an increasing prison population, even though by U.S. standards it is small. Barely the prison population of New York State, I understand. But apart from that, you can't, it seems to me, simply import one system into another, you can't just transplant something that works somewhere into somewhere else just like that. You have to recognize the difference in different systems. There's difference of scale as some of your previous witnesses have said, there's the fact that you are operating within a federal system, and there are differences of legal and political culture and context, and it is very important to take those into account in whatever you are doing. When my predecessor was Chief Inspector of Prisons we had a visit from a group of Russians coming to see how we did things and they asked three questions. They said, &quot;Who appoints the chief inspector of prisons?&quot; &quot;The home secretary,&quot; we said. &quot;And where does the money come from?&quot; &quot;Well, it is part of the Home Office vote.&quot; &quot;And who is your chief inspector?&quot; &quot;Well, he used to be a general.&quot; &quot;Ah,&quot; said the Russians, &quot;we have independent inspectorates just like that.&quot; In order to be effective you have to be working with the grain, you have to be working in a culture that will accept what you say and that can buttress the independence that I think is necessary to this role. As I've said in evidence to the commission, and I won't go through it again in detail, our inspectorate is a creature of statute. It is created by statute, my office is created by statute. I hold the office for five years at a time. I am appointed independently of the Prison Service and also to an extent independently of government since I'm a Crown appointment and therefore I'm not part of the permanent civil service. We inspect regularly all the 139 prisons, and by prisons I mean prisons and jails because we don't distinguish in England and Wales, so it is every single prison institution I am responsible for inspecting regularly. Some of that is with warning, some of it is without warning. I have the power at any time and over half my inspections are carried out unannounced without any warning to the institution.</td>
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We will take in a whole team of inspectors including experts in education and health care and substance use. We will look at everything that is happening within that prison and we will provide a holistic picture of all that's actually going on irrespective of what should be going on or what those running that prison might think is going on. We do that by using criteria that we have developed over a lengthy period, which I have copies of which I can happily leave for the commission, called "Expectations" which is our criteria in detail for what we would expect to see, what would be best practice in all the areas of prison life, the prisoner's experience, and we have developed those over time. We have a separate one for juveniles also.

And we also have free access within the prison to everything. We have our own keys, we talk to prisoners, we talk to staff, we see all the documents, and before we go into a prison we will carry out a confidential survey of prisoners to find out what they think of their establishment and although prisoners are by no means honest about all the things they do, we find them a surprisingly reliable source about prisons, not least because they have to tell you that those people who come from colleagues that come from outside. They're by no means pushovers; quite the reverse.

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

We are not pushovers; quite the reverse. They're by no means honest about all the things they think of their establishment and we have our own keys, we talk to prisoners, we talk to staff, we see all the documents, and before we go into a prison we will carry out a confidential survey of prisoners to find out what they think of their establishment and although prisoners are by no means honest about all the things they do, we find them a surprisingly reliable source about prisons, not least because they have to tell you that those people who come from colleagues that come from outside. They're by no means pushovers; quite the reverse.

Prison Service, like many of your witnesses today, has got a detailed set of standards, its own standards are not being implemented properly. Our inspection and I'm very happy to answer more questions about that.

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

External oversight is emphatically not.

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<td>1. what we see and hear and feel and read when we're 25&lt;br&gt;2. checking what the survey is telling us by&lt;br&gt;3. when we go into the prison but we&lt;br&gt;4. believe, it is only part of our evidence base, so&lt;br&gt;5. course, what prisoners tell us isn't necessarily what&lt;br&gt;6. out individual bias. The second thing is that, of&lt;br&gt;7. prisoners, so we have statistical validity which can rub&lt;br&gt;8. you are not basing what you are saying on one or two&lt;br&gt;9. of validity, we have statistical validity which is coming from outside the institution can&lt;br&gt;10. coming from those who are actually running prisons,&lt;br&gt;11. it is pulling out&lt;br&gt;12. to the public what is actually happening in their&lt;br&gt;13. in their prisons.&lt;br&gt;14. As many of your witnesses have said, the&lt;br&gt;15. TSG Reporting - Worldwide  212-702-9580</td>
<td>1. public doesn't always want to know what's going on in&lt;br&gt;2. their prisons; they would like them to be out of&lt;br&gt;3. sight, out of mind, and yet prisons are a public&lt;br&gt;4. service just as surely as hospitals and schools and&lt;br&gt;5. police are a public service, and it seems to me that&lt;br&gt;6. the work that we can do, the publicity we can get for&lt;br&gt;7. what's going on in prisons and the publicity we can&lt;br&gt;8. get for what needs to be done in prisons is an&lt;br&gt;9. important part of public accountability. Thank you. 10. MR. SCHWARZ: Let me start the&lt;br&gt;11. questioning and then others will have more. 12. Maybe you could give us, even though it is&lt;br&gt;13. hard to do in a compressed period of time, but what&lt;br&gt;14. would you say are the factors which demonstrate a&lt;br&gt;15. prison to be healthy or unhealthy? 16. MS. OWERS: We have developed four&lt;br&gt;17. tests of what we call a healthy prison, which the&lt;br&gt;18. tests are based upon something that the World Health&lt;br&gt;19. Organization produced some while ago when it was&lt;br&gt;20. doing an inquiry into prison suicides. Those tests&lt;br&gt;21. are that a healthy prison is one where prisoners,&lt;br&gt;22. even the most vulnerable, are safe; where prisoners&lt;br&gt;23. are treated with respect for their human dignity;&lt;br&gt;24. where they are able to engage in purposeful activity,&lt;br&gt;25. and they are prepared for what we call resettlement&lt;br&gt;</td>
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<td>1. and what you call reentry, so those are the four&lt;br&gt;2. things we look at. And when we do the detailed&lt;br&gt;3. examination under our expectations, we group what we&lt;br&gt;4. find under those four headings and we will tell the&lt;br&gt;5. prison how we assess, how we think it is doing under&lt;br&gt;6. each of those four tests. 7. MR. SCHWARZ: Then the second point I&lt;br&gt;8. wanted to ask you is your written materials attached&lt;br&gt;9. a questionnaire for prisoners and you talked about it&lt;br&gt;10. in your opening remarks. That sounds like a very&lt;br&gt;11. interesting thing to do, but what assurance do you&lt;br&gt;12. have of validity? I mean, have you tested -- how do&lt;br&gt;13. you test for validity? Is there bias in what's being&lt;br&gt;14. said or is that canceled out by something else? 15. MS. OWERS: Well, the first thing is we&lt;br&gt;16. select a random sample which is statistically valid.&lt;br&gt;17. The first thing is you've got statistical validity,&lt;br&gt;18. you are not basing what you are saying on one or two&lt;br&gt;19. people, so we have statistical validity which can rub&lt;br&gt;20. out individual bias. The second thing is that, of&lt;br&gt;21. course, what prisoners tell us isn't necessarily what&lt;br&gt;22. we believe, it is only part of our evidence base, so&lt;br&gt;23. we will have that when we go into the prison but we&lt;br&gt;24. will be checking what the survey is telling us by&lt;br&gt;25. what we see and hear and feel and read when we're</td>
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helping with political support for reform. You were
there I think at the first panel this morning where
there was a lot of discussion about how one generates
political support for reform and I would be
interested in your comments on that dialogue or your
own views on the subject.

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

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

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

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

MS. OWERS: We have 139.

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

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

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

MR. MAYNARD: Laurie.

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

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

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

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

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

MR. SCHWARZ: Thank you.

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

MR. MAYNARD: You think are relevant about why the prison isn't working
properly. Also staff sometimes can be resistant, but
it is actually surprising, and I think it is partly
because we have a great familiarity with prisons. It
is surprising to me that we are -- we very rarely get
the kind of resistance -- well, we never had
resistance that makes it impossible to do our job,
but we very rarely have resistance that means that it
is a very uncomfortable procedure.

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

MS. OWERS: I think you have to start

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

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

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

SENATOR ROMERO: After lunch, teeth.

MS. OWERS: Thank you.

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

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

MS. ROBINSON: Thank you.

SENATOR ROMERO: Just two questions.

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

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

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

SENATOR ROMERO: Teeth.
I was having lunch with the judge from Alabama and the former head of the Alabama Prison Service who said that the starting pay for a corrections officer in the State of Alabama is $15,000; 8,000 pounds, or something like that. So what would the starting pay be for a corrections officer in Great Britain?

MS. OWERS: It would be about twice what it already is, so 6,000 pounds, £3,000. That's to say in the public sector, it is less in the private sector prisons, about 3,000 pounds less, but it is about double that. And, of course, we have, the difference for us is we have a national prison system.

MS. OWERS: My office was established in 1982 so it has had quite a long run for its money.

We're nearly completing 25 years.

It is very difficult, I think, to isolate one particular actor in a prison system. My view, of the institutions that you inspect?

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

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

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

MR. SCHWARZ: Did you have one?

JUDGE SESSIONS: I have one or two.

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

MS. OWERS: Our recidivism rates have been poor, very high for young adult men, age 21. It depends on what you count as mental disorder because it isn't clear, I don't have the statistics at my fingertips, but I can certainly provide that.

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

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

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

MS. OWERS: How deep. Well, it started very slowly around two years go. We're now creating a new structure where we're joining together prison and probation to try to do that in a more seamless and organized way, but it is the short-term offenders who are the major issue.

JUDGE SESSIONS: Thank you, Inspector.

MS. OWERS: Thank you.

JUDGE SESSIONS: Thank you very much.

MR. SCHWARZ: And while Judge Thompson is walking up, you may be interested in the dialogue that the starting pay for corrections guards in Great Britain is double what the starting pay is in the United States, linked to substance use. And, of course, that doesn't count the crimes which aren't even detected.

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

Mr. Hanlon is a partner at the law firm Holland & Knight and has been pro bono counsel in several different class action lawsuits addressing unsafe and abusive conditions in prisons and jails too, I think, right? No, just prisons. Judge Thompson serves on the U.S. District Court for the Middle District of Alabama sitting in Montgomery and has presided over a large number of individual actions brought by prisoners, and quite a number of them, of larger injunctive cases involving overcrowding, gross medical neglect and other unconstitutional conditions.

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

Mr. Bronstein founded the American Civil Liberties Union's National Prison Project in 1972 and is now the director emeritus. He is currently the U.S. board member of Penal Reform International and is a member of the assembly of delegates to the World Organization Against Torture.
Steve Bright is suing them all over again.

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

Let me give you two examples, I detailed some of this in my written report, but two early examples of the court intervention. One was in Judge Thompson's court. His predecessor, Chief Judge Frank Johnson of the Middle District of Alabama, took a pro se handwritten petition by a prisoner and certified it as a statewide class action even though the prisoner wasn't in his district, did you know that? And appointed a law professor at the University of Alabama and then told him to call our office and get some hints from Judge Johnson in his decision denying the state's motion to dismiss that if we could prove that the totality of conditions in the state prison system actually made prisons worse, that that would be a violation of the eighth amendment and then given the broad remedial powers of the court of equity he could address issues that weren't really directly found in the constitution and we proved it and we did it. He found the system unconstitutional.

He appointed -- in his view of not interfering too much in the state he made the mistake, I think, of appointing a committee of 20 leading citizens of the State of Alabama to be the court monitors and to run around and just bother the hell out of all the wardens. That part of the order was set aside by the Fifth Circuit. They affirmed and everything else but said no, that's a little too intrusive, and he then appointed two people, one a prison official, John Conrad, who had been the TSG Reporting - Worldwide 212-702-9580

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

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

The other example that A.T. Wall mentioned earlier today was quite different, and the Alabama case lasted only about eight or nine years before it was dismissed as being in total compliance and now Steve Bright is suing them all over again.
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<td>practice,&quot; and he brought the governor in and things</td>
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<td>have changed and Rhode Island, in my opinion, today</td>
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<td>former president of the ACA, called me and said,</td>
<td>bought into this thing and the PLRA passed without</td>
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<td>&quot;Look, there's a couple of pro se cases in South</td>
<td>any congressional hearings and is now a law. Steve</td>
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<td>Carolina for a good district judge, you get into</td>
<td>Hanlon can tell you more about that. And I will come</td>
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<td>those cases and I will settle with you and I can get</td>
<td>back and answer some questions about some other</td>
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<td>the resources I need from the state legislature,&quot; and</td>
<td>things I want to say even if they're not contained in</td>
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<td>we did that and we settled. Most of the cases after</td>
<td>the questions.</td>
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<td>1980 were settled by consent decrees. The state</td>
<td>MS. SCHLANGER: Thank you, Mr.</td>
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<td>didn't want to go through and pay the money to spend</td>
<td>Bronstein.</td>
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<td>on attorneys' fees. They recognized that we</td>
<td>Mr. Hanlon.</td>
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<td>MR. HANLON: Thank you.</td>
<td>system right now as a result of these recent changes.</td>
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<td>I, as I indicated in my written remarks,</td>
<td>The basic argument that I think I'm making</td>
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<td>would really like this commission to seriously</td>
<td>is that if you would like to have Judge Thompson and</td>
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<td>consider the question of whether or not we need</td>
<td>others in the federal judiciary involved in judicial</td>
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<td>judicial oversight in our prisons, whether or not it</td>
<td>oversight, I go with the territory. We can't get</td>
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<td>has been effective, and whether or not it is sound</td>
<td>Judge Thompson into this judicial oversight unless</td>
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<td>national policy, and particularly whether or not our</td>
<td>there are lawyers like myself and others who are</td>
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<td>existing national policies as formulated by our</td>
<td>prepared to bring these cases, and there are several</td>
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<td>courts, particularly the United States Supreme Court,</td>
<td>huge obstacles to bringing these cases as a result of</td>
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<td>and the United States Congress move that policy goal</td>
<td>this emerging national policy.</td>
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<td>forward or backward. I've suggested to you that, in</td>
<td>The first one I believe is the Farmer</td>
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<td>my remarks, that those policies are really standing</td>
<td>versus Brennan test for deliberate indifference to</td>
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<td>in the way of what I think is a highly effective</td>
<td>establish cruel and unusual punishment under the</td>
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<td>remedy in our prisons.</td>
<td>eighth amendment to the constitution, and Farmer</td>
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<td>I am not nearly as experienced in this</td>
<td>established a standard of subjective recklessness as</td>
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<td>litigation as Al Bronstein or Judge Thompson. I have</td>
<td>defined by the criminal law as the test to establish</td>
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<td>been practicing law for 40 years and it is only in</td>
<td>a violation in that. Justice Blackman had a dissent</td>
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<td>the last few years that at the insistence of Steve</td>
<td>in Farmer in which he describes that focus as, and</td>
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<td>Bright that I began to work in this area because I</td>
<td>I'm quoting him, &quot;Myopic and mistaken.&quot; And I would</td>
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<td>was convinced that it was impossible to win in this</td>
<td>imagine that you have over the course of your</td>
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<td>area.</td>
<td>hearings here taken some interesting testimony where</td>
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<td>I do think that I have some experience in</td>
<td>you would have a pretty good idea of whether a</td>
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<td>what it takes to get lawyers; qualified, experienced,</td>
<td>problem is subjective recklessness which focuses on</td>
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<td>competent lawyers to do this highly complex work, and</td>
<td>individual culpability of individual state actions</td>
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<td>I think there are substantial disincentives in the</td>
<td>with respect to specific acts or failure to act, or</td>
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Judge Thompson.

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

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

In my remarks I will address the limitations of a court and I basically say several things. First of all, that courts are basically reactionary. We don't prevent violations, we remedy them, and our intrusion in the system is only to the extent of redressing the violation and it is really up to the executive and the legislative branches of government to come up with the oversight that prevents constitutional violations.

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

MS. SCHLANGER: Thank you very much.

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a particular defendant in fashioning a sentence.  

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

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

Within the last I think it was year and a half I had a prisoner come out who was mentally ill but who had gone into the prison system displaying no symptoms of mental illness. I had a hearing on this matter essentially to determine why he was mentally ill. The evidence revealed that while in the prison system he had become psychotic and that the federal prison system while incarcerating him essentially warehoused him in a one cell to treat his mental illness. Actually they weren't treating his mental illness, that was a way of not treating his mental illness, and basically confined him.

After holding that hearing and hearing not only from the defendant but we actually appointed a court psychiatrist to review his medical record while in the federal prison system to confirm what he was saying; that he had actually become psychotic while in the system and that the federal prison system had done nothing; in fact, had exacerbated his problem by confining him and putting him in solitary confinement. I then sent my record to the federal prison system and asked them to investigate it and report back to me by order but by suggestion as to whether the findings I had made were accurate because I had not heard from the federal prison system itself. I knew that within the federal prison system they did have certain sort of procedures whereby they did investigate complaints. I realized that a complaint from a federal judge carried a lot of weight and I did hear back from them and they did the investigation they had been asked to do and they did report to me that they had investigated the matter thoroughly. But my point being that as a sentencing judge, first of all, I am actually a part of the prison process, I am the one who sentences people to prison, and I, as a sentencing judge, do have significant authority in what is in that prisoner's record, I have significant authority in requiring, at least to the extent we're talking about in the federal prison, that the prison assure that judge that that defendant will be treated fairly. And, secondly, when the prisoner does come out again, my relationship with the federal prison is such that I can write letters to the prisoner; in fact, can hold hearings and request an investigation of a matter. And this is not something that I, a right I have sort of when I'm wearing that institutional civil hat when you have all these sort of well-know cases, but I think every federal judge in this country has that authority, it is not unique to me, and I also think that every state judge to some degree has that authority, and if they would merely go and visit these prisons and see them and be more concerned about what happens to individuals after they are sentenced, I think that that part of the oversight process can be expanded. So my bottom line is I think that as we talk about judicial oversight, you should include judges as sentencers, as people who sentence people as a significant player in that role.

MS. SCHLANGER: Thank you very much.

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

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

JUDGE THOMPSON: Mr. Bright, I so wish.

MR. BRIGHT: Me too.

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

I have a question about the limitations of litigation as an oversight method and I have two that I'm curious about. The one is that you sort of see it a lot more with prisons rather than jails. There seems to be a lot more big injunctive litigation involving prisons rather than jails and I wonder if...
that any court order entered into a jail by the court
in a jail or prison case at the end of two years is
subject to a motion to dismiss by the defendants, and
the court is obligated to dismiss unless you can
prove present unconstitutionality, you have to
prove your case all over again, very low fees and the
expert problems that we mentioned.

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

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

MR. BRONSTEIN: I can respond to that.

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

One thing I neglected to mention, I will do
it now, sort of finishing off the scenario of the
effectiveness of court supervision, by 1989, '88,
there were 39 states plus the District of Columbia
and the Virgin Islands and Puerto Rico that had their
total state prison system or one or more major
institutions under a court order involving
overcrowding and the totality of conditions, my
office had 25 of those cases, so it was a very
significant judicial oversight by the middle, end of
the eighties.

MR. HANLON: Right now you have, and
Steve didn't mention all of the other barriers
created by the Prison Litigation Reform Act, they
have a two-year limitation on jurisdiction basically
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have to have a three-judge court, so all of these
barriers make it much more difficult to litigate in
these counties.

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

MR. BRONSTEIN: I want to second that.

Lawyers really do look at it and say is there an end
game here, is there something we can do that will
effectively move the ball down the court. That
analysis precedes every one of these cases.

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

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

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

MR. BRONSTEIN: Right now you have, and
won't be because of the litigation; that that's as much as the litigation can do is, from horrible to pretty bad.

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

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

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

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

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

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

speculate, I'm just asking what you think.

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

MS. SCHLANGER: Steve.

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

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

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

MR. BRONSTEIN: Your first point is well taken. When we brought the Tennessee statewide case our co-counsel was the Legal Services Program, Middle Tennessee in Nashville, and they provided a lot of person power, lawyer power to assist us in the statewide case and they couldn't do that today.
MR. BRIGHT: And that also, I might just interrupt and say, that also accounts for who was doing the jail cases because you are suing prisons because it affects a lot of people, and the people suing the Johnson County Jail in Tennessee is the local Legal Services lawyer.

MR. BRONSTEIN: Legal Services people and they can't do it anymore. The two-year question -- well, it is illustrated in Rhode Island. We thought we could fix Rhode Island in a couple of years. Rhode Island had 700 prisoners, sentenced them pretrial, when we filed that lawsuit, 700 in the entire state, and we thought three facilities, 700 prisoners, great judge, Judge Petine, we thought we would fix it in two years. Well, it took 20 years. The legislature just wouldn't provide the funds. The first two corrections directors we were dealing with were not very reform minded, they were pretty stubborn, there were all kinds of other problems, some of them that A.T. alluded to. There was a significant Mafia problem in Rhode Island, both the prisoners and staff, I think, were also members of the Mafia, the chief judge of the Rhode Island Supreme Court was a member of the Mafia, there were a lot of problems to

JUDGE THOMPSON: And when you are talking about prison overcrowding and that's state judges. Routinely in the prison overcrowding cases that I have it is convincing those state judges not to send people to jail if they don't have to and quite often you will have the lawyers for the state agreeing sometimes to a consent decree that they can take to their state judges so as to let them know this is the bind we are in. These are principal players whom the state has no control over quite

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

MR. BRIGHT: And that also, I might deal with.

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

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

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

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

MR. BRONSTEIN: That's the tough one.

The easier one is why it is happening. I think that politicians discovered that it was wise to run by being tough on crime even before the Willie Horton stuff. Governor Wilder, the first black governor in the south, Virginia, ultimately for ran governor, he became a death penalty advocate, advocate of harsher punishment. It is difficult for me to say this as still a long time ACLU staff member and consultant, but I think the press has a great deal of responsibility in this, particularly the broadcast media. I travel around the country and the opening program, the opening segment of every local news program is a crime and so the public thinks that crime is happening every minute. You are safer in Washington, Los Angeles or New York than you are today in Rome or London or Paris, the crime rate is higher there in terms of street crime, yet that's not the perception in this country, so the press has to have a role in educating people about this. Somehow we are beginning to get some of the fiscal conservatives to say the fastest rising line item in our state budget is corrections, it is increasing at twice the rate as -- well, California bankrupted twice the rate as well, California bankrupted 25 our state budget is corrections, it is increasing at 24 23 conservatives to say the fastest rising line item in 22 our state budget is corrections, it is increasing at 21 20 the perception in this country, so the press has to 19 higher there in terms of street crime, yet that's not 18 today in Rome or London or Paris, the crime rate is 17 16 the easiest one is why it is happening. I think that 15 politicians discovered that it was wise to run by 14 being tough on crime even before the Willie Horton 13 stuff. Governor Wilder, the first black governor in 12 the south, Virginia, ultimately for ran governor, he 11 became a death penalty advocate, advocate of harsher 10 punishment. It is difficult for me to say this as 9 still a long time ACLU staff member and consultant, 8 but I think the press has a great deal of responsibility in this, particularly the broadcast media. I travel around the country and the opening program, the opening segment of every local news program is a crime and so the public thinks that crime is happening every minute. You are safer in Washington, Los Angeles or New York than you are today in Rome or London or Paris, the crime rate is higher there in terms of street crime, yet that's not the perception in this country, so the press has to have a role in educating people about this. Somehow we are beginning to get some of the fiscal conservatives to say the fastest rising line item in our state budget is corrections, it is increasing at twice the rate as -- well, California bankrupted 25 our state budget is corrections, it is increasing at 24 23 conservatives to say the fastest rising line item in 22 our state budget is corrections, it is increasing at 21 20 the perception in this country, so the press has to 19 higher there in terms of street crime, yet that's not 18 today in Rome or London or Paris, the crime rate is 17 16 the easiest one is why it is happening. I think that 15 politicians discovered that it was wise to run by 14 being tough on crime even before the Willie Horton 13 stuff. Governor Wilder, the first black governor in 12 the south, Virginia, ultimately for ran governor, he 11 became a death penalty advocate, advocate of harsher 10 punishment. It is difficult for me to say this as 9 still a long time ACLU staff member and consultant, 8 but I think the press has a great deal of responsibility in this, particularly the broadcast media. I travel around the country and the opening program, the opening segment of every local news program is a crime and so the public thinks that crime is happening every minute. You are safer in Washington, Los Angeles or New York than you are today in Rome or London or Paris, the crime rate is higher there in terms of street crime, yet that's not the perception in this country, so the press has to have a role in educating people about this. Somehow we are beginning to get some of the fiscal conservatives to say the fastest rising line item in our state budget is corrections, it is increasing at twice the rate as -- well, California bankrupted
for reform the role of the judicial system. I have no doubt that had California not been sued over and over and over that we wouldn't even be where we are now in terms of beginning to anticipate some reforms and seeing some of them, as modest as they can be.

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

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

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

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

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

JUDGE THOMPSON: Yes, I think that is.

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

JUDGE THOMPSON: No, I really don't. I think the remarks that were made earlier this morning by the director of the Bureau of Prisons as to what he does with federal judges are very important and could be replayed in each state. That is, when a federal judge takes the oath of office, one of the first things that he or she does is to visit a federal prison. In Montgomery we have Maxwell Prison. I would say that on average a federal judge visits that prison once a year and I would say -- and, in fact, my law clerks quite often go there with one of the magistrate judges or with me to visit that prison.
When I go to judicial conferences, if they are held near a federal prison it is routine, and I think Judge Sessions may remember this, it is routine for us to go visit that prison. Now what does this mean. It means that the prison system knows that judges are going to be coming and visiting. Now you are absolutely right, some of you are saying they're probably going to lay out the better food for us. But it is, I think, an important part of our, of sort of the overall judicial oversight to go visit those prisons as sentencing judges and make sure that what we see there meets our expectations. And I think the wardens are trying to let us know that when we sentence someone, they're going to be treated fairly. I don't think that happens in state systems and I think that if state judges were required to visit state prisons on a fairly regular basis, I think it would be beneficial for the judges and I think it would be beneficial for the prisoners because I think it would make them more transparent and I think it would make the judges more aware of what's going on, and I don't think that's going to cost the state one dime. It is something they can do and I don't think it would be controversial, I just think it needs to be done. I think that's one model.

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

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

MS. SCHLANGER: Judge Gibbons.

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

MR. BRONSTEIN: I agree with you, Judge Gibbons, that that's not a mandate but in saying we want to have safe prisons where prisoners are free from abuse and where staff are safe as well, one of the things we have to do is reduce the numbers of people in those prisons. We just have too many.
people in prisons to keep them safe. I mean, the
Men's Central Jail somebody testified -- well, my
young associate from the local ACLU this morning
mentioned she thought that there were 5,500 to 6,000
men in Men's Central Jail in Los Angeles. There are
7,000 there today, not 5,500 to 6,000. Well, that's
obscene. That's a facility that my expert said
should have 2,400 prisoners in it and they have 7,000
there. So that's worth saying, something like that.
That's not a safe prison.

JUDGE GIBBONS: And it probably with
those numbers could never be made safe --
MR. BRONSTEIN: No.
JUDGE GIBBONS: -- but the message, it
seems to me, that we can give is you can't do that
unless you want to spend the money for a facility
that will take care of 10,000.

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

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

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

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

What sort of things can we do to prevent
litigation from your end? If I'm a good
administrator, I should be doing those things anyway
and trying to get them fixed. Sometimes I can't get
them fixed. I would like to do the preliminary stuff
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MR. BRONSTEIN: We can be safe and be
smart at the same time.
MR. RYAN: This will be scary.
Since I'm one of those individuals that has
a name that's on the other side of the "V" that goes
over, I have some concerns about litigation and its
oversight possibilities.

MR. HANLON: Only in your official
capacity, sir.
MR. RYAN: Sometimes.
And I am concerned about your frivolous
side since I was ordered one time to make sure that I
did not feed an inmate any food that would kill him
as a result of a lawsuit and I have ensured that I
have kept my 2,600 calories and so forth on going
through on that, or the time that I was ordered not
to put an inmate in a cell because he was
claustrophobic and had issues to try to deal with
those types of things.
When I left Santa Clara County in
California and went to Florida I had either 37 or 34
lawsuits against me as a facility administrator. I
never had to come back to California because all of
them were thrown out on summary judgment, they were
gone. So my concern in saying that is litigation,
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before you hand me the "V" versus Ryan.

MR. HANLON: All right. Good. This
phenomenon, by the way, is not limited to prisons,
o.kay?

MR. RYAN: I'm a jail.
MR. HANLON: Or jails. Okay.
I spent most of my professional career
doing institutional reform litigation, and what we
do, and I have seen many, many lawyers who are in
this field do this, is that we go in and investigate.
We know that this is going to be a substantial
undertaking, we don't have the luxury of doing things
that aren't going to be productive, and in almost
every case in my career I have laid that out in a
letter, okay? Certainly in any prison litigation I
have done I have sat down with the prison officials
beforehand and you have a natural, it is a little bit
defective mechanism in the PRLA about exhaustive
administrative remedies, it seems to me there seems
to be some national minimum standards about what
exhaustion really might be, but --

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

MR. HANLON: That's right. We may get
some national standards or we might get some from the
Congress too. Less chance there.

But in any event, my sense of what I do in institutional reform litigation is I go in and I speak to the officials involved and I say, "Would you please move this way?" And they say, "No, I'm not going to move that way." And then I go into a federal court and I say, "Will you please make them move that way?" "Okay." And then we spend some time, now in prison litigation it is going to be limited largely to two years, and the whole goal of litigation is just to try to move the battleship.

I'm just trying to move it that way, okay? And I know that when I get through or when the judge, more importantly, when the judge gets through it is going to slip back, okay? And I'm going to have to keep going back in. This is a Sisyphus kind of existence. We're just pushing that stone up the hill and it keeps slipping back down. Because you've -- and I haven't done any jail litigation, okay, but --

MR. RYAN: And I appreciate that.

Thank you.

MR. HANLON: Well, I don't know, it might have been a good experience for me. It is not just an administrator that you are looking at, it is the legislature and the whole

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Bureau of Prisons does this in most of their facilities, they provide some legal services program, either through the university with students, a clinical program, Rhode Island contracted with a local college to train at least two prisoners in every one of their facilities on how to be a paralegal and how to do research, and then they hired probably the two most experienced law librarians in the state to work in their central office and they have a completely -- no books anymore, but all electronic research system and that kind of service will reduce litigation. If you provide some service to the prisoners that can tell them you don't have a case, it is frivolous, they won't be filing these lawsuits. You might think about that.

JUDGE THOMPSON: Did I understand your question correctly that you were concerned that you yourself had identified the problem, called the ACLU, and rather than approaching you informally they slapped you with a lawsuit?

MR. RYAN: Yes. Six of them.

JUDGE THOMPSON: Pardon me?

MR. RYAN: Six of them.

JUDGE THOMPSON: Six lawsuits.

MR. RYAN: To an Informal meeting. Six...
And while many of them are frivolous and, in fact, many prisoners don't recover, I think that they do play a very important role in oversight of the prison process. I have tried over the last 25 years a number of cases where the prisoner alleged physical abuse by guards. Most of those cases don't succeed, I would say 99 percent of them don't succeed, assuming that's by summary judgment, even when they get to the jury they don't succeed, but I do think that the process of going to court and letting six civil people hear what happened in that prison and passing judgment and letting the guards and the prison officials know that if you beat someone up you can arguably be held accountable is a very important part of the oversight process, even though many of us might consider that abusive. That is, the number of suits that are filed. In the long run I think that while these suits don't always succeed -- in particular I'm talking about the abuses, not the one about wanting caviar for breakfast -- but the physical abuse suits I think have a very prophylactic effect in curbing actual abuse in prisons.

**MS. SCHLANGER:** Laurie Robinson.

**MS. ROBINSON:** Steve, I wanted to follow up on the judge's discussion about judicial MR. BRONSTEIN: Laurie, if I could add to it, you probably know the ABA has created, the standards committee has approved a task force on advising the Legal Status of Prisoners, the 30-year-old standards that we have, and the reporter, yesterday, Michele Deitch, she is in the room someplace, and we have two co-chairs. I'm one of them, Marty Love, is the other one. We have a superb committee which includes people from the ACA. Dora Schriro was at our last meeting because we were meeting in Arizona. We have lawyers, we have AJA, Jail Association people on the committee, we have -- we had Joe Lehman, Director of the Washington Department of Corrections but he resigned, he left the job and Pat McManus has taken his place. It is a really good committee and I think this will be an important venture, we hope to finish it next year and go through the process of getting it to the standards committee, the Criminal Justice Section Council, and you know that routine, you used to be there, but we will get it through.

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

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

**MR. BRONSTEIN:** No.

**MS. ROBINSON:** I'm just kidding.

**MR. BRONSTEIN:** But I think that's an important step that the ABA has taken and I think the Corrections and Sentencing Committee is getting revitalized, we have new chairs there, and I think we will be meeting in a couple weeks, so some stuff is happening, Steve.
to hear and I had forgotten about the Legal Status of Prisons Standards being updated so that's very helpful to hear. Thank you very much.

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

MS. ROBINSON: Absolutely.

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

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

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

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

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

Ms. Hall-Martinez is the Co-Executive Director of Stop Prison Rape. Mr. Smith is Director of Client Services at the Center on Wrongful Convictions at Northwestern University's School of Law and is on the board of directors of the John Howard Association, and Ms. Walker is the Executive Director of Massachusetts Correctional Legal Services. Mr. Beck has been the Director of the Prison Visiting Project at the Correctional Association of New York since October of 2004. I would like to thank each of our panelists for their participation today and I look forward to an enlightening discussion.

Let's start with Ms. Hall Martinez.

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

I am honored to address the Commission on Safety and Abuse in America's Prisons about the dual roles my organization, Stop Prison Rape, plays in shoring up government response to one of the most serious human rights violations in our country today, the pervasive sexual violence that exists in prisons and jails. First, SPR advocates for better policy responses to prisoner rape through our role as a monitor and critic of government. Second, SPR collaborates directly with government entities by providing training and spearheading special projects toward that same goal. Our mission is to end sexual violence against men, women and youth in all forms of detention through the U.S. SPR has three main goals for its work: To advocate for policies that ensure institutional accountability, to change society's attitudes about prisoner rape, and to promote access to resources for survivors of sexual assault behind bars.

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

There are three unique attributes of SPR that have contributed to its successes as an advocacy organizations. First, as its history makes clear, it is first and foremost an organization that seeks to
bring perspectives and experiences of survivors of prisoner rape to the forefront of the public debate. It grew from humble beginnings. For many years SPR was run from the back of a survivor's minivan which was also his home.

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

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

So these characteristics of SPR are closely linked to how and why SPR has been an organization uniquely able to contribute to transparency in U.S. detection facilities and to enhancing government oversight, and finally to working with corrections officials directly.

Our mission emphasizes that we provide access to resources for survivors. By their nature, our links to survivors enable us to contribute to policymaking and advocacy in unique ways. We receive about 20 letters per week from survivors of prisoner rape, the vast majority of them still in prison.

The information we receive spontaneously from these survivors provides unique insight as to what is happening in our prisons, about the culture there. To date, our four-year-old database contains information from more than 500 survivors of sexual assault in prisons spread across every U.S. state.

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

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

The collaboration that we do with government is also an important part of our work. In many instances we found that officials have approached us, eager to succeed in their legal mandate to address prisoner rape. In other instances we have identified need and found corrections to be particularly open to collaborating with us to fill that need. And just to give one example, we have long believed that more concerted action is needed to address the mental health needs of many woman who have survived the trauma of sexual assault behind bars, so we designed a project that draws upon the extensive counseling resources available outside of prison to address the needs of prison rape survivors.

Initially our project will involve collaboration between corrections officials from two pilot state prisons in California, our staff, counselors from two pilot rape crisis centers, all of whom will work together to ensure that confidential high-quality services without fear of retaliation and further abuse are available to victims. In effect, we're trying to draw upon, build a bridge between the two worlds of rape crisis centers on the one hand and prison settings on the other hand.

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

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

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

Mr. Smith.

MR. SMITH: Good afternoon, commission members. I want to thank the commission for inviting me to take part in the examination of safety and abuse in prisons. It is an honor to share with you
my perspective as a former long-time prisoner in what used to be one of the nation's most violent maximum-custody prisons, Stateville, in Joliette, Illinois.

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

I grew up in a community that was anything but free of violence, my neighborhood was one of the poorest in the Chicago south side, where one of the rites of passage was withstanding blows to the stomach and chest from the toughest guy in the group until you could take it no more and say, "I give."

Another rite of the passage was being flipped and slammed to the ground by the best wrestler in the room to be acknowledged as tough enough to be okay for the group. Nonetheless, there was standards of conduct that fostered, to a considerable degree, a sense of personal security within that community.

While at Stateville, there were no law library which provided me an opportunity to help others. I benefited from the various programs started as a result of lawsuits brought by legal organizations and individuals to force changes in the prison system, and by the different volunteer groups such as prison ministries, professional prison watch groups such as John Howard Association, the Jails and Prisons Project, the Prison Action Committee, and the Positive Anti-Crime Trust.

People who volunteered to come into prison and teach programs on life skills, the arts, anger management courses and basic reading helped tremendously to inject a sense of purpose into many prisoners' conscious. The professional prison watch groups were invaluable also. They would monitor prison activities by scheduling visits and walking the cell house galleries and talking with prisoners, providing a rare and critical chance for legitimate grievances that needed to be heard. Additionally, there were professional groups that would bring groups of college students and volunteers into the prison who would bring a sense of concern and infuse a sense of hope into many prisoners.

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

One day when visiting, Shaena approached me at the small law library where I worked on Death Row and asked about my status and I told her I was a "C" number. And many of you have seen Shawshank Redemption where the guy goes up on parole and so
forth. Well, I had gone up 14 times. She championed my cause and eventually I made parole.

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

Thank you very much.

DR. GILLIGAN: Thank you very much.
MS. WALKER: Thank you. Thank you for inviting me. Sorry, we're the last panel on the last day of the last hearing. We will try to be as quick and as informational as we can be.

I have been asked to speak as the director of a prison legal services office about the Rapid Response to Brutality Project that our office has run since 2001. Just a point of clarification, someone from my office goes to that prison, staff member abuse of a prisoner, within 72 hours of receiving a report of a guard having abused or someone from my office goes to that prison, photographs the prisoner's injury, interviews the prisoner, documents and advocates for medical care if it is needed, and documents other injuries that may be invisible or invisible and advocates for the prisoner if they want it. It is always offered to them; some chose not to. We get a lot of our calls.

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from other prisoners, not the prisoner in question because that person has typically been lugged off segregation where they are unable to contact us. The short-term goal is to deter brutality, the long-term goal is to eliminate it. Much needs to be done before this country will ever eliminate staff brutality. While our prisoners report a high degree of satisfaction with the project, we ourselves are very unsatisfied and I think you will be as well when you hear some of the information I have for you.

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

The second comment I have to make on the

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

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

The Rapid Response to Brutality Project is designed to deter guard-on-prisoner violence, there's information in your materials, but briefly when my office receives a report of a guard having abused a staff member abuse of a prisoner, within 72 hours of the outside to listen to them, and access to the courts. Our office has been in existence since 1972.

Thank you very much.

DR. GILLIGAN: Thank you very much.

Could we now hear from Ms. Leslie Walker.

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

I have been asked to speak as the director of a prison legal services office about the Rapid Response to Brutality Project that our office has run since 2001. Just a point of clarification, someone from my office goes to that prison, staff member abuse of a prisoner, within 72 hours of receiving a report of a guard having abused or someone from my office goes to that prison, photographs the prisoner's injury, interviews the prisoner, documents and advocates for medical care if it is needed, and documents other injuries that may be invisible or invisible and advocates for the prisoner if they want it. It is always offered to them; some chose not to. We get a lot of our calls.

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

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

Finally on that topic, since ratting, as we know, is the lowest form of life in prison, not only does a prisoner who reports expose himself to the
Very briefly, I have run out of time but I

follows you, that reputation follows you everywhere.

Even if it is something that has been done against a

staff member, you are labeled a rat and that follows

you everywhere.

So in addition to encouraging and reporting

abuse the following eight changes are required.

You've heard some of them; some of them will be new.

The careful choice of leadership.

Superintendents must make it clear that despite union

pressures and many other pressures, they will not
tolerate abuse. But as important, as important, they

will not tolerate the humiliating, daily treatment by

staff which creates and lends a credibility and

allowance for the kind of atmosphere where abuse can

occur. That is a very tough, tough standard and I

understand it but it is necessary. These leaders

must also be clear that staff members must treat

prisoners with respect, a prisoner's word will be

believed over staff on occasion, abusive staff will

be disciplined and honest staff will be rewarded.

That's a very missing piece here. Why should honest

staff come forward. There is no reward for it in too

many systems.

One of the small things that happens, and

Cameras are very important. Cameras with audio

situations. This you have not heard: Cameras.

Crapes are very important. Cameras with audio
equipment especially in segregation units, you can

actually know what is going on, including stairwells

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would like to comment briefly on the media.

I think you need to think about recommending a whole
media strategy. As we heard earlier, if it bleeds it
leads on the news every night. We need to include
the media in these discussions and arrange individual
meetings, which my office has started to do, with the
editors of the local paper telling them the stories
they're missing, good and bad, and see if we can move
the dialogue further. The dehumanization of the
defendant, the coverage of sensational trials, has
led to the dehumanization of the prisoner, which has
led to the violence that occurs in the prisons. It
is a huge problem.

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

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

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And hope and history rhyme.
So hope for a great sea-change
On the far side of revenge.
Believe that a further shore
Is reachable from here."
Thank you.

DR. GILLIGAN: Thank you very much.
Mr. Beck.
MR. BECK: Thank you for the poetry.
I want to thank the commission on behalf of myself and Robert Gandi, who is the Executive Director of the Correctional Association who is also present today, for this opportunity to testify about the role the CA plays in monitoring prisons in New York State.

The Correctional Association has been around since 1846 and we have statutory authority, we're only one of two organizations in the United States that have that, to go into the prisons and to report about what we observe. On a regular basis we go into the prisons and we monitor what's going on and we report to the legislature about our observations. We also conduct in-depth studies on specific topics, including our current effort to access to inmates and to staff is essential to TSG Reporting - Worldwide  212-702-9580

perform our duties, and it is also useful to review department documents and data in evaluating systemic practices and in assessing whether the information obtained from staff interviews is confirmed or credited by department records, but getting that correction data can be difficult. First of all, some of it may be privileged and therefore not accessible under Freedom of Information laws.

But a second and more problematic area is when the department doesn't actually keep the data or it keeps the data in a format that is not retrievable and let me explain. Many incidents of use of force are only recorded if they rise to a certain level like in New York what's called an unusual incident report, but many uses of force are not recorded in that system so you lose the data. But more disturbing is kind of an example of what happens in staff misbehavior. We have tried to get that information for the study and we are told we cannot retrieve that information because it is put into the individual staff folders and, therefore, they would have to review thousands of records and tens of thousands of documents and they refuse to do it. Namely, we cannot monitor what's going on but what's much more important is that the system cannot tell you what's happening if they don't have a way to retrieve the information.

The paucity of violence data is not simply an oversight by corrections administrators, it perpetuates a system that hides the violence that goes on every day in our prisons from state officials, the public, and even the prison population. As you know, it is common for inmates who are involved in inmate/staff confrontations to be immediately transferred from their housing area to a disciplinary segregation unit following the incident. In large systems such as ours, these individuals are often transferred to another prison without ever returning to general population. Other inmates can't find out what happened to the inmate involved in the incident, or how serious his or her injuries were, and they cannot assist the inmate if he or she wants to challenge staff conduct. The inmate simply disappears and the prison population is left to wonder whether the same could happen to them.

A remedy to the failure to maintain adequate record keeping is for the state legislature to mandate that the department regularly make public reports containing specific data about inmate and staff confrontations, inmate and staff injuries, and...
inmate and staff discipline. I urge the commission to pose the type of data that should be kept and reported by the corrections department and to define terms such as "unusual incident" or "reportable use of force" so that systemic data can be compared from state to state.

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

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

DR. GILLIGAN: Thank you.

Thank you.

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MS. HALL-MARTINEZ: Very good questions.

Well, one of the projects that I mentioned that we started to work on and I guess the way we see to approach this is to make it known to prisoners that there are resources that they can avail themselves of. However, we have tried to think about how those resources need to be beefed up which is why I was talking about the need for mental health counseling that can be unequivocally confidential and so that's why we developed this project that's trying to form a partnership between rape crisis centers and the community and the prisons. That to us is one of the major problems with even trying. For the person...
who suffered a rape in prison, they don't want to report it and it may not just be because of fear of retaliation; of course, that could be a huge factor, but it is the nature of rape and what's happened to that person and the stigma, the emasculation, and so just trying to cut through that is a huge challenge.
And, of course, when the prisoner is aware that there are substandard mental health services, for example, at the prison, and particularly if they have seen what may have happen in other cases where it did not in fact stay confidential because of mandatory reporting requirements, that just causes the whole thing to unravel even more and makes it all the more difficult for that person to have access to any kind of care or to make any decision about whether he or she wants to go forward with a formal complaint, you know, et cetera.

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

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

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

DR. GILLIGAN: That's very helpful. I would be interested if you could share with us any experiences you have had in reporting incidents of rape, say, to correctional authorities.

And, again, I say that on the basis of my experience in sometimes reporting to the Commissioner of Corrections of Massachusetts when I discovered a case where someone had been raped and, fortunately, he handled it I thought appropriately and reevaluated many aspects of this person's history and got him moved to a safer place and so on, but it still didn't get to the bottom of the problem, I mean, because this is an endemic problem in prisons. And have you had, could you show us any good or bad experiences that you've had with attempting to report these things, what kind of responses have you gotten?

MS. HALL-MARTINEZ: Well, we don't play that role so we don't report. We have looked into situations and documented situations based on interviews with prisoners and that kind of thing, but similar to a group, I suppose, like the Human Rights Watch, we played that kind of role but we haven't played a role of moving forward on the basis of a complaint from a particular individual or a set of individuals. We have tried to offer some guidance and input to a person who wants to do that in the ways that I described before but we know that we're just kind of chipping at the top of the iceberg, so to speak, so we don't -- I mean, we are very aware of many instances -- I mean, we have some statistics in our database, and it is not a statistically sort of, what's the word, pure database in the sense that these are just random letters that we've gotten over four about years, there's about 500 of them, but the vast majority who have reported the incident have not had any action taken on it. I can certainly tell the commission the information right out of the database but I don't have that in front of me, but it is by far, you know, a significant majority will say that they have reported, they have reported it, they had taken some steps, and then no action was taken on the basis of their going forward and using whatever the formal complaint mechanism is. I'm talking about of those who did report and, of course, many don't report but of those that did, most did not see any action taken on it.

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

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

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

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

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

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

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

DR. GILLIGAN: Ms. Schlanger.

MS. SCHLANGER: I have a question for
those of you from New York and Massachusetts, and
that is about access. I mean, you said, Mr. Beck,
your organization is one of only two in the
country that has statutory access, and I gather
Massachusetts is somewhat unusual also. I remember
when I used to teach in Massachusetts that my
students, many of them would go in and represent
prisoners at disciplinary hearings and I mentioned
that to somebody in a different system who said,
"They let in law students to do disciplinary
hearings, what are you kidding?" So I think that
maybe lawyers and law students, paralegals, have
unusual access in the Massachusetts prison system as
well, and I wondered, I guess, a couple questions.

One, do you think that other systems would
voluntarily do that, have either of you had any
contact with other systems to sort of say this
actually works well, that's one question. And then
the other question is do you see that having any ill
effects for those systems, the kinds that one ought
to think about if you were advocating for that in a
different state, is there any bad side to that.

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

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look at health care, mental health care, maybe
violence. Florida has one that deals with health
care, for example, and others are cited.
There's also a way where the government can
get in and do something where they're appointing a
commission, but in my testimony I emphasize that it
is very important that I think an outside commission
does not become an arm of the prison administration,
and the ways to avoid that is to have many
stakeholders be part of that process. One is to have
both, if you have a state where there isn't really a
minority/majority party to have people appointed from
both parties, both from the governor's office and
from the legislature, and also an authorizing statute
to include provisions that would appoint people from
the outside such as people from Legal Services or
from the health-based organizations or from
providers, and this is a way to have a commission
that will be open, I think that is possible. I've
had a few people come to us and talk about could
there be statutory provisions but I haven't seen
something implemented, but there are some models out
there.

MS. WALKER: Briefly, if I understand
your first question, Mr. Schlanger, would other

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

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

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

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MR. SMITH: Yes, sir.

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

So what happened was that Governor Thompson, many of you know him, Jim Thompson came in, he wrote the election in about he was going to clean up the system. The long and short of it, when he brought people in, new people, whole new staff, young, aggressive guys in who wanted to make a difference with the old-line guards, because that was the problem -- by the way, the governor fired the major and everybody on his staff because what they had did is countermand everything that the warden was saying to do. Every time they would bring a new TSG Reporting - Worldwide 212-702-9580

experience, most officers when they come into the system they're okay, they want to do the right thing. Sometimes they get co-opted by the few that are bad eggs, and I can tell you that anybody that is in the prisons system more than two or three years can tell you what officers are abusing people, what officers are bringing in drugs, they can even tell you what officers are alcoholics that they put on the night shift because they know, and maybe those are some of the things that some officers don't want to know, don't want the outside to know about. But most of the chief administrators, they want to know this, that's been my experience all the years I was incarcerated, and I don't -- and, secondly, I think that if you are talking about educating the public, how better to educate the public about what's going on in prisons and what's not going on in prisons by letting outside people coming in and see what's going on. I mean, it was a liberating force for me, my transformation took place because of people coming in, religious people and so forth, and I'm saying to me, it works. And if the objective is to put out a better product, why not have some quality control that's not part of, that's not necessarily part of the system, you know what I'm saying? Does that TSG Reporting - Worldwide 212-702-9580

answer your question?

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

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

DR. GILLIGAN: Mr. Smith, could I ask an additional question. TSG Reporting - Worldwide 212-702-9580
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<td>Because on paper, and I don't mean any disrespect to</td>
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<td>anyone here, I know most of these people want to do</td>
<td>anyone here, I know most of these people want to do</td>
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<td>the right thing, but on paper is one thing, but when</td>
<td>the right thing, but on paper is one thing, but when</td>
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<td>you go inside the institution, you see that everybody</td>
<td>you go inside the institution, you see that everybody</td>
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<td>is supposed to get a GED, that's the law in Illinois,</td>
<td>is supposed to get a GED, that's the law in Illinois,</td>
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<td>it is mandated. But it says if funds are available</td>
<td>it is mandated. But it says if funds are available</td>
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<td>or something to that effect, all right? So, in</td>
<td>or something to that effect, all right? So, in</td>
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<td>effect, you've got 500 guys on a waiting list to get</td>
<td>effect, you've got 500 guys on a waiting list to get</td>
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<td>GED and you have 40 slots, so it is that kind of</td>
<td>GED and you have 40 slots, so it is that kind of</td>
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<td>thing that the public can say, &quot;Well, wait a minute,</td>
<td>thing that the public can say, &quot;Well, wait a minute,</td>
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<td>we sent this guy in here and you sent him back</td>
<td>we sent this guy in here and you sent him back</td>
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<td>worse,&quot; you know what I mean? &quot;You sent him back to</td>
<td>worse,&quot; you know what I mean? &quot;You sent him back to</td>
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<td>us worse than he was.&quot; And I guess to some extent,</td>
<td>us worse than he was.&quot; And I guess to some extent,</td>
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<td>and I know this is kind of touchy, to some extent it</td>
<td>and I know this is kind of touchy, to some extent it</td>
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<td>doesn't matter to some people because you are not</td>
<td>doesn't matter to some people because you are not</td>
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<td>dropping them back off in their neighborhood but when</td>
<td>dropping them back off in their neighborhood but when</td>
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<td>you are dropping them back off in my neighborhood</td>
<td>you are dropping them back off in my neighborhood</td>
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<td>where I live, you have a guy coming out more angrier,</td>
<td>where I live, you have a guy coming out more angrier,</td>
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<td>I'm worried about that guy. I don't want him walking</td>
<td>I'm worried about that guy. I don't want him walking</td>
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<td>down the street where my grandmother is because he is</td>
<td>down the street where my grandmother is because he is</td>
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<td>angry now. It is the same thing you talked about</td>
<td>angry now. It is the same thing you talked about</td>
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<td>with mental health.</td>
<td>with mental health.</td>
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<td>Well, you can see this every day. There</td>
<td>Well, you can see this every day. There</td>
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<td>was a guy named T.J. Every day he would come out of</td>
<td>was a guy named T.J. Every day he would come out of</td>
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<td>his cell, he would take off of all of his clothes,</td>
<td>his cell, he would take off of all of his clothes,</td>
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<td>heard from quite a few individuals who have been</td>
<td>heard from quite a few individuals who have been</td>
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<td>incarcerated for periods of time and in my memory</td>
<td>incarcerated for periods of time and in my memory</td>
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<td>absolutely every one of them, including you, have</td>
<td>absolutely every one of them, including you, have</td>
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<td>talked about some transforming relationship, some</td>
<td>talked about some transforming relationship, some</td>
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<td>relationship that you had that really made a big</td>
<td>relationship that you had that really made a big</td>
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<td>difference and changed things for you, and I have a</td>
<td>difference and changed things for you, and I have a</td>
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<td>sense that we haven't heard that as a commission.</td>
<td>sense that we haven't heard that as a commission.</td>
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<td>Absolutely everybody has said that. And we have been</td>
<td>Absolutely everybody has said that. And we have been</td>
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<td>talking all around about programs and things like</td>
<td>talking all around about programs and things like</td>
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<td>that but no one seems to hit on this issue that keeps</td>
<td>that but no one seems to hit on this issue that keeps</td>
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<td>coming up and I wonder if you would comment any</td>
<td>coming up and I wonder if you would comment any</td>
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<td>further on what you meant or what was the essence of</td>
<td>further on what you meant or what was the essence of</td>
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<td>that because you use that as part of your whole</td>
<td>that because you use that as part of your whole</td>
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<td>argument for allowing outside people to come in.</td>
<td>argument for allowing outside people to come in.</td>
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<td>MR. SMITH: It is true. It started --</td>
<td>MR. SMITH: It is true. It started --</td>
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<td>first of all, when I started talking to -- there's</td>
<td>first of all, when I started talking to -- there's</td>
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<td>some people that came in who were religious leaders</td>
<td>some people that came in who were religious leaders</td>
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<tr>
<td>and -- Christian, Muslims and Christian Science --</td>
<td>and -- Christian, Muslims and Christian Science --</td>
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<td>and these were programs that before then, you know,</td>
<td>and these were programs that before then, you know,</td>
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<td>the only place you could go was to the chapel and</td>
<td>the only place you could go was to the chapel and</td>
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<td>that was like for half an hour. But then they</td>
<td>that was like for half an hour. But then they</td>
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<td>started to have ministries, they call them, coming in</td>
<td>started to have ministries, they call them, coming in</td>
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<td>and you could access these people on the weekend,</td>
<td>and you could access these people on the weekend,</td>
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<td>hour, two hours, and get various kinds of lessons.</td>
<td>hour, two hours, and get various kinds of lessons.</td>
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<td>Then there was the drug counseling program and this</td>
<td>Then there was the drug counseling program and this</td>
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<td>Now that you are on the board of a prison</td>
<td>Now that you are on the board of a prison</td>
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<td>watch group, the John Howard Association, what</td>
<td>watch group, the John Howard Association, what</td>
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<td>suggestions or recommendations, if any, do you have</td>
<td>suggestions or recommendations, if any, do you have</td>
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<td>to make to that association regarding its prison</td>
<td>to make to that association regarding its prison</td>
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<td>monitoring work and do you have recommendations to</td>
<td>monitoring work and do you have recommendations to</td>
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<td>this commission as to what we should recommend</td>
<td>this commission as to what we should recommend</td>
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<td>ourselves.</td>
<td>ourselves.</td>
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<td>MR. SMITH: I think, you know, prison</td>
<td>MR. SMITH: I think, you know, prison</td>
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<td>is a very closed society, you know, and it is the</td>
<td>is a very closed society, you know, and it is the</td>
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<td>same thing that I say to the board members. We've</td>
<td>same thing that I say to the board members. We've</td>
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<td>got judges on the board and so forth. And one of the</td>
<td>got judges on the board and so forth. And one of the</td>
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<td>things that each board member has to do is visit a</td>
<td>things that each board member has to do is visit a</td>
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<td>prison at least once a year as long as you are on the</td>
<td>prison at least once a year as long as you are on the</td>
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<td>board and oftentimes they don't know what to look</td>
<td>board and oftentimes they don't know what to look</td>
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<td>for, you know. They say, &quot;Well, what should we look</td>
<td>for, you know. They say, &quot;Well, what should we look</td>
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<td>for, what should we be doing.&quot; And I said, &quot;Well,</td>
<td>for, what should we be doing.&quot; And I said, &quot;Well,</td>
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<td>you know, guys are going to give you -- they're going</td>
<td>you know, guys are going to give you -- they're going</td>
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<td>to give you everything.&quot; You know, some guys are</td>
<td>to give you everything.&quot; You know, some guys are</td>
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<td>trying to get some money to spend in the commissary,</td>
<td>trying to get some money to spend in the commissary,</td>
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<td>you know. But most of the time if you ask the hard</td>
<td>you know. But most of the time if you ask the hard</td>
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<td>questions, right, about medical treatment, about</td>
<td>questions, right, about medical treatment, about</td>
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<td>abuse, about sexual predators, those -- about</td>
<td>abuse, about sexual predators, those -- about</td>
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<td>visitations, about transfers and classification,</td>
<td>visitations, about transfers and classification,</td>
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<td>education, these are the kind of things that the</td>
<td>education, these are the kind of things that the</td>
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<td>outside group should be wanting to find out about.</td>
<td>outside group should be wanting to find out about.</td>
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<td>put them on the gallery, take all of his bedding, put</td>
<td>put them on the gallery, take all of his bedding, put</td>
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<td>them on the gallery, walk around the gallery two or</td>
<td>them on the gallery, walk around the gallery two or</td>
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<td>three times see what the reaction would be. You</td>
<td>three times see what the reaction would be. You</td>
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<td>know, he was spaced out. He put them back. Do you</td>
<td>know, he was spaced out. He put them back. Do you</td>
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<td>think the guards did know about this? Yeah, they</td>
<td>think the guards did know about this? Yeah, they</td>
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<td>knew about that, but it is like, &quot;That's T.J., he</td>
<td>knew about that, but it is like, &quot;That's T.J., he</td>
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<td>is crazy.&quot;</td>
<td>is crazy.&quot;</td>
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<td>The other thing is the guys who were angry</td>
<td>The other thing is the guys who were angry</td>
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<td>and violent all the time who have known issues and we</td>
<td>and violent all the time who have known issues and we</td>
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<td>knew it, the prisoners knew it, but the guards, &quot;He</td>
<td>knew it, the prisoners knew it, but the guards, &quot;He</td>
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<td>got a mental problem?&quot; &quot;No, he is just an angry</td>
<td>got a mental problem?&quot; &quot;No, he is just an angry</td>
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<td>black man, he ain't got no mental problem.&quot; So these</td>
<td>black man, he ain't got no mental problem.&quot; So these</td>
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<td>are the kind of things that outside agencies can see</td>
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<td>and maybe report to the chief administrator because</td>
<td>and maybe report to the chief administrator because</td>
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<td>the average guard is not going to do it, he is not</td>
<td>the average guard is not going to do it, he is not</td>
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<td>going to tell his captain, &quot;You know, I think that</td>
<td>going to tell his captain, &quot;You know, I think that</td>
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<td>guy is crazy,&quot; he is not going to do that, he is not</td>
<td>guy is crazy,&quot; he is not going to do that, he is not</td>
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<td>trained to do that.</td>
<td>trained to do that.</td>
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<td>DR. GILLIGAN: Dr. Dudley.</td>
<td>DR. GILLIGAN: Dr. Dudley.</td>
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<td>DR. DUDLEY: I'm glad you just said</td>
<td>DR. DUDLEY: I'm glad you just said</td>
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<td>what you just said because that's one of the things</td>
<td>what you just said because that's one of the things</td>
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<td>we have been arguing about that seems so real when</td>
<td>we have been arguing about that seems so real when</td>
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<td>you are actually in the prison, but I actually wanted</td>
<td>you are actually in the prison, but I actually wanted</td>
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<td>to ask you about something else.</td>
<td>to ask you about something else.</td>
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<td>During the life of the commission we have</td>
<td>During the life of the commission we have</td>
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was started by one of the social workers who was also a counselor and she volunteered, they had a volunteer program, there were numerous programs that were started as a result of the riots, okay, to kind of address on the issues, and she would volunteer to come in and she would have a drug education course. I can tell you it was liberating for me to find out -- it wasn't liberating at first because it puts you in a circle and they don't let you get away with stuff, you know, but eventually it was liberating for me to find out why I was using drugs because drugs weren't the problem, it was a deeper problem, do you know what I'm saying? And once I began to get that connect then I could see myself whole. But as long as they were talking about drugs as bad, drugs were good. And, I mean, that's one of the problems you have with telling somebody young that drugs are bad and they say how can it be bad, it makes me high, I feel good. But once you tell them the effects of drugs and what it does to you and they get educated about that you can see a change, I think.

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

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One is this issue of finding out from inmates what they perceive, can you rely on that; how important is it to talk to inmates and find out what they think. I think it is very important. And I think it is -- I was, to my experience having talked to inmates for a very long time that there are credibility issues with everyone, but there are many ways to kind of look at that and then figure out where the truth lies or not. And one thing that is important in terms of the data that we have, is that we have found substantial differences among the prisons and that really takes out the sense of our prisoners lying. Why would we have in one prison only three percent of the people that we surveyed say that they ever had a confrontation at that prison and in another prison it is 33 percent, and these are people that are in that particular prison, people move around a lot, so they're in a particular prison 11 months at one prison and we see a 10 times rate. Well, that suggests that you have ways to validate that data. And we have a series of about 11 or more preliminary results and those results are, a couple of them that I want to point out. One is there's a significant break of violence, both inmate on staff and inmate on inmate, and I think it is very important that you make connections between both, you don't just look at one, and I find that there's a real connection between that. If there is a real tension within a prison, I think it manifests itself in both ways. As a matter of fact, I have had inmates say to us when we have focus groups that say, "You know, we kind of stopped fighting, punching out the staff because we know we're really going to be harmed and so we take out that tension on other inmates because it is our only outlet." So if you a see a high rate of inmate-on-inmate, you have to look at what is causing that.

We did look at drugs and gangs and we had some interesting data on that. I think in New York we have less of a drug problem -- excuse me, a gang problem than you do on the West Coast, but we saw differences in different prisons and is that because the population is different? No, it is not. 60 some percent of the people in New York come from New York City in the state prison system. But what it is when you don't have mechanisms that work where they see other associations, you were talking about this yesterday, that are effective, other ways you can do it; vocational, jobs, other things, when you feel you are shut off, then gangs become an important
things fall apart where the white shirts are not there, where the commanding officers are not around, and I'm not quite sure exactly why that is, but the respect is important. When you talk to old time cons they will tell you they remember in the seventies people called people sir, they remember when people were addressed by their last name, you know; Ms. Robinson, Mr. Maynard. It is not that way anymore. That's why I mention the lack of respect I think can lead to abusive environments were the tiny, degrading, everyday humiliating name calling that can occur is allow to occur, and without cameras that record, especially in high security areas, the officials cannot find out about these things, it is not going to be reported with any regularity and it is not going to be believed unless it is seen and heard so I think it is critical.

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

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A year and a half ago the governor came up with $13 million, half of it to go to the department, half of it to go to mental health to try to start to create some sort of solutions. You know, if you are going to do monitoring, I believe there are two main, essential components. We should be working with the
effectively with them, we should work in the sense of
we have to make our findings that we should be
sharing with them even before we produce them so you
have an opportunity to say, you know, you are wrong
in this area, it could corrected, or we are going
this already, give us credit, help us on that, and
then narrow that down and have them come up with the
corrective plan, that's on the one part. But we
can't enforce monitors generally on the outside.
Monitoring agencies are not going to necessarily have
enforcement mechanisms other than what I would urge
is the requirement that at least the department
respond to the findings but we're not going to be
able to enforce them, so what is the enforcement
mechanism. Ultimately it is the risk of litigation,
that's what unfortunately is the last and the the
ultimate resort. What you hope is that there's going
to be a risk/benefit analysis because once you have
written a report and you have sent it to the
commissioner he can no longer complain I'm ignorant
about what's going on. That risk/benefit calculus
will then include, you know, I can be exposed to
litigation about this, I can have a consent decree
that I don't want to have, and, therefore, I am going

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

MR. SMITH: I'm going to try to answer
you, Commissioner.
The procedures are there. They got crisis
management teams, et cetera. The problem is here.
Unless you are cutting yourself or cutting somebody
else, you are not going to get no assistance. Now if
you start cutting on yourself, they will send a
crisis management team there and then take you
MS. HALL-MARTINEZ: I just wanted to add very quickly two sentences.

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

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

It has been about eight years since I got off the maximum-security yard and I can tell you, in Arizona you've got to see a psychiatrist once every third Tuesday, a psychiatrist would come in the yard, you go there, tell them you had a problem, they would give you some kind of drug, that's the last you see of them. There was no place to put the guys that had a mental issue anyway, it is bed space, they have to turn the chair over to the co-chair of this panel more importantly, what you doing out there. I really appreciate that. So thank you very much.

Before we draw to a close I would like to turn the chair over to the co-chair of this commission as a whole for some last words about our efforts here.
JUDGE GIBBONS: At this time, yes, we are bringing to a close the last of our group of hearings.

We thank all of the witnesses who have testified over the last two days, as well as all of those who attended and listened to the hearing and thus shared our interest in this very important work. The commission will be issuing its report and recommendations this spring. We are hoping to have it done before June. And we hope that all of you will read it and help to publicize it. Thanks, everyone.

(Hearing concluded at 5:05 p.m.)
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