(Recess)

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 Prisoner Rape. Mr. Smith is Director of Client Services at the Center on Wrongful Convictions at Northwestern University's School of
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 Prisoner 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 can 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
standards of conduct and no sense of security. There at Stateville 24-hours a day, seven days a week, there was a constant atmosphere of random violence. It was a condition which I had to adapt to quickly in order to survive.

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

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

From that day forward, each time I would hear
someone yelling or pleading for help in the distance
of the cell house or the cell next door or when I
came up on somebody being stabbed or crying out for
help, it seemed that their cries became less and less
heard by me as my sense of compassion and caring
failed to hear them more and more. In essence, I
learned to wear the mask, to suppress my human sense
of caring for others, to conceal my compassion in
order to survive, such as it was, for another day.
I might have completely lost my moral
center and belief that all life is precious had it
not been for the job I later secured in the prison
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.

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
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 or staff member abuse of a prisoner, within 72 hours 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 unvisible 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
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
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
retaliation of the corrections officers but it 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
it has happened here for the last two days, is the
use of words. I personally find it very offensive to
have prisoners referred to as offenders, I don't even
like "inmates." I mean, they are prisoners, and this
is part of the whole dehumanizing process that has
gone on that has allowed abuse to run rampant in some
prisons, not all, thankfully, but I would urge you to
consider the very use of the words to label people
that have committed crimes. People often say to me I
am not my crime, I'm a person that committed a crime,
and that very slight difference can be very
significant. A verbal commitment to this kind of
holding people to high standards is insufficient;
consistent adherence to this kind accountability at
all levels is required. A lot corrections officers
have been around for a long time and they're going to
wait out a good superintendent, they're going to wait
out anyone else. But what happens is that the
commissioners need to be consistent at all levels.

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

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

Very briefly, I have run out of time but I
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
assess the safety and abuse in New York prisons. For our current study on prison violence we have interviewed or received surveys from more than 850 inmates in 11 prisons of the 70 prisons in New York, and we anticipate to have a thousand surveys done when the project is finished.

In my testimony I laid out many different ways I thought you could assess the effectiveness of non-governmental oversight but I would like to talk about two and those are transparency and accountability, the two terms we have been focusing on these last two days.

The most important aspect of our legislative mandate is access to the prisons. We can go anywhere in the prisons we want and speak to any inmate in their housing area or program area. It is crucial that a monitor speak to the often silent majority of the prison population who are not necessarily out advocating for themselves, but rather attempting to survive their prison term and get out. We also talk to staff and the prison executive team. Getting a true picture of what is happening requires that the monitor identify how prison practices diverge from stated prison policy. Direct access to inmates and to staff is essential to
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 forces 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
included, as should the views and opinions of staff and prison executives. The credibility of the monitor will always be tested, and it is crucial that the organization can fully support its conclusions and demonstrate that it is equally prepared to listen to and present the staff's and the administration's views.

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

Two areas that I hope we can get to talk about because I see my time is up, is, one, what is the role between a monitoring agent and the
department, and I have certain views of that and it basically goes to the model of what I call quality assurance, namely that the agency should have to develop, respond to findings of the monitor and develop their own corrective plan.

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

Thank you.

DR. GILLIGAN: Thank you.

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

From my years of working in the prison system I reached the conclusion that rape in prisons might very well be the most frequent, unreported crime of major violence in America today for the simple reason that everybody involved has a vested interest in keeping it secret to a degree that's just not even comparable to the situation in the free world. The prisoner can be reluctant to report it because of fears of being called a snitch or a rat and really could be subjected to assaults or even death, murder, if they complain about it. The
perpetrators, of course, have a vested interest in keeping it a secret, and the prison administrators and correctional staff have a vested interest in keeping it secret because it makes them look bad. I'm saying that as a preface to asking you how do you deal with this problem and how do you suggest we can deal, what experiences have you had with the issue of the powerful pressures on the part of everybody involved to keep this a secret and when you are able to penetrate that wall of secrecy, what can you do effectively to protect an inmate against retaliation.

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

But I guess to get back to your question for a second, I mean, penetrating the wall of secrecy is just such a challenge and I guess we felt that, again, one place to start is just in trying to make it possible for that person to get some counseling from an expert, from a person who is trained in dealing with rape and with posttraumatic stress disorder that results from rape and then see how and whether that person wants to somehow move forward. So we're still, I guess, we recently hired a mental health program director and this is part of what she is doing in her work. Again, a lot of this has come out of the survivors that are part of our governing structure and our advisory committees and they too know that we're still so small that we can't do
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
DR. GILLIGAN: Do you have any thoughts or have you had any experience with collaborating with the media to try to disseminate the information you have been getting? For example, I mean, 500 letters is quite a large database, you might say. Have you had any contacts with television, movie, newspaper, magazine, any form of media dissemination on this or have you given much thought to that?

MS. HALL-MARTINEZ: Well, definitely a major part of our mission is to try to change public attitudes and, of course, the main way that that can happen for a small organization like ours is by relying on media to help us do that so it is a significant portion of our resources in terms of we have communication specialists whose job it really is to try to get the word out there on this and we work with them, we certainly have, we were part of an effort to get some -- for example, there was a very offensive commercial on at one point by 7-Up that dealt with prisoner rape in an extremely callous way and we were part of getting that pulled by them. That was a couple of years ago. In a couple of cases we tried to get -- the show "E.R.," for example, did a positive show where they, you know, tackled the
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 which 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, that 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.
MR. BECK: Your second question first, ill 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
grievance rather than just be frustrated.

When we have looked at our violence data I can say that the high violence is in the areas where there is a tremendous amount of tension, where there is no communication between staff and inmates. When you go to a facility where there's communication violence is down, we're on another form of communication, so I don't think there's a lot of chance of disruption. On the rare occasion there was, the executive director was telling me before I got there, there was this one time where we went to the prison and there was a disturbance before we got there and they said, "I'm sorry, you can't come in today, we're locked down." Well, of course we wouldn't go into a situation if it felt like it would cause further disruption, but I don't believe it has that impact.

Whether there's a model elsewhere -- in my testimony I lay out there's a couple different models. Do I think that necessarily our statutory provision which was done in the 1842s can be necessarily done today? I think that's a legitimate question that would be difficult, it is very broad-based. But there are other models where they have created commissions to look at specific issues,
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
systems voluntarily do this, I don't know. I think so much of it, like life, depends upon the personalities involved. Some commissioners, some superintendents, some wardens, "Certainly, come in, go wherever you like," other are bothered by the idea and concerned about safety and concerned about other things that will happen like perhaps some legitimate things, people stirring up trouble, but I have something to offer with regard to the second question, the ill effects for the system where we do go, something not ill but actually quite wonderful and a good reason why I think we have remained alive the number of years we have remained alive and received some state funding.

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

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

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

DR. GILLIGAN: Mr. Krone.

MR. KRONE: Yes.

New York, Massachusetts, Illinois,
California, so you are pretty much across the
country. Is there any clearinghouse, any center
where anybody who works in human rights, prison
rights type of thing, oversight, that works like a
clearinghouse, a central place where you use to meet,
compare notes, exchange ideas? Is there anything out
there and would it be worthy or worthwhile at all if
you had something like that?
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 we 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
be up to seven, eight, or nine days. But what
traditionally happens is that if you want to have
somebody present at a hearing, you have to -- there's
a part down there that you have to sign and send back
through the mail to tell the committee, the
adjustment committee, that you want somebody present
at your hearing, or that you even want to have
witnesses come to the meeting, other inmates. And
what traditionally happens is they deny it, and you
don't know that they have denied it until they call
you for your hearing. You get like 40 minutes'
otice, your hearing is today, stay in from your
detail or whatever the case may be. And then you go
to your hearing and say, "Where are my witnesses?"
And they say, "Well, we ain't got time to call your
witnesses," or "We didn't get it," or something like
that. So the reality is that it is there,
Commissioners, the provisions are there, but the
reality of it happening are nil.

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

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

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

Now from my perspective, you know, I
thought that was a good thing that you've got people
coming in and who can tell the chef administrators
what they're not hearing from the line staff, that
seems to be a good thing. I don't understand -- and
they can also see people who are being abused. Now
maybe that's one thing that the line staff don't want
them to see, you know, some of them, you know. My
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
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.
Now that you are on the board of a prison watch group, the John Howard Association, what suggestions or recommendations, if any, do you have to make to that association regarding its prison monitoring work and do you have recommendations to this commission as to what we should recommend ourselves.

MR. SMITH: I think, you know, prison is a very closed society, you know, and it is the same thing that I say to the board members. We've got judges on the board and so forth. And one of the things that each board member has to do is visit a prison at least once a year as long as you are on the board and oftentimes they don't know what to look for, you know. They say, "Well, what should we look for, what should we be doing." And I said, "Well, you know, guys are going to give you -- they're going to give you everything." You know, some guys are trying to get some money to spend in the commissary, you know. But most of the time if you ask the hard questions, right, about medical treatment, about abuse, about sexual predators, those -- about visitations, about transfers and classification, education, these are the kind of things that the outside group should be wanting to find out about.
Because on paper, and I don't mean any disrespect to anyone here, I know most of these people want to do the right thing, but on paper is one thing, but when you go inside the institution, you see that everybody is supposed to get a GED, that's the law in Illinois, it is mandated. But it says if funds are available or something to that effect, all right? So, in effect, you've got 500 guys on a waiting list to get GED and you have 40 slots, so it is that kind of thing that the public can say, "Well, wait a minute, we sent this guy in here and you sent him back worse," you know what I mean? "You sent him back to us worse than he was." And I guess to some extent, and I know this is kind of touchy, to some extent it doesn't matter to some people because you are not dropping them back off in their neighborhood but when you are dropping them back off in my neighborhood where I live, you have a guy coming out more angrier, I'm worried about that guy. I don't want him walking down the street where my grandmother is because he is angry now. It is the same thing you talked about with mental health.

Well, you can see this every day. There was a guy named T.J. Every day he would come out of his cell, he would take off of all of his clothes,
put them on the gallery, take all of his bedding, put them on the gallery, walk around the gallery two or three times see what the reaction would be. You know, he was spaced out. He put them back. Do you think the guards did know about this? Yeah, they knew about that, but it was like, "That's T.J., he is crazy."

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

DR. GILLIGAN: Dr. Dudley.

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

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

MR. SMITH: It is true. It started -- first of all, when I started talking to -- there's some people that came in who were religious leaders and -- Christian, Muslims and Christian Science -- and these were programs that before then, you know, the only place you could go was to the chapel and that was like for half an hour. But then they started to have ministries, they call them, coming in and you could access these people on the weekend, hour, two hours, and get various kinds of lessons. Then there was the drug counseling program and this
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
moral center which is what I was able to do with some
of the groups that was coming in, I don't think that
you are going to change. I think the behavior
pattern, the culture that I was raised in and so
forth, it was cool to do those things that I was
doing. And it may not have been socially acceptable
to certain groups but within my group, that was the
way you got ahead, you know. And so for me it was a
spiritual component that helped me transform my
behavior. And at the risk of being politically
incorrect, I thank God for that today, you know. So
I think that when you just deal with -- let me put it
this way. I think that you should make things
available for people in addition to just the regular
social sciences.

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

MR. BECK: Well, in my written material
we had some preliminary findings in there but we are
literally, this data is being collected while I'm
here and we haven't come up with recommendations yet,
but I think there's several interesting components to
what we have and I think it will go to some of the
points you discussed over the day.
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
instrument for protection, for support, that's how you validate yourself. And so we did see that gangs were an element, they exist, but the real question is are they a source of violence and at the prisons that we found where there is great tension, they were much more a source of violence.

Another area we haven't really talked about is a race question. Race is a crucial issue. If you don't talk about race, you are not talking about the criminal justice system, in my opinion. It is a racist system. Certainly in New York we have, I will give the numbers, it is about 80 percent are people of color, and yet we put them in prisons where three and five percent of the prison staff are people of color, and often it is an urban population that is being incarcerated and it is a rural population that are looking at them, how can you have -- and this is about effective communication and respect. How can you take a person that's grown up in an all white community, rural community, and now they're going to be dealing with people of color, that the only people of color they see have been convicted of a crime and they're in an environment where they have total control over that person and there's no respect. And if there's one thing I got from our study, it is that
you have violence when you don't have mutual respect
and so inmates would say, "Why is there not violence
here? Because they respect us and therefore we
respect them back." So these are not rocket science
things, but they're really cause and effect and we
see, I think, some of those elements.

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

MS. WALKER: Very briefly I would echo
what Jack has just said, that when prisoners are
treated with respect, they respond in kind. For all
of the complaints I get from prisoners about abusive
guards, I also always ask is there anything good
going on. We have a prison liaison project where we
go out to all the maximum-security prisons and
medium-security prisons and interview prisoners who
are good reporters, reliable reporters known to us,
some new prisoners, who care about more than just
their own issues and we hear good things. "This CO
has been like a father to me," "This guy is an honest
straight shooter," "This guy I can rely upon," "This
guy is a decent human being," so in those units when
people are in charge, things go well. Typically it
is the day shift. It is the second shift where
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
administrator or the sheriff or whomever, because I
was in county jail for a lengthy period of time, they
don't know what's going on with their staff all the
time. I mean, for the most part, like she was
saying, the day shift you've got all the brass, they
would call it, on. And that's why they act out, the
officers act out, because there's no brass there to
correct them, in my opinion. And what happens is
that when the shift changes in the evening there's
less captains, you have maybe one shift commander and
there's no major around and there's no superintendent
around, you've got a duty warden, and so guys get
away with more, and they do. And that is very true
that -- when I worked my way up from max to minimum
there was a superintendent who demanded this, he was
straight, no mince. He demanded that you respect the
officers, he demanded that the officers respect you,
and when the guys knew that was coming from the top,
they responded differently.

DR. DUDLEY: I would like to -- I agree
with what the last three of you said and I would like
to particularly go back to what Mr. Beck was saying.
I am convinced that what you are saying is
not only central to virtually every issue that we
have been discussing during the life of this
commission, although we haven't been really
discussing it so clearly in that way, although I
think it obviously underlies everything that we have
talked about, and I wanted to go back to an earlier
question that came up because I think it is also
particularly relevant there.

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

I also think that the problem that you are
describing helps explain this enormous dichotomy that
we have been hearing about how great the assessment
processes are, and then at the same time the reality
that there are all these mentally ill people in
segregation as opposed to in treatment where their
illnesses are missed, they're not diagnosed, they're
not being picked up, and I suspect it is the same
issues. You have not only corrections officers who
are totally unfamiliar with the community and
therefore find it difficult to identify those who are suffering from mental illness as you all have suggested, particularly if any behavior is attributed to the fact that they are bad inmates and you are otherwise unfamiliar with this whole population of people of color, but even the professionals make the same errors and, therefore, the diagnoses are missed in the assessment process and people are treated as bad as opposed to ill, and I'm wondering if you have any thoughts about that.

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

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

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

I saw this man, he had scars on his arms and across his head. He is spending 10 years in the box. That's what we call disciplinary segregation.

He had been to the psychiatric hospital 21 times during this time period cycling back and forth. And we have a residential mental health component called the Intermediate Care Program. He hadn't been there since 1977. He has been in the box this whole time.

It is entirely predictable, I have some data which is not part of this but another study, where it is 21 times greater that someone in disciplinary segregation will end up going to one of these psychiatric centers than someone who is in the regular mental health facilities within the prison.

And so, you know, that is torture when you know that someone, it is predictable that you will seriously harm someone. And I don't mean to overstate it, but I think it is a reality. This is not just the difference between policy and practice, this is policy, that they take people with severe mental
illness and they place them in disciplinary
segregation. I have studies where we have gone in
and more than 50 percent of many of the people in the
disciplinary segregation in New York are on the
mental health caseload.

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

So what happened with this perfect storm?
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
department, we should be attempting to communicating 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 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
to do something and correct the problem. So I
believe in that respect litigation plays a role in
any monitoring because it is ultimately an
enforcement mechanism. Now I did litigation for 23
years and I don't believe it is the panacea and I
have a lot of problems about the PRLA and all of
that, but it still is, unfortunately, in our current
system, it is the only force that's going to deal
with the recalcitrant institution. And I don't
mean it is because the administrator is bad, often it
is a function of I don't have the resources to do
what you are asking me, I can't do it on my own and,
therefore, litigation is going to force that.

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

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

MR. BECK: But there's an additional problem I'm saying of what often people talk about on the mental caseload, at least in New York. Well, on the mental health caseload, it doesn't necessarily mean that you have a mental illness, but it means that you are receiving their services. But if you have a person who is quite disturbed but refuses to take the psychotropic medication, they're going to be kicked off the mental health caseload. It is not that they don't know that they're ill, but they will not meet the very limited treatment modality that is
being offered. Now are there others that do that,
yes. As a matter of fact, we have been supportive of
legislation that will propose, that would give
training to staff to be able to identify that person
in their general population, there are a huge number
of people in general population with mental illness
and for them to recognize is this confrontation
really because I have an inmate that is just getting
in my face or is there something going wrong here; to
also look at people that are on medication that have
gotten off their medication and what are the symptoms
of that so there can be interventions to avoid it
before you have what we call in New York the ticket.
You get a ticket and you end up in the box. No, the
idea is to have intervention. Well, staff needs
training to do that and obviously you need resources
to promptly respond.

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

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

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

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

In 1981 when we had 20,000 people and we
have gone up to over 70,000, we're at 63,000, and in
1981 they opened the forensic mental hospital with
189 beds. Today we still have 189 beds in the
forensic hospital. We then have this intermediate
care program which is the in-facility residential
mental health program, but there's only about five to
700 beds. We estimate that we have 3,000 people with
persistent, serious mental illness. We have 7,500 people with mental illness, but I'm talking about the serious ones, the ones you would want to be in resident, we have more than 3,000 and we have 700 beds. You are right, there are not adequate resources and it is a real problem, but this goes to, particularly this commission -- Al Bronstein, I have to absolutely agree -- we are incarcerating the wrong people and we have to deal with this question of the mentally ill, why they are in there to begin with. It should not be the last asylum and that's what prisons are. And what I would say, the last asylum is not just prison, it is disciplinary segregation in prison.

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

I want to thank you all very, very much for your time, the time you have given us here and even, 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.