

## EXPERT TESTIMONY ON OVERCROWDING

4                   MR. KRONE: I believe now we're going  
5 to continue now with the introduction of the  
6 overcrowding panel.

7                   On behalf of the Commission on Safety  
8 and Abuse in America's Prisons, I am honored to  
9 welcome our three witnesses; Vincent Nathan, Craig  
10 Haney and Richard Stalder. The Commission has invited  
11 this prominent group of experts to express the causes,  
12 implications and consequences of overcrowding in our  
13 prisons and jails.

14                   Overcrowding directly impacts both  
15 inmates and correctional officers every hour, every  
16 day that people are inside of a facility.

17                   This morning we are taking a serious  
18 look at how facilities operate above capacity or  
19 overcrowding, as we will call it. Many have safety  
20 failures, violence and abuse that directly impacts  
21 both inmates and correction officers. Through our  
22 witnesses today, we will consider the extent to which  
23 overcrowded prisons and jails are more difficult to  
24 operate and how overcrowding contributes to the  
25 breakdown of social order in a facility, harming both

1 prisoners and correctional staff.

2                   This panel will address these issues  
3 from several complimentary perspectives. Our  
4 witnesses have dealt with the challenges posed by  
5 overcrowded facilities in different capacities. We  
6 will draw upon their experience to develop a balanced  
7 report on the state of our knowledge on the link  
8 between overcrowding and violence. We will hear about  
9 how overcrowding causes systematic breakdowns that  
10 results in dangerous conditions. In the academic  
11 literature removed from daily experience of the  
12 inmates and corrections officers, there is no  
13 established connection between overcrowding and  
14 violence.

15                   We will hear from our witnesses today  
16 about how individual accounts, court cases and media  
17 reports, and even our witnesses' own experiences, are  
18 more able to make the obvious connection between  
19 overcrowding and violence.

20                   Attorney Professor Vincent Nathan has  
21 served as a consultant for several state departments  
22 of corrections. He has also been retained as an  
23 expert in conditions, lawsuits and studied prison  
24 violence at University of Toledo Law School.

25                   Dr. Craig Haney, professor of

1 Psychology at the University of California, Santa  
2 Cruz, will help us understand the consequences of  
3 deteriorating prison environments to inmates.

4 Richard Stalder, Secretary of  
5 Louisiana's Department of Public Safety and  
6 Corrections, has worked with the department for over  
7 30 years in different capacities. He will describe  
8 the systematic conditions related to overcrowding  
9 problems and how correctional institutions respond.

10 Let me thank each of you for taking the  
11 time to appear at this hearing. Our goal is to learn  
12 from your many years of experience and many years of  
13 hard work. We are confident by helping us, you will  
14 contribute to helping making correctional institutions  
15 safer, less abusive and more humane for those  
16 incarcerated, and safe for the men and women who work  
17 inside. Thank you.

18 MR. NATHAN: My name is Vincent Nathan.  
19 Let me begin by --

20 JUDGE SESSIONS: Would you pull the  
21 microphone up closer. We can't hear you.

22 MR. NATHAN: Good start. Is that  
23 better?

24 JUDGE SESSIONS: Much better.

25 MR. NATHAN: Thank you. Let me begin

1 by thanking the Vera Foundation for inviting me and I  
2 would like to thank, as well, the members of the  
3 Commission for their expression of interest and  
4 concern about the problems we've been hearing about  
5 and we'll be hearing about today.

6 I'm going to focus on the impact of  
7 crowding on the operation of a prison or a prison  
8 system and attempt to formulate for you a description  
9 of the perspective of the conscientious Director,  
10 Secretary of Corrections, who is faced with the  
11 exceptional difficulty of maintaining a safe and  
12 secure and, hopeful, industrious prison system,  
13 despite that person's inability to control the size of  
14 the population and, in many senses, the resources  
15 available to deal with that population.

16 You notice I used the word responsible  
17 as an adjective. In 1965, when I began working in  
18 prison and jail litigation, typically as a  
19 representative of the federal court, I did not meet  
20 very many Directors of Corrections whom I would have  
21 described as responsible. Now, let me add a quick  
22 cliff note. Special Masters don't go into good  
23 prisons as often as they go into bad prisons so I'm  
24 not suggesting that everyone with that length of  
25 experience or experience at that time was part of the

1       problem.

2                       But what I can say with confidence is  
3       that of all of the things we have accomplished through  
4       litigation, through the adoption of internal  
5       professional standards, through increased  
6       expectations, the impact of efforts on citizens groups  
7       and others, of all the things that we've accomplished  
8       I think the thing that may have been most valuable has  
9       been the enormous change in the prospective attitude  
10      and behavior of people at the administrative executive  
11      level of corrections in the United States.

12                      We are talking about people, for  
13      example -- and I'm going to make a couple of  
14      references to my State of Ohio, we're talking about  
15      spending almost \$2 billion a year and we have a  
16      person, Reggie Wilkinson in this case, who is  
17      responsible for the operation of almost 40 prisons and  
18      some 42, 43,000 inmates and he has qualities of  
19      administration and he has a sensibilities and concerns  
20      that simply -- that I simply did not see 25 or 30  
21      years ago, and I think that's true of many, many  
22      corrections administrators.

23                      Now, the concern that I tried to  
24      express in the brief statement that I gave you is that  
25      when state governments initially reacted to

1       correctional overcrowding by ignoring the problem,  
2       we've had a couple things going for us. At first we  
3       had the federal courts, who did step in and who did,  
4       not solve the problem, but accomplished a great deal  
5       and we've had a response to that in the form of  
6       building and expanding; not reducing population, but  
7       making more room. And, of course, that costs a lot of  
8       money and in the '90s money was cheap, it was easy to  
9       budget those kinds of expansions, it was politically  
10      easy and it was at least economically feasible.

11                   As the population increase has  
12      stabilized for at least a little while, or nearly  
13      stabilized, what concerns me so much is that we are  
14      going to see an increase in population soon and that  
15      we are going to find ourselves without the benefit of  
16      the courts for a number of reasons that I outline in  
17      my statement, and we're going to find ourselves  
18      without the money that we had in the 1990s to address  
19      the problem.

20                   The difficulties that administrators  
21      face in attempting to maintain safe institutions, to  
22      maintain staff moral, to prepare prisoners for  
23      re-entry, which is a fundamental responsibility in the  
24      state, to accomplish anything constructive is made so  
25      much more difficult by the inability to do anything

1 but respond to the daily crises in the form of  
2 violence, in the form of staff responses, in the form  
3 of deterioration of physical facilities and all of the  
4 problems that result from an overcrowded environment,  
5 it's a heartbreaking experience for people like Reggie  
6 Wilkinson and other directors.

7                   And I remember he said to me -- a  
8 couple of years ago he said, you know, we're going to  
9 make it, our population is going down, we actually  
10 lost -- we pulled our population down by 6,000. Now,  
11 that wasn't just happenstance, that wasn't just -- it  
12 wasn't because Ohioans quit committing crime, they  
13 have a lot of crime in Ohio, they have a lot of crime  
14 in all of our big cities in the state, but our  
15 legislature began to catch on and we began to  
16 decriminalize, we began to take some steps that  
17 resulted in reduced incarceration. And then the money  
18 went away. And what have we done?

19                   We've closed three or 4,000 beds to  
20 save money because we don't have any money for our  
21 colleges, we don't have any money for maintenance of  
22 Medicaid, we don't have money for secondary education.  
23 And even though the corrections department continues  
24 to be the only state agency with an increase in its  
25 budget, that increase is marginal compared to what it

1 was accustomed to.

2                   And so, as I point out in my written  
3 remarks we continue to, as many states do, double cell  
4 inmates who have just walked in the front door of the  
5 prison, we know nothing about them, we have no idea  
6 how two men or two women will respond. In fact,  
7 turning to women, the intake facility for women in  
8 Ohio maintains 250 women in one dormitory before they  
9 are classified. Now, if classification means  
10 anything, that kind of crowding and the resultant  
11 response that is inevitable, simply turns the concept  
12 on its ear.

13                   We have an opportunity now, it seems to  
14 me, while we enjoy the benefits of reduced pressure on  
15 intake, to begin to think seriously about the number  
16 of prisoners a particular jurisdiction is prepared and  
17 able to accommodate financially, physically and to  
18 develop policies that will bring our system into some  
19 form of balance. If we do not accomplish that, we are  
20 going to lose what I think is the most crucial -- the  
21 most crucial resource we have today to take the  
22 improvement of prison to the next stage, and that is  
23 the talent that we see in a large number of directors,  
24 a substantial number of wardens and deputy wardens and  
25 captains and majors and line correctional officers who

1 really feel differently about what they do for a  
2 living than they did 30 years ago, and who are  
3 prepared to make prisons work.

4 And if we say no, by our actions, we  
5 don't want to help you make it work, perhaps they will  
6 leave and when they do, they will replace -- they will  
7 be replaced by people who are willing to accept the  
8 status quo and work from there, and that's what we had  
9 for so long and that's what produced the problems of  
10 the '70s, the '80s and the '90s. Thank you very much.

11 MR. KRONE: Craig Haney now, please.

12 MR. HANEY: Thank you. Thank you for  
13 an opportunity to address such a distinguished group  
14 about such an important topic.

15 When people discuss and analyze  
16 prisons, and it's been evident in this morning's  
17 presentations, much depends on one's perspective.  
18 Depending upon that perspective, the glass is either  
19 half full or half empty. I want to acknowledge at the  
20 outset that I am a half empty guy.

21 I was a graduate student in 1971 and I  
22 was one of the principle researchers in what has  
23 become a notorious experiment in psychology, the  
24 Stanford Prison Study. And I sat as a graduate  
25 student and watched healthy, normal, young men turned

1 into either largely sadistic acting or behaving prison  
2 guards or victimized and, soon, emotionally  
3 dysfunctional prisoners in the period of six short  
4 days.

5                   Since that time, almost 35 years I have  
6 spent a lot of my professional life going in and out  
7 of correctional institutions throughout the United  
8 States, touring, inspecting, interviewing prisoners  
9 and, to a certain extent, staff and administrators as  
10 well. I would estimate nearly 100 of these tours and  
11 inspections in different facilities around the United  
12 States.

13                   Much of my involvement has been  
14 precipitated by litigation, so, like Vince Nathan, I  
15 am typically not called in to examine prisons at their  
16 best. I acknowledge to you at the outset, I have not  
17 seen American prisons at their best, but I have seen  
18 many of them at their worst and I have seen many of  
19 them with issues that this commission addresses,  
20 issues of safety and issues of abuse are at the  
21 forefront.

22                   I can tell you that when I began this  
23 work, the concept of double celling was regarded not  
24 just by academics, but by prison administrators as  
25 well as an unmitigated evil. Nothing has changed

1       except for the numbers of people that we have in  
2       prison to shift that judgement. Nothing has changed  
3       in academia to suggest that crowding is not harmful,  
4       nothing has changed in prison administration to  
5       suggest that prisons cannot be run better when they  
6       are not overcrowded. What has changed are the norms;  
7       the perspective from which we view these issues.

8                       Of all the things that have happened in  
9       American corrections over the last 35 or so years  
10       since I have been a witness to it, nothing is more  
11       important than overcrowding, in my opinion. There are  
12       many issues, but overcrowding, if one had to pick one,  
13       it would be the single one, and the related concept or  
14       trend of overincarceration.

15                      Now, overcrowding in this context I  
16       think is a bit of a term of art; it does not just mean  
17       too many people for the space available. It also  
18       means housing more prisoners in environments that  
19       don't have the infrastructure to manage them properly.  
20       Housing more prisoners in environments that don't have  
21       adequate programming resources, housing more prisoners  
22       in environments that don't have medical and mental  
23       healthcare that is commensurate with the number of  
24       people who are confined. And, by that measure,  
25       American prisons are and have been for the last 35

1 years, in many jurisdictions, woefully overcrowded.

2 Overcrowding does mean to a certain  
3 extent, however, social density and that's something  
4 that ought not be lost sight of. The average American  
5 prisoner lives in an environment roughly the size of a  
6 king size bed. If you have a king size bed at home,  
7 that's about 60 square feet, the average American  
8 prisoner lives in an environment just a little bit  
9 bigger than that. You have a modest size walk-in  
10 closet or a very small bathroom, imagine living your  
11 life in an environment that size, imagine having all  
12 of your worldly possessions in there with you and then  
13 imagine also having a friend to share that space with  
14 you, or an enemy as the case may be, because, as you  
15 well know, virtually every prison in the United States  
16 in double celled, if they are lucky. Some of them are  
17 housed in the space that size with a third person in  
18 certain jurisdictions, with which I'm sure you are  
19 familiar. So overcrowding does mean an absence of  
20 appropriate space, a lack of sheer physical freedom.

21 But it also means a lack of adequate  
22 programming. By most estimates, half or so of the  
23 prisoners confined in American prisons lack meaningful  
24 work opportunity, half or so. About an equal number  
25 lack adequate educational opportunities. In my state,

1 California, the average reading level of prisoners  
2 confined in our prisons is seventh grade and many of  
3 them, many of those prisoners have been in those  
4 prisons several times. So whatever kind of  
5 educational resources we're devoting to the process of  
6 educating them, they are not learning and they are not  
7 improving.

8                   There is a lack of adequate mental  
9 health program and medical resources in many  
10 facilities, in many facilities in the United States,  
11 in part because the sheer overwhelming numbers of  
12 people who are confined inside our prison system.  
13 Indeed, many prison systems lack the opportunity and  
14 the resources with which to do even adequate screening  
15 of people who are coming into the system. And, of  
16 course, if you can't identify a mental health or  
17 medical problem, you cannot treat it adequately. Most  
18 systems -- again, I will speak to my own state -- do  
19 no more than a superficial job of addressing these  
20 issues, in part because there are simply too many  
21 people coming into the system to devote the necessary  
22 amount of time to adequately assessing them and then,  
23 in part, frankly, because we don't have the resources  
24 with which to address their problems, even if we  
25 adequately identified them.

1                   Now, you heard some testimony earlier  
2                   today that despite the overwhelming oppressive numbers  
3                   in the system, somehow we have managed to keep order,  
4                   some semblance of order in most places. You are going  
5                   to hear more about this this afternoon, I know, but  
6                   let me share with you the mechanisms that I have seen  
7                   used in order to keep some semblance of order inside  
8                   these overcrowded and barely overrun and overwhelmed  
9                   facilities.

10                   In many prisons in the United States,  
11                   maximum security prisons, there are metal detectors,  
12                   x-ray machines, leg irons, waist chains, handcuffs,  
13                   black boxes, holding cages, violent prisoner restraint  
14                   chairs, psychiatric screening, chain link fences  
15                   concertina wire, tasers, stun guns, pepper spray, tear  
16                   gas canisters, gas grenades, and, in some  
17                   jurisdictions, mini 14 and 9-millimeter rifles,  
18                   12-gauge shotguns and the like in place, inside  
19                   housing units. That is, in some sense, the way we  
20                   have managed to maintain control and stability in some  
21                   of our worst and most overcrowded prisons.

22                   You are going to hear later on this  
23                   afternoon about another technique which has emerged in  
24                   the course of this recent period of overincarceration  
25                   and overcrowding, the use of the supermax prison,

1 where people are kept, at best, 23 hours a day lacking  
2 any human contact. I have regularly interviewed  
3 people who have been in these facilities for five or  
4 10 or 15 years during which time, among other things,  
5 they have not touched another human being with  
6 affection.

7 In my written statement to you and in  
8 other materials that I know people have written about  
9 these issues, we have addressed at length the  
10 psychological and psychiatric consequences of  
11 confining people in overcrowded facilities and of  
12 confining people in facilities where they are  
13 subjected to these forms of social and institutional  
14 control. There is a significant psychological and  
15 psychiatric price which is exacting and I would  
16 suggest to this Commission that unless we can get a  
17 handle on the overcrowding and overincarceration which  
18 has plagued our country over the last 35 years, then  
19 we will not be able to solve the many problems that  
20 you have been addressing and thinking about and  
21 analyzing. Thank you.

22 MR. STALDER: Thank you. Richard  
23 Stalder, Secretary of Public Safety and Corrections in  
24 Louisiana. First, let me say that the fact as a  
25 witness I don't have on a shirt and tie is not a sign

1 of disrespect of this Commission, it's a sign and  
2 simply reflects the fact that at 6:00 this morning the  
3 button on my buttondown collar escaped from my shirt  
4 and remains at large and, therefore, I'm doing the  
5 best that I can.

6 I would like you to know -- I want to  
7 begin, I guess, with my conclusion. On behalf of the  
8 Association of State Correctional Administrators, on  
9 behalf of the American Correctional Association, of  
10 which I am a past president, the executive director,  
11 Jim Gallon(ph.) is in the audience, I think, Mr. Ryan,  
12 you would agree as the past president of the American  
13 Jail Association, we share with you a very common goal  
14 in your work and that is to advocate for safe and  
15 stable and productive and organized and disciplined  
16 correctional environments in America. That is what we  
17 want.

18 Senator, we, as an association, have  
19 been working four years with the Department of Justice  
20 through VJA to develop the very kinds of performance  
21 measurements that you called for this morning,  
22 consistent across the board ability throughout America  
23 to say how many assaults do we have, how many escapes,  
24 not just the deaths and the suicides, but at a level  
25 of performance measurement that gets down into our

1 operations that can provide meaningful information to  
2 people like you to explore these problems. We are  
3 four years into doing that and we have six pilot  
4 states. Mr. Maynard is one of the pilot states, I'm  
5 one of the pilot states. We'll add probably seven or  
6 eight states by August or September and, hopefully, be  
7 in full operation in another six months. That would  
8 be the kind of information that you need and I'm proud  
9 that our association is doing that.

10 I want to speak to you about  
11 overcrowding, not from the fire marshal's perspective.  
12 I think I'm going to echo a little bit about what  
13 Vince and Craig said. You know, overcrowding from the  
14 fire marshal's perspective is, you know, can you exit  
15 people quickly in an emergency? What are your exit  
16 aisle widths and how big are your doors and where are  
17 your keys?

18 From the health department's  
19 perspective, overcrowding is contingent upon how many  
20 sinks do you have and how many toilets do you have and  
21 how many showers do you have?

22 And I think from our perspective,  
23 particularly from my perspective as an administrator,  
24 overcrowding means do you have more inmates than your  
25 resources can support? You know, we can have a

1 thousand bed prison -- two identical thousand bed  
2 prisons, one which is significantly overcrowded and  
3 one which is very safely and productively run simply  
4 as a function of the resources that are put into it.

5           You know, I want to very specifically  
6 urge your advocacy for certain things. One is for pay  
7 and benefits for correctional officers, people who  
8 work in our prisons and our jails. You cannot run the  
9 kind of safe and stable facilities that you want and  
10 that we advocate for without a well trained, career  
11 staff.

12           In Louisiana I regret to tell you that  
13 we start our correctional officers at the state level  
14 at \$18,000 a year, gross. Now, if they're fortunate  
15 enough to be able to participate in our group benefits  
16 insurance program, that takes \$3,600 off the top.  
17 Most of our correctional officers are eligible, thank  
18 God, for their children to participate in the  
19 Children's Health Insurance Program, funded federally,  
20 so at least the kids can enjoy health benefits. Our  
21 turnover is 30 percent a year.

22           If this Commission can advocate for pay  
23 and benefits for correctional officers in our prisons  
24 and our jails, you will take a significant step  
25 forward in promoting safety in these environments.

1                   You've heard earlier this morning about  
2                   the medical and mental health interests. Dr. Karl  
3                   Menninger wrote a wonderful book years and years ago  
4                   in Topeka, Kansas called "The Crime of Punishment."  
5                   We shouldn't lock up the mentally ill, he said, we  
6                   don't need to punish the mentally ill. And,  
7                   unfortunately, as a society we forgot to read the last  
8                   chapter. We read all the first of the book and we  
9                   should deinstitutionalize the mentally ill, we forgot  
10                  the last chapter that said we need to provide  
11                  community support for the mentally ill.

12                  And so the mentally ill became the  
13                  homeless and began to interface with the justice  
14                  system and tomorrow you will hear from Director  
15                  Wilkinson, who Vincent mentioned earlier, tomorrow you  
16                  will hear about that very tragic reality that our  
17                  correctional institutions are becoming de facto mental  
18                  health clinics, but we have to have the resources to  
19                  deal with it. Without the resources, without the  
20                  staff, without the professionalism that's needed to  
21                  cope with those kinds of problems, you will not have  
22                  the kind of safe environment that you promote as a  
23                  Commission.

24                  The medical issues. You know, when we  
25                  talk about safety, I like to say public safety

1 relative to corrections is not just about keeping  
2 dangerous people behind bars. Public safety is about  
3 making sure they don't exit our system with contagious  
4 diseases. So that if we know that someone has disease  
5 prevalence or that we have a higher disease prevalence  
6 in our institutions, we need the resources to deal  
7 with that, and I would urge this Commission to be sure  
8 that the scope of what you do and advocate for  
9 includes advocacy for the treatment of disease in our  
10 institutions.

11                   Twenty-five percent of the inmates in  
12 the State of Louisiana -- we test for tuberculosis, we  
13 test once a year, everybody, staff and inmates -- we  
14 have 25 percent tuberculosis prevalence. That doesn't  
15 mean they're sick, it means they test positive and we  
16 have to treat them. You know, the great news about  
17 tuberculosis is detection is cheap and treatment is  
18 cheap, so that's an easy one.

19                   Unfortunately, hepatitis C, as you  
20 heard Dr. Beck talk about this morning, probably one  
21 out of three inmates in America, because it's a  
22 disease of intravenous drug abuse and it's a disease  
23 of lower socioeconomic status have hepatitis C and,  
24 regrettably, the treatment is 18 months long and it  
25 costs about \$20,000 per inmate. You know, if I

1 treated everybody in the State of Louisiana in my  
2 correctional system who had hepatitis C, the cost  
3 would exceed the annual limit for bonded indebtedness  
4 for the entire state. We need help. We need  
5 attention to those kinds of resource issues.

6 Relative to overcrowding, I would like  
7 you to please consider supporting, for example, the  
8 Prison Rape Elimination Act Provisions For  
9 Safeguarding Communities.

10 It all has to do with we have a fixed  
11 resource base and we continue to pour more people into  
12 it, how do we make those resources stretch to  
13 accomplish our goals? And in my mind the best way is  
14 to quit putting so many people into the system, which  
15 means we need to pay attention to prevention, which in  
16 my mind means that we need to take -- we heard in Ohio  
17 people read at the seventh grade level, in Louisiana  
18 we had tested some 26,000 inmates four years ago and  
19 people come into our system at the fifth grade level,  
20 the fifth grade reading level.

21 You know, and that doesn't mean -- we  
22 can look at all the records and everybody claims I  
23 graduated from high school or I finished 11th grade, I  
24 finished 10th grade. They may have, you finish that  
25 all you want, you still can't read the fifth grade

1 level, that's, unfortunately, the reality we have.

2 We need to put resources into basic  
3 education in our prisons. We need to put resources  
4 into substance abuse treatment. 80 percent of the  
5 people that we deal with have substance abuse problems  
6 that were -- that in some way affected their criminal  
7 behavior. We need to teach job skills. I mean,  
8 three-fourths of the people who come to prison in  
9 America weren't working when they got arrested. Let's  
10 teach job skills.

11 Let's teach values. You know, our  
12 people come to us and they have a value set that's  
13 formed by the culture of gangs and the culture of  
14 drugs and not by preachers and teachers and parents.  
15 We do a lot with that in Louisiana. I think,  
16 Mr. Nolan, you are aware of that. We believe that our  
17 faith-based efforts, our faith-based communities can  
18 do a lot to help people restructure values.

19 You take those four pieces and then all  
20 of a sudden people leave prison and they don't come  
21 back at the rate of 43 percent after five years in  
22 Louisiana. They come back far less frequently, which  
23 means there's far less overcrowding, which means we  
24 don't need more resources, which means we can take our  
25 existing resource base and spread it to accomplish

1       these goals better. That, I think, is a voice that we  
2       need this Commission to adopt and to take.

3                       We need to pay attention to our kids.  
4       My time is up. The one minute thing is about to wave.  
5       Our children -- prenatally and in early childhood  
6       there's so much that we can do to divert them from  
7       criminal activities, so much. I think Head Start is a  
8       wonderful program, we support it in our department,  
9       all over the state, three and four year old kids  
10      learning how to learn and then they go to school and  
11      they succeed in school and they don't come into our  
12      justice system.

13                      You know, that's one of the most  
14      important things we can do relative to overcrowding,  
15      in my opinion, is to support programs for children and  
16      this Commission I think, and I hope, can take a step  
17      forward and say, you know, in all of this that we deal  
18      with and we talk about safety and abuse in America's  
19      prisons, let's deal with some of these issues that can  
20      help make sure that people don't get the opportunity  
21      to come into prison.

22                      On a final note, I'm sure you are all  
23      aware of this horrible statistic. The children of the  
24      people in our prisons are seven times more likely to  
25      go to prison than other kids in similar socioeconomic

1 status, seven times more likely. You know, I hope  
2 that this Commission will look at that tragic  
3 statistic and say, you know, to deal with  
4 overcrowding, to promote safety, let's pay attention  
5 to kids, particularly the children of people who are  
6 in our prisons.

7 Those are the types of things that I  
8 hope that you will be able to do that will be a  
9 concrete and a significant level of support for making  
10 sure that America's prisons and jails are operated as  
11 safely as possible. Thank you for the opportunity to  
12 testify.

13 MR. KRONE: I would like to start off  
14 the first question to you, Mr. Stalder. I recognize  
15 that a lot of things involving prison reform and  
16 safety, you know, right away brings an outrage to the  
17 public, they already got it too easy in there, they  
18 got three hot meals a day and the politicians are  
19 really reluctant to back any type of studies, any type  
20 of legislation that makes them appear soft on crime  
21 and, you know, threatens their re-election.

22 My question to you is you working on  
23 the inside, you know how the prisons work, your ideals  
24 and opinions of what needs to be done in there, how  
25 readily is that accepted by your other co-workers,

1 your other peers, your other people in the profession  
2 in the other states? Do you recognize how much  
3 resistance is there or how much support is there for  
4 these type of changes that we're talking about here  
5 that need to be done to address this overcrowding  
6 issue?

7 MR. STALDER: Mr. Krone, there was more  
8 resistance a decade ago. Today there is very little  
9 resistance to the type of program that helps people  
10 leave prison and not come back for this very simple  
11 reason. If you were a legislative panel in Louisiana,  
12 I could sit before you like this and tell you that the  
13 reality is that every year 15,000 people leave  
14 Louisiana's prisons; within five years, 43 percent of  
15 them will return, that's 7,000 people coming back to  
16 prison at a cost of \$25,000 per bed to build the bed  
17 they sleep in, and at a cost of \$35 a day or almost 13  
18 and a half thousand dollars a year to pay the  
19 operating expenses for them to stay in prison, and  
20 that what we do to teach job skills and basic  
21 education and what we do with substance abuse  
22 education and what we do on the values piece keeps  
23 them from coming back. So that means, Mr. Legislator,  
24 whether you are Republican or Democrat, whether you  
25 are republican or democrat, whether you are liberal or

1 conservative, what that means is you have money now  
2 that you can spend on higher education, that you can  
3 spend on road and bridges, that you can spend on  
4 services to the elderly, that you can spend on  
5 services to children, and that message comes through  
6 very clearly, even in places like Louisiana.

7 MR. KRONE: Keep that message covered.

8 MR. RYAN: Let me go back to basics for  
9 a second. One of the terms that we use is  
10 overcrowding. For me, that terms gets kind of  
11 confused in the fact that there is an assumption that  
12 we're crowded at the beginning.

13 What Mr. Beck said is that our jails  
14 are at 94 percent, our prisons at 100 percent and  
15 federal prisons at 140 percent I think is what he  
16 said.

17 Can you help me better understand the  
18 concept of the design to capacity facility its  
19 operational capacity, its consitutional capacity and  
20 what that all means relative to the consequences of  
21 each.

22 MR. HANEY: Well, let me just offer one  
23 insight about it. I mentioned to you when I first  
24 started doing this work 35 or so years ago the concept  
25 of double celling was anathema to most not only

1 scholars, but correctional administrators. Prisons  
2 were regarded as overcrowded when they approached  
3 90 percent of capacity and that was because  
4 correctional administrators understood that you had  
5 very -- you had increasingly fewer degrees of freedom  
6 to manage prisons effectively when you had problems,  
7 when you had prisoners who needed to be separated, et  
8 cetera, as the prison got closer and closer to its  
9 design capacity.

10 But we've long since have given up on  
11 the notion of 90 percent as overcrowded. We don't  
12 even begin to think about overcrowding until we're at  
13 100 percent of capacity.

14 It sure comes as no surprise to you if  
15 I say that prisons are not built to be particularly  
16 spacious or luxurious, so a facility that is  
17 100 percent of capacity really is operating at a very  
18 tight literal physical capacity to hold people.

19 Now, in California, as Senator Romero  
20 knows, we're operating at 180 percent of capacity,  
21 which means we have almost twice as many people in the  
22 prisons in California as those prisons were built to  
23 hold, and it's a sizeable population, we've got about  
24 150 to 160,000 people I would argue to you who are  
25 significantly, painfully overcrowded. And the

1 management problems which come about as a result, I  
2 think, multiply out well beyond the simple space  
3 capacity issue.

4 MS. SCHLANGER: I had a similar kind of  
5 question based on Dr. Beck's presentation and, that  
6 is, is it the feeling of people on the ground -- what  
7 he said was that we're currently less crowded than we  
8 were ten years ago. And I wondered, if it feels like  
9 that. And I'm always very distrustful of capacity  
10 figures because you can take the same thousand bed  
11 prison and call its capacity different things,  
12 depending on the mind-set of the designer and what  
13 that designer expects is going to happen with the  
14 housing in that prison.

15 So I guess -- not percentages of  
16 capacity or whatever, that seems to me like it's not  
17 that likely to be that illuminating, but just the feel  
18 of the prisons, does it seem like prisons are less  
19 overcrowd now than ten years ago or the same or more  
20 or am I wrong about those capacity figures?

21 MR. STALDER: Commissioner, I want to  
22 answer this very quickly and then let Vince and Craig,  
23 if he wants to say something, but there is a long tail  
24 of building beds in the prison business. It's about  
25 three and a half years to bring beds online.

1                   In Louisiana we grew by 2,500 to 3,000  
2 inmates a year in the mid '90s, which caused a  
3 significant construction boom and, as Dr. Beck said,  
4 growth is fairly static right now. I say static, we  
5 go 2 percent a year, I mean compared to what we were  
6 growing a decade ago -- growth is static, the long  
7 tail of that construction caused us now to have, in  
8 essence, surplus capacity and that surplus capacity  
9 means I think that Dr. Beck is right, that we're not  
10 significantly overcrowded in most jurisdictions.

11                   Now, I don't know what the future will  
12 hold, but today there is capacity to handle the number  
13 of inmates that we have, particularly in Louisiana.

14                   MR. NATHAN: I think I would disagree  
15 with that. I agree, sir, I would dispense with the  
16 word overcrowding, I don't think it adds light.  
17 Prisons should not be crowded and when you have a  
18 system with 45 and 55 and 60 square feet cells in  
19 which virtually every inmate is double celled and when  
20 you have the breakdown of infrastructure that  
21 Dr. Haney has described, you have a crowded prison and  
22 the crowding is interfering with operations.

23                   My very point, Professor Schlanger,  
24 that in Ohio the response of the legislature to a  
25 lessening of the population was to close prisons.

1 We're no less crowded, we're no less crowded.

2 Now, to go directly to the question of  
3 what do these capacity figures mean; the architect is  
4 told design a prison for a thousand people, he or she  
5 designs the prison and says the design capacity is  
6 1,000. Then the question of capacity becomes  
7 political and if we have to put two people in a cell,  
8 then we double that capacity and we call it  
9 operational capacity and we find someone who will say  
10 I can run that prison safely at 2,000. Well -- and  
11 people will disagree about that.

12 I have not, in my experience over the  
13 past several years, seen anything that causes me to  
14 feel optimistic, that we are less crowded today than  
15 we were and, yeah, we're managing the prisons. Part  
16 of that is skill on the part of prison administrators,  
17 part of it is what Dr. Haney described, we have tipped  
18 the scales of control in some ways that, to me, are  
19 some troubling, but I think we have a terribly crowded  
20 system in the United States and that we have made  
21 virtually no inroad.

22 Keep in mind that when we talk about a  
23 reduction in the rate of increase, we're not talking  
24 about pure prisoners, we're talking about not having  
25 quite as many more. That would be my response to the

1 two questions.

2 MR. GREEN: Mr. Nathan, you talked  
3 about, though, hitting a point in time with kind of  
4 the static growth where the policies and decisions  
5 that we make going forward are so important.

6 Can you just expound on that a little  
7 bit more in terms of the kind of things you think we  
8 need to grapple with and the kind of policy  
9 considerations we need to be making at this time?

10 MR. NATHAN: I believe that we are --  
11 and I can't tell you really why, we are at a point at  
12 which we know crime, reported crime and even reported  
13 victimization has fallen dramatically. We don't know  
14 why, but we know it's happened.

15 We know that money is scarce and is  
16 likely to remain so for the foreseeable political  
17 future, at least. We know that we continue to have an  
18 enormous number of people in prison, but it seems to  
19 me that we have an opportunity now, when at least we  
20 don't have folks backed up 10 miles waiting to get  
21 into our prisons, we are not backing up hundreds and  
22 thousands of people in county jails -- although that  
23 is still a problem in some states -- awaiting entry  
24 into the prison system, that now is the time to take  
25 stock; what do we have?



1 your question, I'm not sure.

2 SHERIFF LUTTRELL: Let me address a  
3 question to the three of you and ask you for brief  
4 comments.

5 First of all, I think as a Commission  
6 we are very fortunate to have what I think is a good  
7 blend of the academic, the clinical and the practical  
8 and I think each of the three of you -- each one of  
9 you represent those three values very well.

10 Richard, I would like to add one point  
11 to what you were saying about investment in programs  
12 in our facilities and reflect on something that  
13 Dr. Beck mentioned this morning. I have had the good  
14 fortune to work in both prisons and jails so I can  
15 kind of look at both sides of the equation.

16 Dr. Beck mentioned this morning that  
17 part of the problems with our jail overcrowding has  
18 been a decrease in the quality and quantity of  
19 community programs and when we talk about prison  
20 overcrowding, we talk in large part about the  
21 recidivism rate. Until we have adequate support  
22 programs in our community to really compliment the  
23 programs that we are initiating in our prisons, it's  
24 going to be very difficult for us to sustain the good  
25 programs that we have in our prisons.

1                   Some of the best drug programs I've  
2                   seen have been in prisons, yet there doesn't seem to  
3                   be a nexus to the community when many of these people  
4                   are released. So there's got to be support in the  
5                   community if we're going to impact the recidivism.

6                   But I would like the three of you to  
7                   really talk about, very briefly -- I think the common  
8                   thread that runs through all of this is shrinking  
9                   budgets effectiveness. State and counties over the  
10                  last three or four years have had some significant  
11                  problems when it comes to funding all types of  
12                  programs, whether it's education, mental health or  
13                  corrections. And, quite frankly, politically we'll  
14                  never compete with education and with several other  
15                  programs in the community.

16                  The overcrowding problems impacts  
17                  programs, quality of programs impacts staffing,  
18                  impacts facilities.

19                  Can you all just give an opinion or a  
20                  recommendation on paradigms; do we need to start  
21                  refocusing another way in addressing these problems?  
22                  We've talked about investing in staff training, we've  
23                  talked about investing in programs, I just mentioned  
24                  community programs; but do we need to start thinking  
25                  in new terms about what can be done to address the

1 consequences of crowding? Do we need to start  
2 thinking of some new approaches to correctional  
3 management that maybe the textbooks haven't addressed  
4 yet? Let me just throw it out for a little  
5 brainstorming response.

6 MR. STALDER: I think, Sheriff, that,  
7 first of all, we are ready as a country, I know we're  
8 ready as a state in Louisiana to acknowledge that  
9 prison ought to be for people who are violent, who  
10 habitually break the law and who threaten our safety.  
11 And we haven't always felt that way in Louisiana,  
12 having the highest incarceration rate in the nation,  
13 which reflects a time in the '70s and the '80s when we  
14 decided to slow down an armed robbery amongst 20 and  
15 21 years old was to say you are not going to be locked  
16 up for 50 years, now you are going to be locked up for  
17 99 years, and those kids could have cared less about  
18 what the sentence for armed robbery was. But we built  
19 that long tail on, we're paying the price today.

20 But across America I think you're  
21 finding the paradigm shift is that low level drug and  
22 property offenders ought to be handled in our  
23 communities, that it's cheaper, that it's more  
24 effective and that it promotes safety and it promotes  
25 the kind of goals this Commission has and that, to me,

1 is the most fundamental paradigmship that we see going  
2 on.

3                   And I go back to what I said earlier,  
4 it really is no longer a partisan issue, it's really  
5 no longer a liberal-conservative issue, it's really no  
6 longer those kinds of things that split us so much in  
7 the past. Everybody understands that true sentencing  
8 reform ought to mean that we keep dangerous people in  
9 prison and not dangerous people in our communities,  
10 and that our communities can effectively handle those  
11 issues and do it in a way that promotes exactly the  
12 kind of safety that we advocate.

13                   MR. HANEY: Prisons and punishment have  
14 been play things of politics in this country for the  
15 last 30 or more years and I think many of the issues  
16 that you are addressing here have come about as a  
17 result of the wrongheadedness of many policies that  
18 were adopted for largely political reasons and,  
19 frankly, somewhat irresponsibly because they were not  
20 followed with -- as you heard just in this panel, they  
21 were not followed with the resources that needed to be  
22 invested in making the policies even workable, let  
23 alone humane.

24                   A paradigmship, yes, at two levels.  
25 One is that we have to go back to viewing prisons, as

1 you have just heard, as the criminal justice system's  
2 response, absolute last resource, and not compete with  
3 one another over who could talk about putting the most  
4 people away for the longest period of time. That kind  
5 of thinking is what has gotten us here and what has  
6 gotten us many of the problems that you've heard so  
7 much about today and I'm sure in your other hearing.

8                   The other thing, frankly, and I don't  
9 know whether it's been addressed with this Commission  
10 or not is you know that during this period we not only  
11 overincarcerated people, but we changed at the  
12 beginning of this era of overincarceration the  
13 philosophy which we use to justify incarceration.

14                   People went to prisons beginning in the  
15 early 1970s for punishment, not rehabilitation. That,  
16 I think, was a psychologically naive shift. Human  
17 beings do not sit still well, the notion that we could  
18 put them in places and suspend them in animation  
19 somehow I think was just naive, and the notion that we  
20 could put people there and acknowledge the fact that  
21 they were there to be punished, by which we meant they  
22 were there to be hurt. Punishment means inflicting  
23 pain. That we could put people in places for long  
24 periods of time and inflict pain on them during the  
25 period of time that they were there and not have the

1 responsibility to do something positive or beneficial  
2 for them while they were there, I think, has now run  
3 its course and we need to go back to thinking about --  
4 again, as you already heard in just this panel, go  
5 back to thinking about programming, what could be done  
6 to ensure that people come out of these institutions  
7 in better shape than they went in.

8 MR. NATHAN: Craig, I would argue -- I  
9 agree with you that that responsibility is not simply  
10 the responsibility of the prisoner, it's a  
11 responsibility of the society and we know that what  
12 we're doing now in the criminal justice system isn't  
13 working and we can talk, and I very much agree with  
14 Richard, that we have to think about people who simply  
15 can't come into the system. We simply don't have room  
16 or resources for them, it's a waste of resources.

17 And, by the way, a footnote, we're  
18 competing real well with education. Our education  
19 budget in Ohio is flat for the next two. Our  
20 correction budget is going up by two-point something  
21 percent, which is ridiculously low from the point of  
22 view of corrections, we're used to six and  
23 eight percent increases, but we're still way ahead of  
24 education.

25 We need to think about the length of

1 sentence. Somehow, and I notice this with my  
2 students, when I say someone goes to prison for five  
3 years, that's a slap on the wrist. Tell me whether  
4 any of you could give up the next five years.

5 I met an 86 year old man on death row  
6 in Mississippi, they are going to have to put him in a  
7 wheelchair to take him into the execution chamber. We  
8 are developing geriatric, skilled nursing home  
9 facilities in our prisons all over the country or  
10 we're letting that population rot, and that's some of  
11 us, that's me, where I go, I hope, it's what I need.

12 But we need to understand that piling  
13 time on top of time on top of time isn't accomplishing  
14 anything. It's defeating any effort to resocialize or  
15 promote re-entry. I think it dilutes punishment, I  
16 agree. You tell me 50 years, 90 years, I don't give a  
17 damn. What's the difference? My life expectancy is  
18 another 12, 13 years.

19 I mean, I wonder -- and I have no  
20 respect for what the man did, but I'm wondering what's  
21 this fellow's thinking about, you know, wouldn't a  
22 three or a five year sentence make our point? That's  
23 a long time. Some of us would be dead, for some of us  
24 that would be a life sentence, for all of us that  
25 would be a totally ruinous event, and that's what I

1 find surprising, that people think that -- I hear, I  
2 can do that time standing on my head. Well, try it.  
3 Try standing on your head 30 minutes or six months or  
4 a year.

5 Our sentences are simply too long and  
6 there is no justification. Nothing can be shown to  
7 have been accomplished by keeping a person in prison  
8 15 years as opposed to three or four.

9 MR. BRIGHT: But what would you say  
10 about incapacitation, that's the argument, isn't it?

11 MR. NATHAN: Well, I understand that  
12 that's an argument in the first place from the  
13 perspective of an inmate who is killed by another  
14 prisoner or staff member who is assaulted by a  
15 prisoner or killed. Incapacitation is in the eye of  
16 the beholder.

17 But so we take -- let's don't talk  
18 about the worst, most vicious, violent crimes, because  
19 there are some that I would have difficulty responding  
20 to, but let's talk about serious economic crimes.

21 Do you think that Martha Stewart can  
22 serve, what, six months, is more likely to commit a  
23 crime than someone who spends five years or seven  
24 years and then gets out? I don't know. I think that  
25 year was probably a tough year. It would be a tough

1 year for me, and I just don't buy it.

2 MR. BRIGHT: I don't necessarily think  
3 that, but I think the question is for the person who  
4 has done three or four armed robberies by the time  
5 they're 19, is five years enough or is a longer  
6 sentence necessary to prevent that person from having  
7 anymore armed robberies, not worrying as much about  
8 the person but worrying about people in the society  
9 and whether or not they're robbed.

10 MR. NATHAN: Well, you know, the  
11 question of why we live, Steve, in such a violent  
12 society is one that we all have partial answers to.  
13 To tell prison administrators that they're supposed to  
14 resolve that problem is unrealistic. It seems to me  
15 that every time we put someone in prison for ten or 15  
16 years, we've got someone lining up to take that  
17 person's place.

18 And I just simply don't buy the idea  
19 that by keeping a person in prison, let's say ten  
20 years, that we're going to have any impact on armed  
21 robbery.

22 And, you know, maybe another way to  
23 look at it is this; maybe it's our responsibility, if  
24 we're given the resources in corrections, we've only  
25 got three or four or five years with this guy, or two

1 years. You know, the Europeans are doing it. They're  
2 not slaughtering each other at the rate that we are,  
3 at least not in their criminal realm. And they get  
4 along with three and four year sentences for homicide.

5 MR. FRIED: You don't buy it, but do  
6 you have evidence and statistics to support your  
7 unwillingness to buy it? There's evidence and  
8 statistics that indicates you are wrong.

9 You don't like it, but you may be  
10 wrong, and what Steve says may be correct and  
11 supported by the facts. And I don't think you are not  
12 buying it is an answer.

13 If you have facts, please let us have  
14 them, but I don't think you have them.

15 MR. BRIGHT: Well, what would you say,  
16 Mr. Stalder, what would your answer to that be?

17 MR. STALDER: Mr. Bright, I would go  
18 back to the paradigm question. I would say I'm just  
19 a -- just from -- a little, old, simple guy from  
20 Louisiana.

21 The paradigm shift is not going to  
22 occur at the top end of the scale, first. I believe  
23 we ought to lock up people who are dangerous and  
24 violent for long and certain terms, and I think that  
25 that level of incapacitation is something that we owe

1 ourselves as a society.

2 But what we have done is locked up too  
3 many people who aren't dangerous to us for long and  
4 certain terms and that has had a very costly  
5 consequence for us as a society, for our states, for  
6 our country.

7 So in Louisiana we did a great thing  
8 five years ago, we changed the mandatory minimum  
9 sentence for possession with intent to distribute  
10 cocaine or distribution of cocaine from five years  
11 flat, no parole, no probation, no suspension offense  
12 to two years flat, and now we're starting to reap the  
13 savings from that, and I think that is consistent with  
14 what Vincent is saying.

15 But I personally believe that those who  
16 are violent and cause injury ought to be locked up for  
17 long and certain terms, without apology and we ought  
18 to pay the price, but we are paying the price for far  
19 too many who aren't dangerous.

20 MR. BRIGHT: Well, I guess the question  
21 is can you put sort of a percentage on that; how many  
22 of those people that you are getting in your system  
23 there are those that don't need those sentences like  
24 the drug people.

25 MR. STALDER: In Louisiana we are

1 attacking mandatory minimums. I think we probably  
2 intake as many as 35 to 40 percent people who are  
3 either technical violators or people who commit low  
4 level crimes and who face mandatory minimum terms  
5 because of that. We are gnawing at mandatory  
6 minimums.

7 We have now the political will to say  
8 that for nonviolent crimes, for property crimes and  
9 drug crimes, that we will reduce that and then let the  
10 individual show on their own merits whether or not  
11 they ought to be released. I don't believe in  
12 automatic release. I don't think lock somebody up for  
13 three or five years and let them out, but let them  
14 demonstrate that they participate in educational  
15 programming, let them demonstrate that they tried to  
16 better themselves, let them demonstrate that they are  
17 able to take care of their family, let them  
18 demonstrate that their values have shifted and then  
19 give them the opportunity to show us that as a society  
20 for people who don't pose that level of risk.

21 MR. KRONE: If I may interrupt here.  
22 This is about overcrowding and, as I understand to  
23 say, it's not the violent criminals that are  
24 overcrowding our prisons, is that correct, so we  
25 really are concerned about those sentences that are

1 putting nonviolent people in violent situations and  
2 overburdening our prison system, that's what we are  
3 addressing.

4 MR. NATHAN: Well, one question I would  
5 raise is how much of what we described as correctly  
6 violent crime is drug related, you know? If you don't  
7 have the money to buy drugs, you are kind of a weak  
8 guy like me, you would rather have a gun and you can  
9 make a robbery or a burglary to get the money for your  
10 drugs.

11 So I'm not sure that you can't go back  
12 to the drug question that's been raised and draw a  
13 pretty clear line of cause and effect, even when you  
14 discuss violent crime.

15 MR. KRONE: Violent issue as a result  
16 of a medical dependency that we are not treating or  
17 working on.

18 MR. HANEY: Let me -- Professor Fried  
19 brought up the issue of evidence and let me suggest to  
20 you that there is not one shred of evidence to suggest  
21 that the reductions in crime which we have enjoyed  
22 over the last decade or so are, first of all, remotely  
23 commensurate with the extraordinary increase in the  
24 rates of incarceration.

25 You heard this morning we were talking

1 about a quadrupling of the rate of incarceration in  
2 this country at many billions of dollars of investment  
3 and the decrease in crime rates have been significant,  
4 but they did not commence until a very significant  
5 change in the economic picture in the United States  
6 began in the 1990s.

7 So the extraordinary increase in  
8 incarceration took place in the late '70s and  
9 throughout the entire decade of the 1980s bore not  
10 direct fruit whatsoever in terms of reduced crime  
11 rates. There may have been a carryover effect into  
12 the '90s, no question about it, but statisticians  
13 suggest that only a small percentage of decrease in  
14 crime rates over the 1990s is attributable to the  
15 massive increase in the number of people in prison.

16 Now, add to that the question of  
17 opportunity costs. What could have been done with  
18 those billions of dollars instead to address crime,  
19 not after, but before it took place, and then address,  
20 or take into account, the issue of the consequence of  
21 these very selective policies of incarceration in  
22 certain communities in the United States, particularly  
23 African-American communities, particularly with  
24 respect to African-American men.

25 I'm sure you know the statistics that



1 when we talk about crowding and overcrowding, of  
2 course, it's subjective, it varies from state to  
3 state, from jurisdiction to jurisdiction. I think I  
4 would say it's about caseload inevitably, it's about  
5 space and it's about resources and, of course, all of  
6 this embedded in a political context.

7 But aside from the sentencing, which I  
8 absolutely think needs to be addressed, aside from  
9 looking at not only inmates, but the parole  
10 population. In California there's 165,000 inmates,  
11 300,000 on parole, and most of them go back on some  
12 kind of technical violation, but I think another issue  
13 that I've seen, at least, sitting on the public safety  
14 committee in the State Senate in California is I don't  
15 want to say it's a new trend, but it has increased and  
16 that's the question of enhancements.

17 Use a gun, get this. Kill somebody  
18 under the age of whatever, get this additional. So  
19 it's not necessarily the sentencing, but it's adding  
20 on to the sentencing. Silence in those committees,  
21 absent in those committees, the witnesses, our  
22 corrections officials.

23 I guess, if anything, what I really do  
24 think that is needed is to have communication with  
25 respect to what is the effectiveness of the sentencing

1 and for how long and what is the worthiness of these  
2 enhancements because as long as we have a silence at  
3 the witness table when this legislation is going  
4 through, it's going to be law and order, business as  
5 usual, sounds good for the sound bite for the media,  
6 slap on the enhancements.

7 Any comments from you as to how we  
8 might engage corrections officials in our own states  
9 and others nationally to address this type of  
10 legislation that has come through California and  
11 hasn't stopped, and I would imagine if it's happening  
12 in California, it's happening throughout the nature.

13 MR. STALDER: Senator, in Louisiana we  
14 call it a fiscal note and when that type of  
15 legislation is proposed, I go to the table and I don't  
16 attempt, necessarily, to try to shake Louisiana's  
17 sentencing laws, which is really a legislative  
18 function, but I do go to the table and I say if you do  
19 this, this is how many millions and millions and  
20 millions of dollars it's going to cost, starting this  
21 fiscal year and how it will grow, and, you know we  
22 have -- do the charts and graphs and we believe -- I  
23 think that's an appropriate role for correctional  
24 administrators, is to explain what the consequence of  
25 the sentencing structure revision would be and, having

1 done that, then we find that many, many times people  
2 will say, well, I just really didn't realize that that  
3 was going to be that expensive and then it pretty well  
4 backs up and that takes care of it.

5 SENATOR ROMERO: Well, you do that in  
6 Louisiana, what about your cohorts? I haven't seen  
7 that in California.

8 MR. HANEY: I would call it a  
9 correctional environmental impact report that I think  
10 would be very helpful to have attached to any law that  
11 was under consideration that would increase the  
12 numbers of people who are going to prison or the  
13 lengths of time they would spend there and have the  
14 corrections department come in and say not only what's  
15 the direct economic impact of this, but how is this  
16 likely to effect the functioning of the prison system,  
17 and then until that's done, the law can't be passed.

18 MR. FRIED: Bringing us back to what is  
19 the subject of this Commission, do the three of you,  
20 and I guess Mr. Stalder is perhaps the best position  
21 to address this, think that it would be useful for  
22 this Commission to suggest minimum standards; square  
23 feet per inmate, double bunking or not bunking,  
24 correctional officer to prisoner ratio, things of that  
25 sort, so that you could have a kind of baseline which

1       said below this it is no longer acceptable and then,  
2       of course, your impact statement is a brilliant idea  
3       for dealing with the overcriminalization point,  
4       because I don't think that's our job.

5                       Our job is to say what is the effect of  
6       those things on the conditions in the prison, but in  
7       order to be effective could we come out with something  
8       like minimum standards; would that be useful?  Would  
9       anybody believe it?  Is it feasible?  Does it make  
10      sense?

11                      MR. STALDER:  Commissioner Fried, I am  
12      probably the strongest advocate for meeting minimum  
13      standards that you will find anywhere around the  
14      country.

15                      MR. FRIED:  I didn't know that.

16                      MR. STALDER:  I know that Commissioner  
17      Ryan is shaking his head.  We in the 25 years of  
18      federal court supervision of the Louisiana  
19      correctional system by subscribing to the standards of  
20      the American Correctional Association and the  
21      Commission on Accreditation for Corrections, they have  
22      volumes of standards, we subscribe to 469 standards  
23      for the operation of our adult prisons and we entered  
24      into about a 24-month process, we accredited every  
25      prison and the federal judge said -- initially said

1 I'm releasing you from court supervision and releasing  
2 you from the monitoring of my special master, as long  
3 as you maintain American Correctional Association  
4 accreditation. It is a very remarkable tool to  
5 maintain minimum standards.

6 There are those who criticize those  
7 standards and I believe that the criticism --

8 MR. FRIED: What is your view of them?

9 MR. STALDER: My view of them is they  
10 provide a solid foundation upon which to build safe  
11 and nonabusive correctional environments, a solid  
12 foundation, and that foundation is what we've used in  
13 Louisiana. And Commission Nolan I know has been in  
14 our largest maximum custody prison and I hope believes  
15 that it's a safe and stable facility. It's the oldest  
16 and the largest facility in the United States that's  
17 accredited by the American Correctional Association.

18 MR. FRIED: So if you put that  
19 together -- you have those minimum standards and you  
20 put that together with your impact statement and every  
21 time somebody proposes some criminalization, you say  
22 fine, here are the standards, we've got to meet those;  
23 if you do that, then you can really put a dollar  
24 amount on whatever changes in the criminal justice  
25 system are being proposed; another five years, fine,

1 match that with the standards, in our state that means  
2 so and so.

3 MR. STALDER: Yes, sir. And I think as  
4 you look around this Commission, Commissioner Ryan,  
5 Commissioner Maynard, as you hear of Director  
6 Wilkinson that Vincent talked about earlier, strong --  
7 not just proponents of, but participates in the  
8 accreditation process and the belief, the firm belief  
9 that those standards provide that level of foundation  
10 for our operations that result in the type of safety  
11 that this Commission advocates for.

12 MR. NATHAN: Professor, if I could take  
13 your question and relay it directly to the issue of  
14 crowding.

15 I think it's very difficult to argue  
16 that the ACA standards, which I do support, and the  
17 accreditation process, which I do support, that those  
18 have been effective in eliminating or substantially  
19 reducing crowding in the United States, the standards  
20 have simply changed.

21 I want to make a very quick point about  
22 the idea of impact statements and I will do this, you  
23 know, in just a minute. There is a problem with  
24 impact statements. If I have a system now, and I'll  
25 just take the crime armed robbery, and the average

1 time served is six years, average time served, not  
2 sentence. Now, in order to get some votes I want to  
3 double the sentence from let's say 10 years to 15.  
4 There will be no economic impact in year one or two or  
5 three or four or five. There will be no impact until  
6 we get to the point that someone who, on average,  
7 would have gotten out stays in, and I don't see  
8 legislators thinking in those terms.

9 I think that when you say to a  
10 legislature there's going to be this terrible  
11 financial impact in 2012, well, I'll be governor by  
12 then.

13 And so while I do agree that we should  
14 do them, there's no question, we should do it, educate  
15 the public, the press and the legislature, keep in  
16 mind that it's really kind of a free ride for the  
17 folks who are voting for these add-ons or for these  
18 increased sentences because those people are  
19 spending -- these criminals are spending some time now  
20 and until we get to the point they're spending more  
21 time, we're not spending anymore money. So it's not  
22 today's problem and, boy, politicians love that.

23 SENATOR ROMERO: But as one of those, I  
24 do think that you are right, a lot of people do look  
25 to say it's the next -- especially states that have

1 term limits, however, there is a free pass. If you  
2 are not there at the table facing those tough-on-crime  
3 legislators, then they get the free pass.

4 MR. NATHAN: That's right.

5 SENATOR ROMERO: And so I do think, and  
6 I really like the idea of the environmental impact  
7 report for the prisons, that silence is enabling to  
8 continue that trend to really not being responsible.

9 MR. NATHAN: And you are absolutely  
10 right and anyone in corrections who is not trying to  
11 educate the legislature on the realities, in my  
12 opinion, is failing corrections as an industry, as a  
13 profession.

14 MR. NOLAN: Two points. As a  
15 recovering politician, it's not just that they think  
16 they will be governor, they are scratching an itch  
17 that the public feels. The public thinks these  
18 sentences and doesn't think of the cost of them and  
19 we -- I think an important part of this Commission's  
20 work is trying to break that idea that longer  
21 sentences mean a safer community and that there's no  
22 cost.

23 But having been at Angola, which was  
24 the most dangerous prison in the United States and is  
25 now the safest in the United States, the length of

1 sentence doesn't really impact that because 95 percent  
2 of those inmates are going to die in that facility,  
3 it's an astounding situation, but they've made it a  
4 safe facility, even with the relative hopelessness of  
5 ever getting out.

6 And, Mr. Stalder, I would like to talk  
7 to you about the challenges that you faced in changing  
8 that because I would assert to this Commission, it's  
9 not just policies, which are very important, it's also  
10 leadership and commitment to change, having a vision  
11 that there can be a peaceful prison and then setting  
12 the standards to drive it. Secretary, if you could  
13 talk about the challenges you faced and the  
14 leadership.

15 MR. STALDER: Commissioner Nolan, as  
16 you know, it's a fundamental sense of on-site  
17 leadership through the warden and support of staff,  
18 both correctional officer staff, programming staff and  
19 our faith-based community. I mean that's really  
20 been -- Angola is the only prison or now that we've  
21 spread it a little bit to Mississippi and Florida --  
22 we were the first prison to have an adjunct location  
23 of the New Orleans Baptist Theological Seminary on  
24 site with a four-year and a two-year graduate program  
25 that didn't cost the taxpayers of the State of

1 Louisiana a nickle and we graduate ministers, who then  
2 go out and work with our chaplaincy to promote the  
3 kind of change in values that's so important.

4 I guess, Commission Nolan, the only  
5 thing I would say it's necessary but not sufficient to  
6 teach how to people to read and write, it's necessary  
7 but not sufficient to teach people job skills, it's  
8 necessary but not sufficient to deal with substance  
9 abuse, it is absolutely imperative that we deal with  
10 the values issue and our faith-based communities  
11 across Louisiana have really stepped up to do that.

12 As you know, Angola has three churches  
13 that were built by the faith community in the State of  
14 Louisiana, three. We have built seven chapels at  
15 prisons in Louisiana interdenominational chapels;  
16 Christian, Muslim, Jewish, it doesn't matter, each at  
17 a cost of \$450,000, not a nickle of taxpayer money,  
18 every dime contributed by the faith community and that  
19 level of commitment, Mr. Nolan, is what I think has  
20 says the most, coupled with the leadership on site,  
21 for how we reformed our operations, not only at Angola  
22 but throughout the Louisiana system.

23 MR. KRONE: Well said.

24 With that, unless there's any  
25 questions, I think we pretty much ran out of time and

1 we're going to have to thank you all for that insight  
2 that you have given us.

3                   And we are going adjourn now for lunch.  
4 We will resume again at 2:00. I would like to ask all  
5 the witnesses; prior, present and upcoming to exit  
6 through the door here. I would like to remind the  
7 audience there is a cafeteria available within this  
8 building where you can get a lunch and, as I said,  
9 we're back here at 2:00. Thank you.

10                                   (Lunch recess.)