

1 (Recess)

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

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

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

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

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

10 Let's start with Ms. Hall Martinez.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Mr. Smith.

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

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

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

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

25 While at Stateville, there were no

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

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

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

25 From that day forward, each time I would hear

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

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

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

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

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

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

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

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

16 DR. GILLIGAN: Thank you very much.

17 Could we now hear from Ms. Leslie Walker.

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

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

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

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

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

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

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

25 The second comment I have to make on the

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

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

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

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

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

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

25 One of the small things that happens, and

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

20 Number 2, new and longer term staff must be
21 trained in effective ways of dealing with difficult
22 situations. This you have not heard: Cameras.
23 Cameras are very important. Cameras with audio
24 equipment especially in segregation units, you can
25 actually know what is going on, including stairwells

1 and mental health watch area. Additionally, systems
2 for protecting the integrity of those tapes. Too
3 often there's editing and lost tapes. We have a case
4 pending right now where the superintendent knew he
5 was going to be sued, he asked it be taped, and the
6 tapes have mysteriously disappeared.

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

25 Very briefly, I have run out of time but I

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

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

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

1 And hope and history rhyme.

2

3 So hope for a great sea-change

4 On the far side of revenge.

5 Believe that a further shore

6 Is reachable from here."

7 Thank you.

8 DR. GILLIGAN: Thank you very much.

9 Mr. Beck.

10 MR. BECK: Thank you for the poetry.

11 I want to thank the commission on behalf of
12 myself and Robert Gandi, who is the Executive
13 Director of the Correctional Association who is also
14 present today, for this opportunity to testify about
15 the role the CA plays in monitoring prisons in
16 New York State.

17 The Correctional Association has been
18 around since 1846 and we have statutory authority,
19 we're only one of two organizations in the United
20 States that have that, to go into the prisons and to
21 report about what we observe. On a regular basis we
22 go into the prisons and we monitor what's going on
23 and we report to the legislature about our
24 observations. We also conduct in-depth studies on
25 specific topics, including our current effort to

1 assess the safety and abuse in New York prisons. For
2 our current study on prison violence we have
3 interviewed or received surveys from more than 850
4 inmates in 11 prisons of the 70 prisons in New York,
5 and we anticipate to have a thousand surveys done
6 when the project is finished.

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

13 The most important aspect of our
14 legislative mandate is access to the prisons. We can
15 go anywhere in the prisons we want and speak to any
16 inmate in their housing area or program area. It is
17 crucial that a monitor speak to the often silent
18 majority of the prison population who are not
19 necessarily out advocating for themselves, but rather
20 attempting to survive 75 their prison term and get
21 out. We also talk to staff and the prison executive
22 team. Getting a true picture of what is happening
23 requires that the monitor identify how prison
24 practices diverge from stated prison policy. Direct
25 access to inmates and to staff is essential to

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

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

1 you what's happening if they don't have a way to
2 retrieve the information.

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

21 A remedy to the failure to maintain
22 adequate record keeping is for the state legislature
23 to mandate that the department regularly make public
24 reports containing specific data about inmate and
25 staff confrontations, inmate and staff injuries, and

1 inmate and staff discipline. I urge the commission
2 to pose the type of data that should be kept and
3 reported by the corrections department and to define
4 terms such as "unusual incident" or "reportable use
5 of force" so that systemic data can be compared from
6 state to state.

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

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

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

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

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

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

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

12 DR. GILLIGAN: Thank you.

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

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

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

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

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

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

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

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

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

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

4 DR. GILLIGAN: That's very helpful.

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

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

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

25 DR. GILLIGAN: Have you worked with the

1 Prison Rape Elimination Commission, the commission
2 assigned to implement the Prison Rape Elimination Act
3 that Congress passed a couple of years ago?

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

1 can.

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

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

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

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

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

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

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

1 pursuant to their mandate under PREA.

2 DR. GILLIGAN: Ms. Schlanger.

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

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

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

1 grievance rather than just be frustrated.

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

18 Whether there's a model elsewhere -- in my
19 testimony I lay out there's a couple different
20 models. Do I think that necessarily our statutory
21 provision which was done in the 1842s can be
22 necessarily done today? I think that's a legitimate
23 question that would be difficult, it is very
24 broad-based. But there are other models where they
25 have created commissions to look at specific issues,

1 look at health care, mental health care, maybe
2 violence. Florida has one that deals with health
3 care, for example, and others are cited.

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

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

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

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

1 year before.

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

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

15 DR. GILLIGAN: Mr. Krone.

16 MR. KRONE: Yes.

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

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

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

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

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

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

25 MR. SMITH: Yes, sir.

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

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

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

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

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

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

1 answer your question?

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

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

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

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

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

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

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

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

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

19 DR. GILLIGAN: Dr. Dudley.

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

25 During the life of the commission we have

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 An example. I was at Attica a couple of
25 months ago. They have a special program within the

1 Disciplinary Segregation Unit, it is called the
2 Special Treatment Program. They take these
3 individuals out and they put them in little cages for
4 their therapy sessions, five separate little phone
5 booths that are cages. That's therapy.

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

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

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

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

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

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

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

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

25 These have become high-tech torture

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

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

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

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

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

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

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

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

1 let them worry about the money.

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

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

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

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

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

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

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

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

11 It should not be the last asylum and that's what
12 prisons are. And what I would say, the last asylum
13 is not just prison, it is disciplinary segregation in
14 prison.

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

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

22 Before we draw to a close I would like to
23 turn the chair over to the co-chair of this
24 commission as a whole for some last words about our
25 efforts here.