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THE FINDINGS AND RECOMMENDATIONS OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS

HEARING

BEFORE THE

SUBCOMMITTEE ON CORRECTIONS AND REHABILITATION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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THE FINDINGS AND RECOMMENDATIONS OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS

U.S. SENATE,
SUBCOMMITTEE ON CORRECTIONS AND REHABILITATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 3:01 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Tom Coburn, Chairman of the Subcommittee, presiding.

Present: Senators Coburn and Durbin.

OPENING STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Chairman COBURN. The Committee will come to order. We do have one more vote, and what we will do is I am going to start with an opening statement. Senator Durbin is still on the floor. What I will do is adjourn the hearing after my opening statement. We will have gotten that out of the way. When we finish this next vote, which is supposed to be at 3:15, then we will get rolling.

First of all, I want to thank all our witnesses for being here and testifying and the effort that they have put forward. I will not read my statement into the record but, rather, make it a part of it.

As a practicing physician, one of the things that I know is what happens in prison affects all of us. It affects us on the outside because the vast majority of people that experience incarceration are back among us. And if that is a positive process, it is great. If it is a negative process, it is terrible. And so the idea that we have a discussion about what is good and what is bad is very important for this country.

The second thing I know is that this country has to make a major change in how it treats drug-addicted felons, non-violent. The fact is we know with good treatment two out of every three people who go through a good, qualified drug treatment program will be free and stay free of dependency. That is not a strong characteristic of many of our prisons today throughout the country, and it is something that, if we really want to make a difference in people's lives, we have to address.

Another wonderful thing about that is when we do that, we each save ourselves money because the cost of drug treatment and incarceration, separate from regular incarceration, is about one-half to two-thirds the cost of regular incarceration. So it is my hope that this is the start of a discussion.

I am very appreciative to the Commission for their hard work. We are not going to take everything at face value. We are going to look at this hard. And I know Senator Durbin is of the same mind to look at it and to make recommendations. This will not be the only hearing that we will have on this subject, and I am sorry that we are having a hearing at this late date. But it is, nevertheless, very important, with 2 million people incarcerated in this country. Some of them are our family members. Some of them are people that we love. Some are people that we know of. Some made bad choices. Some continue to make bad choices.

The final thing I would say is mental health and mental illness is a significant component of a large number of people in our prison system today. Mental health parity outside of prison is something that has to happen in this country because I believe we could forego lots of the incarcerations if, in fact, we treated mental health illness as we treat every other illness in this country. So I am a strong advocate of that, and I believe that we can accomplish a lot in terms of prevention in the future for those that could be incarcerated, as well as better, more up-to-date scientific treatment for those that are incarcerated today.

With that, I will end my statement. Have they called the vote? They have not, have they? And I would ask your forbearance until Senator Durbin gets here. This just happened today. I apologize. I know there are a lot of people in the room, but I think we have to hold up. I do not want your statements prior to Senator Durbin being here, if you would. And we will adjourn until after the 3:15 vote. So relax.

[Recess 3:05 p.m. to 3:10 p.m.]

Chairman COBURN. The Committee will reconvene. It gives me great pleasure to recognize my co-Chairman on this Subcommittee, Senator Durbin from Illinois. I have made an opening statement. I would recognize you at this time.

STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you very much, Mr. Chairman, and it is an honor to be a co-Chairman, which does not happen often around here. I am honored that you would give me that opportunity.

I am pleased to have this opportunity to work with you on the Corrections and Rehabilitation Subcommittee. This is a first for this Subcommittee and this Congress. It is an important hearing about a subject we rarely discuss on Capitol Hill. Most of us in Congress and most Americans do not spend a lot of time thinking about the conditions in the prisons across our Nation, but we should. We should because, in the words of the Commission on Safety and Abuse in America's Prisons, "What happens inside jails and prisons does not stay inside jails and prisons. The conditions in our jails and prisons directly affect millions of Americans who are incarcerated or work in the corrections system. They are also indirectly affecting family members, relatives, and friends. They affect the public safety and the public health of America."

As the Russian author Fyodor Dostoyevsky once reflected, "The degree of civilization in a society can be judged by entering its prisons."

I would like to welcome the members of the Commission who will be presenting their report at this hearing. It reminds us that we need to judge our civilization from time to time—and this Commission did so—by entering our prison system. The Commission spent a year listening to experts across the Nation and from all viewpoints, covering many aspects of this complex world of corrections. Now they have laid down a challenge to all of us: to take a hard look at what is going on in our prisons.

Most of us take the trash out and put it in the alley. I do at my home in Springfield. I do not want to know what happens from that point. I just want to know that after the truck leaves, the cans are empty and ready for more. We have to view our prison and incarceration system much differently. People who are removed from our neighborhoods and our towns and society because of wrongdoing are coming back. Most of them will return. And what will they return to? Will they return to a productive and different life or to the same mistakes that led to their initial incarceration?

Some say that part of the punishment is to deny them the most basics—whether it is education, mental health counseling, whatever it may be—efforts to remove their addictions. And yet we know that if we do not deal with some of these fundamentals, they are likely to return to prison. But something else is likely to occur, too. There is likely to be another crime committed before that happens, another victim before that happens. And so it is penny-wise and pound-foolish not to really look at those in prison as people likely to someday be free and likely to someday be in our neighborhoods and towns again.

I am glad Illinois has made prison reform a high priority. I want to thank our Governor, Rod Blagojevich, for several innovative programs that he started, such as the creation of the Model Meth Prison and Reentry Program. We could spend a whole hearing on meth and what it means to my State and what it means in terms of incarceration. This new unit, which is going to be funded from Federal and State sources, is modeled after other successful programs and many other innovations.

Mr. Chairman, in the interest of time, because the witnesses have been patient, I would like to ask that the remainder of my statement be made a matter of record.

Chairman COBURN. Without objection. Thank you, Senator Durbin.

[The prepared statement of Senator Durbin appears as a submission for the record.]

Chairman COBURN. Let me introduce our panelists, if I might. The Honorable John Gibbons is Director of Gibbons, Del Deo, Dolan, Griffinger & Vecchione, a member of the firm's litigation department and head of its alternative dispute resolution group and founder of the Gibbons Fellowship in Public Interest and Constitutional Law. He was formerly Chief Judge of the U.S. Court of Appeals, Third Circuit, and a member of that court for 20 years. He has authored approximately 800 published opinions. He was also formerly a professor of constitutional law and other subjects at Seton Hall University Law School. He is Past President of the New Jersey State Bar Association, a life member of the American Law Institute, and a fellow of the American Bar Association. He is a

former member of the House of Delegates of the American Bar Association and former Chair of its Committee on Fair Trial and Free Press, and also a former Director of the American Arbitration Association. He is also Trustee Emeritus of the Practicing Law Institute, a Trustee Emeritus of Holy Cross College, and a Trustee of the Fund for New Jersey. Welcome.

Nicholas Katzenbach we have known for a long time. A distinguished career of public service began when he joined the United States Army Air Force. During the Second World War, he was captured by enemy troops and spent 2 years as a prisoner of war in Italy and Germany. After the war, he attended Princeton University and then Yale Law School, becoming editor-in-chief of the Yale Law Journal. He also received a Rhodes scholarship and studied at Oxford University for 2 years. Early in his legal career, he was Associate Professor of Law at Yale University and also Professor of Law at the University of Chicago. He joined the U.S. Justice Department's Office of Legal Counsel and was promoted to Deputy Attorney General in April 1962. In that role, and working closely with President Kennedy, he was responsible for securing the release of prisoners captured during the Bay of Pigs raid on Cuba. He also oversaw the Justice Department's efforts to desegregate the University of Mississippi in September 1962 and the University of Alabama in June 1963, and worked with Congress to ensure the passage of the 1964 civil rights legislation. President Johnson appointed him Attorney General of the United States in 1965, and he helped to draft the 1965 Voting Rights Act. He then appointed him Under Secretary of State and one of a three-member commission charged with reviewing Central Intelligence activities. He also chaired the 1967 Commission on Crime in the United States. After President Johnson decided not to run for re- election, Mr. Katzenbach became General Counsel of the IBM Corporation, where he remained until 1986. He is currently Non-Executive Chairman of the MCI Board of Directors.

Gary Maynard I am familiar with. I appreciate him being here. He is an Oklahoma native. He is Director of the Iowa Department of Corrections and President-Elect of the American Correctional Association. He has worked for more than 34 years in the field of corrections, beginning his career as a psychologist in El Reno Federal Reformatory in Oklahoma. Before assuming his position in Iowa, Gary Maynard held similar positions in the Oklahoma, Arkansas, and South Carolina corrections systems. He received the Courage and Valor Award from the Oklahoma Department of Corrections and the Roy Wilkens Award from the NAACP. For 32 years, he was a member of the Army National Guard, retiring as Brigadier General. In the course of his service, he received the Legion of Merit from the United States Army and is a member of the Hall of Fame of the U.S. Army Artillery and Missile Officer Candidate School in Fort Sill, Oklahoma. He has a master's in psychology from Oklahoma State University. I am an alumnus of that university as well.

Mr. Marc Morial is President and CEO of the National Urban League, a position he has held since May 2003. Before becoming head of the Urban League, he served two distinguished 4-year terms as the mayor of New Orleans, becoming one of the most pop-

ular and effective mayors in the city's history. Under his leadership, crime plummeted by 60 percent, the police department was reformed, new programs for youth were begun, and stagnant economy was re- energized. During that time, he also served as President of the United States Conference of Mayors in 2001 and 2002. Prior to becoming mayor of New Orleans, he served for 2 years in the Louisiana State Senate, where he was recognized as "Conservationist Senator of the Year," "Education Senator of the Year," and "Legislative Rookie of the Year"—that is not an honor I am going to get here, I don't think—for his outstanding accomplishments.

[Laughter.]

Chairman COBURN. He has a J.D. from Georgetown University Law Center and an Honorary Doctor of Laws degree from Xavier University.

Pat Nolan is a friend, well-known to me for a long time. He is President of Justice Fellowship, the reform- oriented criminal justice arm of Prison Fellowship Ministries. He is the author of "When Prisoners Return," which describes the important role the church can play in helping prisoners get back on their feet after they are released. His opinion pieces have appeared in numerous periodicals, including the Los Angeles Times, the National Law Journal, and the Washington Times. He is a much sought after speaker on issues of justice and faith. He was selected by Governor Geringer of Wyoming to be the speaker at his annual prayer breakfast in 2002, and he has testified on several occasions before Congressional committees on prison work programs, juvenile justice, and religious freedom. Earlier in his life, Pat spent 15 years in the California State Assembly, 4 of those as the Assembly Republican Leader. He was a leader on crime issues, particularly on behalf of victims' rights, and was an original cosponsor of the Victims' Bill of Rights. He was given the Victims Advocate Award by Parents of Murdered Children and named Legislator of the Year in part for his work on behalf of Vietnam veterans. Then as part of an FBI sting operation, he was prosecuted for a campaign contribution he received and pled guilty to one count of racketeering. He served 25 months in Federal prison and 4 months in a halfway house, and that experience changed the course of his life work forever.

Let me welcome you all, and do you have an order that you want to talk? I think, Marc Morial, I would love—since you have a time constraint, I believe if we would allow you to go first, and then followed by Attorney General Katzenbach. We just want to accommodate you to make sure that you make that flight.

Mr. MORIAL. Train.

Chairman COBURN. Train.

Mr. MORIAL. Go Amtrak.

STATEMENT OF MARC H. MORIAL, COMMISSIONER, AND PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL URBAN LEAGUE, FORMER MAYOR OF NEW ORLEANS, AND FORMER LOUISIANA STATE SENATOR, NEW YORK, NEW YORK

Mr. MORIAL. First of all, let me thank you.

Chairman COBURN. Is your mike on, Mr. Morial? Punch the button on it. Is it on? OK. There we go.

Mr. MORIAL. Let me thank you, Chairman Coburn and Senator Durbin. I want to thank you for the opportunity to testify today, and it has been a great pleasure to be a part of this very important process.

Corrections is a tough profession and a poorly understood one. Corrections officers often work long shifts in tense, overcrowded facilities, without enough backup, support, or training—stressful conditions that take a toll on them personally as well as professionally. Many wardens run aging, understaffed, and outdated facilities and deal with a work force which experienced officers are likely to leave the profession for better paying, less stressful jobs just when they are ready to become good mentors to new recruits. And those who manage entire systems deal with ever-growing numbers of prisoners, comparatively fewer resources, and, indeed, for all of their hard work, corrections professionals receive very little positive recognition.

These pressures on the labor and leadership of our prisons and jails cause stress, injury, and illness among the work force and contribute to a dangerous, very dangerous culture inside. Because the exercise of power is an important part of the job of a corrections officer, it is natural that in situations where officers are under stress, inexperienced, and undertrained they will be more inclined to abuse that power. In facilities where the culture has devolved, rules are not enforced, prisoner-on-prisoner violence is tolerated, and antagonistic relationships between prisoners and officers often erupt into overt hostility and physical violence. In many places, this kind of tension is exacerbated by racial and cultural differences between prisoners and the staff. This conflict and violence not only harms staff and prisoners, but the families and communities that officers and prisoners return home to as well.

In the 1960's, my home State of Louisiana, by the State Department of Corrections' own admission, gained a reputation for running "America's bloodiest prison," Angola, the maximum security prison in Louisiana. I do not know which prison today carries that distinction, but I can say with some confidence that it is no longer Angola State Penitentiary in Louisiana. Reforms there began decades ago, but the most dramatic changes were accomplished over the course of the last 10 years when the fundamental institutional culture of the prison was profoundly transformed. Prisoners at Angola are treated with dignity and respect by everyone who works in that facility, and the prisoners are equally expected to treat staff that way. Prisoners have been given hope through education and morally centered programming and responsibility through meaningful employment. And the fair and reliable enforcement of the rules for both prisoners and staff means—and I underscore this—less violence. Prisons that add punishment on top of the sentence—those that are run in ways that stamp out hope and kill the spirit of people—will be violent places. In contrast, prisons that reward the best in those who are incarcerated, institutions that treat prisoners with basic human dignity and respect, are much more likely to be places where violence and abuse are the rare exception and not the rule.

Institutional "culture change" may sound like a soft approach to combating violence behind bars, but this Commission heard over-

whelmingly that when one changes the culture, one changes the entire institution. There are clear, concrete steps that every institution can take, and many are taking them, to create a safer environment for both prisoners and staff. Congress can support the National Institute of Corrections, Institutional Culture Initiative that is currently providing prison and jail managers with tools and training to change the culture of their institutions. But the NIC cannot do it alone. Managers and wardens need support at the local, State, and Federal level to be able to make change over time, and they need the resources to hire a qualified and diverse staff. Officers need training that emphasizes ways to resolve conflict without force and communication skills—particularly the ability to communicate across cultural, racial, and now language differences, which are so common in many facilities across this Nation.

These are just some of the very important recommendations of this Commission. I hope that today's hearing does not represent the end of this Commission's work or the end of this Congress' attention to this matter but, rather, the beginning as we talk about and we seek to find ways to advance the important recommendations contained in this report.

Thank you.

[The prepared statement of Mr. Morial appears as a submission for the record.]

Chairman COBURN. Thank you, Mr. Morial.

General Katzenbach?

STATEMENT OF NICHOLAS DE B. KATZENBACH, COMMISSION CO-CHAIRMAN, AND FORMER U.S. ATTORNEY GENERAL, PRINCETON, NEW JERSEY

Mr. KATZENBACH. Mr. Chairman, Senator Durbin, it is a real pleasure to be back before this Committee after all these years. Although its personnel has changed, it is a wonderful Committee.

I would not want you to think that my interest in prisons is new. As Attorney General I brought before this Committee proposals later enacted into law to ease prisoner reentry into society and got bipartisan support for their enactment. Indeed, I remember perhaps the strongest advocate for the attention to the problems of prisons at that time and to their personnel was a conservative Republican from Nebraska, Senator Roman Hruska. It was not then a partisan issue, and in my view it need not be today. My co-Chair—Judge John Gibbons, a lifelong Republican—agrees.

My own interest did not begin with my time in the Justice Department. During World War II, I spent 27 months in Italian and German prison camps, and while that experience is very different from being in prison as a result of criminal activities and convictions, there are some similarities. You know, until one really experiences it, I think it is hard to appreciate what the loss of freedom entails: boredom, frustration, the tedium of idleness, the fear of the unknown that one cannot control. Most importantly, the need for enforceable standards and independent oversight of prison conditions—in that case through the Geneva Convention and the Swiss Government—cannot be overstated.

When I was in the Department and chaired the Crime Commission, there were about 200,000 persons in prison. Now there are

more than 10 times that many, and that is just on any given day. Over the course of a year, the number of Americans who spend some time in jail or prison exceeds 13.5 million. We spend more than $60 billion annually on corrections, but problems of public safety and public health persist.

The Commission chose to focus on problems of safety and abuse, both within prisons—the safety of both prison officials and prisoners and the abuse of prisoners by guards and by other prisoners—and outside prisons, especially in the surrounding communities where prison officials live and those communities to which prisoners return. When people live and work in facilities that are unsafe, unhealthy, unproductive, or inhumane, they carry those effects home with them.

Over the past year, we investigated these problems by listening to corrections officials, criminal justice experts, medical experts, lawyers who litigate for improved conditions, court-appointed monitors, and prisoners themselves. We found a surprising amount of agreement among these groups as to the nature of the problems and as to how they might be solved. For all the hard work of corrections officials—most of which the public never hears about—there is still too much violence in prisons and jails, far too little medical care, a culture which too often pits officers against prisoners and prisoners against each other, and far too little support for the men and women who work in the tiers and pods and for those who run facilities and entire systems.

It is not only wrong, but it is incredibly shortsighted not to talk honestly about what is going on behind bars and whether our approach to incarceration serves our country's best interests. Our failure to do so puts at ever- increasing danger the health, safety, and well-being of all of us.

What has personally given me the greatest pleasure and satisfaction has been the fact that a Commission of 20 persons from differing backgrounds, experiences, and political preferences could agree on so many recommendations to deal with problems of safety and health and fair treatment. Thank you, Mr. Chairman.

[The prepared statement of Mr. Katzenbach. appears as a submission for the record.]

Chairman COBURN. Thank you, General. Pat?

Mr. Nolan?

STATEMENT OF PAT NOLAN, COMMISSIONER, AND PRESIDENT, PRISON FELLOWSHIP'S JUSTICE FELLOWSHIP, AND MEMBER, PRISON RAPE ELIMINATION COMMISSION, LANSDOWNE, VIRGINIA

Mr. NOLAN. Good afternoon, Mr. Chairman and Senator Durbin.

Chairman COBURN. Good afternoon. Your mike is not on. Would you mind punching that little button? There we go.

Mr. NOLAN. Good afternoon, Mr. Chairman and Senator Durbin. I am Vice President of Prison Fellowship and the President of their criminal justice reform arm, Justice Fellowship. In addition to serving on this Commission, I am also Speaker Hastert's appointee to the Prison Rape Elimination Commission.

I bring a unique background to this work. As the Chairman mentioned, I served for 15 years as a member of the California State

Assembly, 4 of those as Assembly Republican Leader. I was prosecuted for a campaign contribution that I accepted, which turned out to be part of an FBI sting. I pleaded guilty to one count of racketeering and served 29 months in Federal custody.

The best way to describe being imprisoned is that I felt like an amputee. I was cutoff from my friends, my family, my work, my church, and my community. And then, with my stumps still bleeding, I was tossed into a roiling cauldron of anger, bitterness, despair, and often violence.

In prison, inmates are completely defenseless. They are deprived of the usual ways we protect ourselves. They do not choose here to sleep or live, they have no choice of their companions, they cannot avoid going in dark places, and they are prohibited from arming themselves for self- defense.

Because prisoners are deprived of the ability to defend themselves, the Government has a responsibility to protect them from violence and harm. No sentence, no matter how terrible the crime, includes being threatened, beaten, or raped while in the custody of the Government.

Sadly, many prisons fail in their responsibility to protect their inmates and staff from violence. At the Commission's hearings around the country, we heard many accounts of violence and abuse behind bars. These were reports not just from prisoners and their families, but from line officers and correctional administrators as well. But, on the other hand, we also heard many accounts of many facilities where prisoners and staff are healthy and safe. Plainly, there are practices and policies that make for safer prisons.

The clear consensus among the experts is that to prevent violence in prison we must: reduce crowding; increase access to meaningful programs and activities; encourage a climate of mutual respect between inmates and staff; increase the transparency of the institutions by increasing accessibility to outside agencies and volunteers; identify at-risk prisoners and predators, and classify them accordingly, and separate them; make better use of surveillance technology; and strengthen family relationships by placing inmates close to their families, encouraging family visits, and lowering the cost of phone calls.

How do we hold administrators of institutions plagued by violence accountable for adopting the reforms that are proven to make prisons so much safer? One important way Congress can help is to develop a uniform system for collecting data on violence in prison. Currently, there is no way to track the number of assaults by prisoners on other prisoners, by prisoners against staff, or the use of excessive force by corrections officers. This prevents us from comparing levels of violence in different facilities and systems around the country, or tracking trends over time. For instance, in the year 2000, one State with 36,000 prisoners reported just 17 assaults. Three States reported zero assaults among prisoners statewide. Zero. Now, that just is not credible. And we are confronting this same issue of the lack of credible statistics on the Prison Rape Elimination Commission.

Without accurate numbers we cannot hold prison administrators accountable for the safety of their staff or inmates. We end up fighting over anecdotes—pitting good stories against bad ones.

More importantly, it means that successful corrections leaders are not recognized and rewarded, and that dangerous institutions do not get the attention and the reform that they so desperately need.

Corrections administrators need accurate information to monitor safety, and the public needs it to hold them accountable.

Thank you.

[The prepared statement of Mr. Nolan appears as a submission for the record.]

Chairman COBURN. Thank you, Mr. Nolan.

Mr. Maynard, on behalf of Senator Grassley, he had every intention of being here and had a schedule change at the last moment, so I am offering you his regrets for not being here, and you are recognized for 5 minutes.

STATEMENT OF GARY D. MAYNARD, COMMISSIONER, AND DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS, AND PRESIDENT-ELECT, AMERICAN CORRECTIONAL ASSOCIATION, DES MOINES, IOWA

Mr. MAYNARD. Thank you, Mr. Chairman, Senator Durbin.

I am the Director of the Iowa Department of Corrections and President-Elect of the American Correctional Association, but I am not speaking for those organizations today. I am here speaking as a member of this Commission. I want to discuss the medical and mental health issues in our prisons and jails and bring to your attention the reality I see in facilities across the country. We know how to secure prisoners behind walls, but the physical and mental health problems they bring with them are not so easily secured. These health problems quickly become problems for corrections officers, for other prisoners, and for surrounding communities. And the burden of solving these problems cannot rest solely with State and local correctional agencies.

Prisoners are probably the least healthy group of Americans. They are ill with some of the most destructive diseases—ranging from diabetes to HIV, hepatitis C, and tuberculosis—and at far higher rates than other Americans. Every year, as many as a million and a half people are released from jail and prison to our communities carrying a potentially life-threatening infectious disease. In California, a Federal judge recently appointed a receiver to run the prison medical system after learning that every 6 or 7 days a prisoner dies unnecessarily from inadequate medical care.

And correctional facilities are filled with people who have a mental illness. At least 16 percent, or 350,000, and maybe twice that number, are mentally ill. You have heard it said many times over because it is true: prisons and jails have become America's de facto psychiatric hospitals. I am not here to tell you that the mentally ill prisoners should not be held accountable. I am just saying that prisons and jails—try as we might—are not good places to help people cope with or recover from serious mental illness. In facilities around the country today, we are struggling to deal effectively with mentally ill prisoners. And we are releasing mentally ill prisoners without the necessary supply of medications and without any clear pathway to treatment. That threatens public safety and almost guarantees that those individuals will fail, commit new crimes, and reincarcerated.

These are difficult problems, but they are not without solutions. We need real partnerships between correctional agencies, departments of public health, and health care providers working in the community. The health care challenges in prisons and jails are public health problems, and they demand public health solutions. We have come to a point where the doctors in some prisons and jails practice under licenses that restrict their work to correctional settings. They would not be permitted to provide care to you or me. Congress should find ways to encourage public health partnerships because they have been demonstrated to work and help correctional facilities hire only fully qualified medical staff.

When we must incarcerate someone who is mentally ill, we need properly trained and caring staff to treat the person's illness. And we must avoid isolating mentally ill prisoners in high-security segregation units where their mental state deteriorates and their suffering increases.

Money alone will not guarantee these crucial reforms, but without adequate funding for correctional health care, we have no hope for real change. Some correctional systems ration services by requiring prisoners to pay to see a nurse or doctor. Correctional systems that require medical co- pays by prisoners risk the spread of disease and the potentially high cost of delaying necessary care in exchange for a small cost savings. The Federal Government, along with State and local governments, should end the use of medical co-pays in correctional facilities. It will take tremendous political will to make that change, and the shift is much more likely to occur if we can also increase the financial resources available to States to pay for medical care in prisons and jails.

One of the most important contributions Congress can make to improve the public health of this country is by changing Federal law so that correctional health care providers—just like every other public health care provider—can be reimbursed by Medicaid and Medicare. If I ran a public hospital system rather than a correctional health system, my facilities would be entitled to Federal reimbursement for the medical and mental health care we provide to persons who are low-income or elderly. The public health depends on seeing prisons and jails as part of the public health system. Medicaid reimbursement is a key part of that system. We have a responsibility to provide decent health care to people who are not free to seek medical care on their own.

In conclusion, in over 30 years of working in corrections, this opportunity to participate with the Commission on Safety and Abuse in America's Prisons has been the best opportunity for others and me in my profession to have a public voice, and we thank you.

[The prepared statement of Mr. Maynard appears as a submission for the record.]

Chairman COBURN. Thank you, Mr. Maynard.

Judge Gibbons, welcome. I have seen a lot of you lately at different hearings. Welcome. Please share with us, if you would.

STATEMENT OF HON. JOHN J. GIBBONS, COMMISSION CO-CHAIRMAN, AND FORMER CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, NEWARK, NEW JERSEY

Judge GIBBONS. Chairman Coburn and Senator Durbin, I would like to—

Chairman COBURN. Turn your mike on.

Judge GIBBONS. I would like to first apologize for my health problem. I am coughing. Is it on?

Chairman COBURN. Now it is. Thank you.

Judge GIBBONS. I would like to reiterate what General Katzenbach said at the outset of this hearing: ensuring safe and humane and productive prisons and jails is not, and must not be, a partisan matter.

Witness after witness before our Commission spoke of the closed nature of prisons and jails and the danger to the health and safety of all of us when there is insufficient oversight. A former prison warden told us: "When we are not held accountable, the culture inside the prison becomes a place that is so foreign to the culture of the real world that we develop our own way of doing things." Our jails and prisons require the sort of external oversight systems that we demand for every important public institution, be it our public hospitals, our public schools, or our publicly traded corporations.

Too few U.S. correctional systems are monitored by an independent Government body with enough authority and funding to regularly inspect conditions of confinement and to report findings to lawmakers and the public. Now, the Federal Government has an excellent model. The Office of Inspector General within the Department of Justice inspects Federal correctional facilities and answers to the Attorney General and Congress, rather than to the Bureau of Prisons. The office does an admirable job in maintaining its independence, and everyone, from the Bureau of Prisons to the public, benefits as a result. Congress, exercising the authority conferred on it by the 14th Amendment, should actively support a similarly independent and strong authority in every State.

The Federal courts have played a historic role in watching over America's prisons and jails, shedding light on and remedying many of the most dangerous conditions and abuses. Indeed, we heard from a number of corrections professionals that they welcome—and sometimes quietly invite—lawsuits: they are often the only way to shake free the resources needed to make prisons safe and effective. The courts' role in prison oversight should in no way be impaired.

The Department of Justice's activity in overseeing correctional facilities, through civil rights investigations and litigation, has diminished significantly in recent years. In fiscal years 2003 and 2004 combined, the Department of Justice's Special Litigation Section initiated only six investigations and filed only one civil case in Federal court addressing conditions in prisons and jails. This diminished activity is not the result of diminution of the problems in our penal institutions.

The Prison Litigation Reform Act of 1996 brought down by nearly half the number of Federal cases by prisoners alleging constitutional violations. Now, in part, that was the Prison Litigation Reform Act goal—to reduce what were deemed to be frivolous lawsuits. But the PLRA has proven to be a crude weapon: meritorious

lawsuits are suppressed at a greater rate than non-meritorious ones. The Commission recommends that the PLRA be amended to ensure that those individuals who suffer some of the worst abuses like rape, medical neglect, and physical violence have a meaningful way to achieve accountability.

First, Congress should eliminate the requirement in the statute which bars the courthouse to prisoners, such as victims of sexual assault, unless they can prove a physical injury.

Second, Congress must eliminate provisions that discourage prisoners from going to court and from having lawyers when they do go to court, such as the filing fee for indigent prisoners and the restrictions on attorneys' fees.

Third, Congress should remove provisions that discourage consent decrees, such as the requirement that correctional agencies concede liability as a prerequisite to a settlement.

And, finally, Congress should relax the "exhaustion rule," which requires prisoners to fully exhaust all administrative processes, regardless of whether those processes are actually meaningful. As some courts have interpreted it, the PLRA bars the courthouse forever when a prisoner misses a single administrative deadline.

We must hold out a genuine hope for humane treatment in our prisons and jails and be willing to let courts and other institutions shed light on how we treat the millions of people we incarcerate and the hundreds of thousands who work inside the corrections institutions. The Commission on Safety and Abuse and the Vera Institute look forward to an ongoing dialog on these issues with Members of the United States Congress.

Thank you.

[The prepared statement of Judge Gibbons appears as a submission for the record.]

Chairman COBURN. I thank each of you for your input. I have been through the report and found it very interesting. I am going to ask each of you to—I see this divided into three areas. There is a Federal responsibility, there are certainly State responsibilities, and then there is the organizational responsibilities of the institutions that certify and evaluate prison practices.

Could each of you go to each of those three areas? What is the No. 1 thing you see that the Federal Government ought to be active in? You have pretty well outlined what you think, Judge Gibbons, but Federal, then State, and then associational. In other words, as we start to look at this, what is the most important? I think both Senator Durbin and I have a keen interest in seeing some changes take place. But as you see it, General Katzenbach, what is the No. 1 priority that should be there for Federal? What is the No. 1 priority for State? And what is the No. 1 priority for the associations?

Mr. KATZENBACH. Thank you, Mr. Chairman, for such a simple question.

[Laughter.]

Chairman COBURN. I am trying to make this easy. I am a doctor.

Mr. KATZENBACH. I think as far as the Federal Government is concerned, I think the No. 1 priority in my view would be the modeling that it can do and the help that it can serve in assisting those people in the States that really want to run a better prison. And you have that in the academy, which is like the FBI Academy, and

I think it needs more help on that. And I think that would be a major part, and the other part I think is also what it can do as far as health is concerned, which is such a big problem and a very expensive problem. And I recognize the difficulties of that.

As far as the States are concerned, I think the single most important problem is getting people who are willing to try to change the culture within those prisons, and I think that really requires an effective oversight system. Now, it may be that the Federal Government can help on oversight as well, but I think the States should be creating effective oversight because that opens the doors and it gives—you know, keeping it secret, keeping it quiet only helps those who are not doing anything good, who want to keep what is going on out of the public eye. I think the good people can take advantage of oversight, and I think that is the most important thing from the State's point of view.

I have forgotten what your third one was, frankly.

Chairman COBURN. It was the association, American Correctional—

Mr. KATZENBACH. Well, I think they have done some very good jobs in terms of establishing standards. The difficulty is that there are more words in it than there is reality, and that is, again, an oversight question. It is a question of putting—they have done tremendous work under tremendous difficult circumstances, and it is very valuable work. And I think it is up to the States and to private groups as well to try to make that much more of a reality than I think it presently is in terms of not very many prisons are, in fact, approved, certified by them. And that would be a big help, to have more of those people, if you really had a good system for inspecting and for measuring. That is about as good as I can do.

Chairman COBURN. That is very good. Thank you.

Pat Nolan, please.

Mr. NOLAN. Yes, Senator, I think at the Federal level I think uniform standards, reporting standards of statistics is just crucial. There just are at the present time a patchwork of statistics, and it ends up, you know, with us fighting over anecdotes. So I think having that baseline so you can compare.

I also think just the bully pulpit that you folks have, the opening statements of both of you, if we could just try to get the public to realize this is all of our problem, it is not just an in-prison problem—Senator Durbin's statement about the trash. Frankly, as a legislator, I frankly thought, Sent them to prison, we can forget about them. And that was a big mistake that I made. These people are coming out. And also, as a religious person, our brothers and sisters, we have to care about them. They have lives. They are children of God, too. So I think alerting the community to what is at risk, you can play—like holding this hearing is a tremendous step forward.

As far as the States go, I absolutely believe that oversight and changing the culture to one of respect and caring about the future. And, you know, the State of California does not have—you know, the ACA has terrific standards. The State of California just ignores them. In fact, the ACA meeting was picketed by the guards' union in California because they advocated standards in California. That is just, you know, my former home State, but there needs to be

some move on the State level to say we will have our prisons pass muster by these standards the ACA has developed so carefully.

And you asked for one, but I would add another, and that is the funding of medical and mental health. The pot is empty for them, and their lives are totally dependent on the prison authorities for their care. You do not have the option—

Chairman COBURN. Well, let me go to my State. My state has $1 billion that they are trying to figure out how to spend right now. Why is that not a State responsibility in a State prison?

Mr. NOLAN. Oh, well, I agree, except that as Mr. Maynard pointed out, all the public institutions—the poor and the elderly are entitled to Medicaid reimbursement except if they are in prison.

Chairman COBURN. Well, they are also entitled to vote except if they are in prison. So the question I have for you is: Is that a Federal responsibility to supply health care to States when the States are running surpluses and could, in fact, take care of the health of their prisoners?

Mr. NOLAN. You know, first of all, the first responsibility is on the State, but the first responsibility is on the State not to send mentally ill people to prison. You know, we have incarcerated so many of the people that are mentally ill, and they are crying—you know, it becomes a slippery slope. They are arrested for worshipping the newspaper rack in front of Denny's, and literally in L.A. County they call it "mercy bookings." Mercifully, they take them off the street, but the place they take them is jail because there are no acute care beds for them and the L.A. County Hospital will not accept them. So they end up in jail. The L.A. Sheriff runs the largest mental health facility in the world. And the deputies don't want—these people are sick. They are not criminals. And yet then they have a record, and it just escalates from there.

So the State could not save money, but the money would be better spent treating them in acute mental health beds, get them stabilized on their meds, not in prison making criminals out of them, and, frankly, putting them at risk because they are abused. I saw it. I saw the abuse of these mentally ill people by the other prisoners. They are taken advantage of, and it makes a correctional administrator's job virtually impossible to be dealing with criminals, but also mentally ill people.

Chairman COBURN. Mr. Maynard?

Mr. MAYNARD. Mr. Chairman, I think as we have been talking, the medical and the mental health issues are areas that States are not able to deal with. I think there needs to be some Federal support into the medical costs. The medical costs are rising tremendously, as are the pharmaceutical costs. And when those costs rise, they have to be met because of the law and just for doing the right thing, and money comes out of operations, which reduces staffing and so on. I think the Bureau of Justice Statistics, funding them to do more data collection, more research. The National Institute of Corrections, funding them, they do excellent training for corrections. They have for years. They are limited funding. I think that would be most helpful.

As far as States, I am not sure other than what States are doing now. I think if they had overall guidance, I think they would probably do a better job.

Organizational responsibilities, I think the accreditation process—I have been involved in accreditation of corrections for over 25 years, and I have seen the organization as a whole across the country improve because of the work of people to try to meet certain standards. And without those standards, they do not. We have about less than half of the prisons in the country are accredited. That was not the case 15 years ago. And that has all been a voluntary movement on the part of corrections professionals. I think we should really support that effort that people are doing voluntarily.

Chairman COBURN. Judge Gibbons, you pretty well summarized the Federal side of that. Anything to say about the State side or the associational side?

Judge GIBBONS. Well, one thing I can say about the States is that they will react to Federal prodding.

Chairman COBURN. I already got your message.

[Laughter.]

Judge GIBBONS. If the Federal Government establishes standards, the States will have to comply with them, whether at State expense or otherwise. One particular problem that jumps out at me when I go to these prison facilities—it is essentially a State problem—is that they are dealing with an aging population and that the cost of health care particularly for that aging population is becoming a staggering burden. There are institutions where internally they are training prisoners to run hospice centers for the dying because the population is so old.

Now, Senator, you said, well, isn't that a State responsibility? Why should Medicaid take care of some of those expenses? Well, you could say that about the whole Medicaid program. What is the justification for carving out of a Federal health program this very vulnerable aging population that has expensive medical care? Or else they are just going to die.

But I think what my essential message is, Federal standards for the operation of correctional facilities will inevitably improve the situation.

Chairman COBURN. Thank you. I want to give plenty of time to Senator Durbin. I just want to come back and talk on that issue a little bit on recidivism rates, because that is the key to a lot of this cost.

Senator DURBIN. Let me just say that I have been in the Senate for 10 years, on this Committee for 8 years. To my memory, this is the second time we have ever had a hearing on corrections. On the Senate Judiciary Committee, the second time. We do not want to talk about this. It goes back to Mr. Nolan's point and the one I made earlier. Take these dangerous people away and do not tell us anything about it. Keep the costs low and don't talk about it, please. You know, they are paying a price, and they do not deserve a second thought.

Yet the reports suggest 95 percent are coming out, will be released. I do not know what current recidivism rates are. Does anybody have a current number?

Mr. NOLAN. It is about 66 percent stay there for 20 years.

Senator DURBIN. So two out of three of those released are headed back. So the obvious question that I raised in my opening state-

ment is: Is there an intervention with that incarceration that can stop the second crime from being committed, the second victim from being created? And it strikes me—and I thought about this when I worked at the State level and the Federal level. One of the things going in, there are just a myriad of problems that have created the criminal mind. One of them is lack of self-esteem. And what I read in your report, not at length but certainly good reference, is that the educational courses in prisons have been diminished dramatically. It used to be that you would go to prison and pick up a skill or a GED, and I take it from what you say here that that is not the case very often anymore. And so they are emerging from prison with few skills, if any.

I might just give a salute to Congressman Danny Davis of Illinois, who has focused more on this issue than any Congressman I know, because the West Side of Chicago, because of all the great faith-based operations there, has many more returning incarcerated people than other places. But the point he has found and I have found is that, absent some new skill or education, they return to the streets in the same or worsened condition. They have sharpened their criminal skills, but no other skills, and their criminal connections.

Second, you have people with mental illness, and, Mr. Maynard, you made the point that my Director of Corrections made in Illinois, that he had no idea that he was getting into the business of running a mental health institution, which he is. And the numbers, from 16 to 54 percent, suggest the magnitude of this issue and how inhumane it is for us to take people who are ill and to put them in this vulnerable predicament. We would no more think of taking an innocent person suffering from a disease and abandoning them on an island for a long period of time to fend for themselves than we would—than we should in this situation. And so that lack of mental counseling, mental health counseling and help really makes a significant difference. And then the physical illnesses and diseases, whether they were sick going into the prison, a million and a half come out each year sick, if I heard the testimony correctly, with serious and communicable diseases.

And now let's move to the issue of addiction. If you are an addictive person with an addictive mind and an addictive temperament going in a prison, what is the likelihood that you will be cured of that during your incarceration? Slim to none, I think, and sadly there still are narcotics coming into prison to deal with this.

So now it comes back in our direction. Federal and State legislative leaders, as well as executive leaders, are we prepared to face the public criticism of putting resources into prisons that we have just described— education, mental counseling, health care, dealing with addictions, saying to the public, if we don't spend the money here, you may be the next victim when they are released?

Now, Mr. Nolan, you have been in this business. This is a tough political task. There were times not too long ago when we were debating whether or not to even give exercise equipment to prisoners because it was "a reward," or let them watch television, another "reward." So let me ask you: Come to our world for a moment here and talk about this. Mr. Maynard?

Mr. MAYNARD. Senator Durbin, the Federal Government has supported the reentry projects throughout the country, and they are going to prove to be effective in helping people stay out of prison when they get out, and that is going to prove to be cost-effective for the system. There is no question about it. And there are programs, in addition to education, but drug treatment programs, we have found that—we first thought that meth treatment was not going to be effective, and we were all concerned about it. But we have pretty well proven that there is effective treatment for meth addiction.

Anger management, some of the domestic abuse issues, people who are in treatment are less likely to reoffend in those cases.

Senator DURBIN. How common is that in the correctional setting?

Mr. MAYNARD. We have, of course, the drug treatment; we have sex offender treatment; we have the—

Senator DURBIN. Are you talking about one State or nationwide?

Mr. MAYNARD. I am talking about one State right now, but I was just going to relate to—I think the majority of the State systems have those kinds of programs, but they continually fight to—when budget cuts come, education, unfortunately, is something I have seen that typically gets cut, chaplains and education and training.

Senator DURBIN. Isn't that the No. 1 indicator on recidivism—education?

Mr. MAYNARD. It is a strong one. People that come to prison that could not read and write and learn to read and write in prison, they are, according to the research, three times less likely to come back to prison. And the same way with GED, if they do not have a GED, and they get it—it is the self-esteem you talked about—they are less likely to come back to prison. So those programs are cost-effective, and today, one thing that is encouraging is that most States are starting to look at evidence-based practices, where we—in fact, in Iowa, my budget is predicated on being able to prove that if we are given these resources, we will cause a reduction in recidivism, we will cause these people to do better and not come back. So a lot of States are starting to move in that direction, and I think that is the kind of data that you can take to constituents and say here is why we do this, it makes sense.

Senator DURBIN. Good. The results orientation.

Mr. MAYNARD. Yes, sir.

Senator DURBIN. I think that is good.

Can I address another issue which you touched on in this report but I want to ask for a little amplification? I bring this up at hearings from time to time. These statistics are old, but I do not think they are out of date. I think they are still largely true, and it is about drug crimes and the people who commit them and the people who are incarcerated because of them.

African Americans comprise about 12 percent of America's population, but about a third of the drug arrests and about 65 percent of the drug incarcerations are African Americans. There is clearly an injustice built into those statistics.

You in your report discuss diversity in terms of correctional officers. I am glad that you speak to the issue of correctional officers. I know a lot of them. It is not an easy job, and my hat is off to

them because they do not get paid well, as you also note, and they risk their lives to keep peace in these correctional settings.

But address for a moment this diversity issue as to whether or not the correctional officers reflect the diversity of the people that they are watching and whether there is an empathy there that does not exist because of it, because of this disconnect.

Mr. MAYNARD. I could just say that—

Senator DURBIN. I am sorry Mr. Morial is not here or Hilary Shelton, who I know was also part of your Commission. But if you would—

Mr. MAYNARD. I think it varies a little bit from State to State. I know my experience has been we typically have had more African-Americans in prison than an equivalent ratio of staff. Historically, prisons have been built in remote places, in rural areas, and typically been more white, a rural atmosphere, and difficult to recruit minorities to work in prisons from those areas. That has been the history.

Senator DURBIN. Did you find any correlation to the conduct at a prison relative to good time, as to whether or not prisoners were rewarded with good time for a certain time served? I know that the State transfer used to be much closer to one-to-one in Illinois. I don't know what it is today. But the Federal is much different. It is 1 day for 1 month, I believe.

Is there any correlation between the conduct of prisoners and the good time that allows them to reduce their ultimate sentence?

Mr. MAYNARD. I would think so. Most States have systems that give credits for work or credits for program completion. They give time off a sentence, either work time or good time.

Senator DURBIN. But you would not know nationwide or through the correctional system whether that has an impact on what prison life is like?

Mr. MAYNARD. I think so. Yes, sir. I think it would have an impact on encouraging positive behavior, yes, sir.

Senator DURBIN. Mr. Nolan, you talked about vulnerable people in prisons, and you mentioned the mentally ill. Are there other vulnerable populations in prisons?

Mr. NOLAN. Yes. In fact, the Prison Rape Commission has had on sexual violence quite a bit of testimony. People of slight builds, people with effeminate characteristics, people that are homosexual are viewed as targets.

Senator DURBIN. Does age have anything to do with this?

Mr. NOLAN. Oh, yes, definitely, and the trend to housing juveniles in adult facilities is troubling. They are by nature vulnerable, and so we think it is important that on entrance those factors be looked into.

In fact, I was meeting with the management team of the Los Angeles County jail system. They just had the riots and several deaths there. And I said, you know, "You really need to classify these." And the head of operations said, "Oh, we do." And then the head of training said, "Well, we only classify them as a danger to us, not to each other." You know, it was a revelation that even with them they had not even thought about that factor.

If I could answer a previous one, as politicians, one of the things that is important that we emphasize is these things are not for the

prisoners. This is for safer communities and fewer victims, as you said. That is the bottom line, and we need to hold everybody accountable. I learned this from one of my colleagues, a liberal in the legislature, John Vasconsellos, who changed the name of the Committee on Criminal Justice to Committee on Public Safety. And I said, "John, that is typical liberal nonsense," you know. And he said, "No, no, Pat." He said, "If we call it the Committee on Criminal Justice, the members and staff will view it as our job as building a stronger criminal justice system." He said, "That system does not exist for stronger prisons. It exists to keep the public safer, and we have to hold it accountable for that. And if we change the language of discussion to public safety, how do we reduce the risk of harm to people?"

So I would say, as far as your question about good time, there is no one-on-one correlation of that. It is really a changed life. Have we changed their value system, their structure? Have we changed them but for a very self- centered focus, to realizing that there is something more important than them, that the community and we believe God, you know, is more important. And if you change their focus of their life so it is not just focused on "gimme, gimme, gimme," then a lot of other things fall into place.

I think there are several factors, and I need to make clear: recidivism, the 66 percent is rearrested within 3 years of release. The reincarceration rate is 52 percent, so that is a distinction.

Senator DURBIN. Still, that is high.

Mr. NOLAN. So it is still high, but it is the rearrest that is 66 percent. But if we have meaningful relationships with healthy, moral people—Dr. Martin Luther King, Jr., said, "To change someone, you must first love them, and they must know that you love them." And programs cannot love people. People can. So the more people we have actually making a difference, the greater the density of loving moral people we pack around them, the better the chance they will make it.

The second thing is job preparation, and I would commend to you the chief probation officer in St. Louis has set up a fabulous job, absolutely sensational. I could not design a better job on this, and he got the permission of the chief judge there, and the unemployment rate of the people under his jurisdiction is lower than the unemployment rate in St. Louis itself. That is working, it is changing lives, and it involves the community.

The third thing is a safe place to live. You know, people do not think about it, but, you know, when you are in prison, you have people guarding you. There is a violence there, but when you are out on the street, you know, where do you sleep at night? If you are sleeping under a bridge or in a park, you are vulnerable. And so having a safe place where they can live is important. Yet most neighborhoods do not want ex-offenders there, so we need to deal with that.

And the fourth thing is treating addictions, and, unfortunately, a lot of systems play "okey-doke" with that. I was at the Virginia Reentry Committee meeting, task force meeting, and I said that less than 10 percent of inmates get treatment for addiction before they are released and that is a reality. And so one of the directors of Virginia said, "Well, we have drug treatment in every prison."

Well, he is begging the question. Yes, they have drug treatment, but only a tiny fraction of the prisoners get it that need it. So having it in prisons is different than making sure everybody with an addictive personality has the treatment to help them, to teach them the coping mechanisms to deal with that aspect of their life.

And then one other thing, so many of the programs—for the 10 percent that do get treatment, after they are released, they have to wait in the queue to get community treatment, 6 to 8 months before they get into a community treatment. Well, if you have that discontinuity, you lose all the benefit.

So I would say those are the major things, but the key thing is relationship more than programs. We focus on programs. But it is linking them with good, moral people that are making it in life and that care about them.

Senator DURBIN. Nothing works better than to have someone who cares.

Judge, a last question the Chairman has been kind enough to allow me to ask. Talking about loving people, let's talk about lawyers.

[Laughter.]

Chairman COBURN. I believe that doctors think they are the least lovable.

Senator DURBIN. I know.

You appealed to our sense of fairness and justice, saying that those incarcerated should be able to have a day in court or a hearing or a review if they are being mistreated. Now, we also know that many of these prisoners have access to great law libraries and maybe computers these days—I am not sure—and file extensive briefs to the court about all sorts of things, some of which are meritorious, and some are not. All of them are not Mr. Gideon of *Gideon* v. *Wainwright*, and many of them tax the system.

Is there a way, is there a screen or a method to give justice where there is none today and yet not open the system up to the idle filings of those who are seeking attention beyond what they deserve?

Judge GIBBONS. Well, there are ways. They have been operating for many, many years. We really did not need the PLRA to screen out frivolous cases. Federal judges were doing it regularly without the inhibitions that have now been placed in the path of often very meritorious prisoner cases. The problem with Federal judges getting rid of frivolous litigation to me has always been greatly exaggerated.

Diverting from the subject matter of this hearing, now the big complaint is that Federal resources are being frivolously diverted to handling immigration appeals. And if the solution to the immigration crisis is to impose on asylum seekers these bars that have been imposed on prisoner litigation, that is going to be counterproductive.

Chairman COBURN. I want to make sure everybody—I am very proud of what is, as a matter of fact, a lot of what you started, Mr. Maynard, in Oklahoma, and I want to read into the record some positive things that are happening in Oklahoma, because I think they lend credence to what this report says. Oklahoma is going to open an acute-care, 262- bed facility for our elderly prisoners and

those with chronic and debilitating diseases. We have the Bill Johnson Correctional Center, which is a premier drug treatment center. That is all it does, prisoners with drug treatment.

We have over 10,000 volunteers working in our prisons in Oklahoma, mentoring and assisting. And the history of Oklahoma is we were under court supervision at one time, and through great leadership and attention to it, that has changed.

In Oklahoma, we have four areas of oversight, which I think are interesting. The Office of State Finance oversights it., the Fire Marshal oversights it, the Department of Health oversights it, and the Attorney General oversights it. So we have four separate oversights, as well as the legislature in terms of doing that.

So I think the results of Federal intervention have borne some great fruit, and Oklahoma is going to do better, and we know that. We have a tremendous problem in terms of paying our staff appropriately and recognizing those needs.

Judge Gibbons, you mentioned the meritorious versus the non-meritorious, the data on that. Could you reference that to my Committee staff if we send you a letter on that in terms of the cases and the filings? You said that the meritorious have been blocked and the non-meritorious have not, and I would just like to have that information as we look at the PRLA.

Judge GIBBONS. We will respond.

Chairman COBURN. Thank you.

One of the things that was cited—I served as a jail doctor for 4 years as the Muskogee County Jail, and there was no question that some prisoners had significant needs. But how do you balance—if you do not even have a little, small co-pay, what we found is they did not want—all they had to do was complain of an illness, and they got out of the work detail that day. And, of course, when I was there seeing them, they were not ill. They were ill from work. So there has to be some balance in terms of your recommendations of how we do not get a secondary motivation for illness to display a requirement in that. And I know that you all have thought of that, and we will send you all these questions. We would love to have your individual responses on how we balance that so that we do not influence it inappropriately.

There is a good balance that should not require a significant cost but still cost something, which is the same problem we have in our own health care system. We have tremendous overutilization in a lot of areas because there is not an appropriate skin in the game. So there has got to be an answer to that, and I will not spend any more time on that.

I would just relate that we will be sending several sets of questions to each of you, if you would try to respond to those within 2 to 3 weeks.

I would commit to you, I am interested in us making a difference, one, in terms of treatment of mental health. As a physician, one out of every three patients I see as a primary care doctor, it is a mental health issue. One in three.

No. 2, drug treatment we know works. We have to incentivize that. We have to pray for the rewards of that.

No. 3, health care. We have got to—we do not have to just fix health care problems in our prison. We have to fix health care in

America. We cannot afford what we are doing now. We are going to spend $2.3 trillion this year. We cannot afford it. And one out of three dollars does not go to help anybody get well. So we have got to work on that, and I think your suggestions have merit, and we need to look at how we do that.

Then, finally, how do we incentivize to raise the level of compensation and professionalism within our prisons so that we meet the requirements that put forward something similar to what Pat Nolan has—how do you be a supervisor in a prison and love your prisoners? I mean, that is where we really want to be, because if that is felt and seen, it is modeled, and it changes lives.

Senator Durbin, anything else?

Senator DURBIN. No. Thank you.

Chairman COBURN. I want to thank each of you for being here. We will discuss among ourselves where we go with followup on this, and I appreciate your time and your testimony. Thank you very much. The record will be kept open for additional statements for 1 week.

The Committee is adjourned.

[Whereupon, at 4:15 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Follow-up Questions of Senator Tom Coburn
Hearing: Findings and Recommendations of the Commission on Safety and Abuse in America's Prisons

Nicholas de B. Katzenbach

1. The Commission's biggest frustrations seem to come from the fact that data is sparse. Do you think it would be a good idea to try to gather more data on abuse before widespread changes to corrections policy are implemented? Explain.

This Commission heard overwhelmingly that there is a need for more and better data on the prevalence of violence and abuse in our correctional facilities nationwide. However, the need for better data does not negate our responsibility to prevent violence and abuse where it is occurring and where it has the potential to occur. The lack of data is a challenge. As we state in "Confronting Confinement," (p.17) "Without it corrections administrators cannot make the best policy decisions, and the public has no way to judge whether those decisions protect or hurt the community." But there are proven methods for preventing violence and abuse, and these can and should be put into practice.

There is no question that better data collection is imperative if we are to identify and resolve problems in a more systematic way. As states and localities build the capacity for better data collection and we gain the ability for more meaningful nationwide statistics, we will be better able to anticipate and work proactively to address the worst problems. In the meantime, many of our correctional facilities must make crucial changes in order to prevent violence and abuse and to stop it where it is known to occur.

For all of the successes we heard about and saw, we also heard compelling evidence of the always present possibility of violence and abuse and believe it is unwise and irresponsible not to begin employing strategies that are accepted by corrections professionals and proven to promote safety behind bars. The Commission was holding a hearing in Los Angeles during the riots in the Los Angeles County jails in February, 2006. We heard about and saw pictures concerning the allegations of beatings and abuse of prisoners with pepper-spray in Florida prisons, we read in the newspapers about the law-suit claiming a pattern of "head strikes" in the New York City jails and the ultimate settlement of the suit, and learned about the high assault rates in the crowded women's prison in Alabama.

Among the most heartening things this Commission learned is that leaders in the corrections field know what works – reducing crowding; promoting productivity through education, work and other programming; using objective classification and direct supervision; enhancing officers' communication skills to reduce the frequency that force is used to resolve conflict; and relying on video surveillance are all strategies that can significantly reduce violence and abuse in our correctional facilities. And supporting our leaders and labor force with the resources and training they need to do their job.

2. You said that one of the most important things that need to change in the prison system is the culture. What cultural changes are needed, and how do you believe that these can be achieved?

The Commission heard similar descriptions of the tensions and conflict that can pervade a correctional facility. Institutional culture is most often defined as the values, beliefs, and behaviors of prisoners and all levels of staff in a correctional facility, and the ways these members of the prison or jail "community" interact with one another. According to one National Institute of Corrections (NIC) researcher, the default culture in a correctional community is susceptible to a number of serious problems that negatively affect both prisoners and staff. As we note in our report, the two most significant problems are the inability of prisoners, staff, and management to identify with one another, and an institutional dehumanization of prisoners that is exacerbated by certain management strategies. These "cultural" problems can then result in harassing, careless, cruel, and even criminal conduct; racial and gender prejudices and strife; staff infighting; open conflict between management and labor organizations; abnormal levels of sick leave; and high rates of staff turnover.

There are a number of strategies for improving the culture in a correctional institution, some of which involve changing the values, attitudes, and behavior of prisoners through targeted programming. Other strategies target the values, decisions, and behavior of the staff and leadership of an institution. We recommend that training for officers place a heavy emphasis on an ethical code of conduct that recognizes the inherent dignity of all individuals, that emphasizes respect for others, and that teaches a broad range of interpersonal skills and de-escalation techniques needed to put that code of conduct into practice every day in culturally and racially diverse environments. We also recommend support for efforts like the NIC's Institutional Culture Initiative, which takes a multi-faceted approach to promoting culture change within institutions by engaging staff and leadership in cooperative problem-solving and by helping the leadership of an institution to assess the need for change and develop a plan to help staff to change their behavior.

Lasting culture change requires the ability to recruit and retain qualified staff and strong leaders. Officers need to be well-trained and able to interact effectively with prisoners from diverse backgrounds. Good managers who are able to model positive behavior for both line-staff and prisoners must be developed through training and an investment in their professional longevity. And governors and local officials must hire the best qualified professionals to lead correctional systems, providing them with the support they need to make change over time and run safe facilities.

3. I served as a jail doctor for 4 years. One thing I noticed was that prisoners have a tendency complain about anything to get out of the general population. Therefore, co-pays do seem to serve a legitimate function to prevent prisoners who are not sick from receiving attention. On the other hand, I think that the idea

to create a health-care/security officer is good. If someone with medical knowledge can monitor the prisoners, they can recognize a problem and ensure that it is addressed. Any thoughts?

The Commission heard from a number of medical experts that co-payments are not the appropriate way to address abuse of medical care in prisons and jails. On the one hand, prisoners who can afford care and are inclined to abuse the system will not be dissuaded by small co-payments. On the other hand, even small co-payments can deter sick, indigent prisoners from seeking care early on, when treatment can prevent greater illness, the spread of disease to other prisoners and staff, and larger costs in the future. Our suggestion to create a health care/security officer position is based on what we learned from systems that do not use co-payments to discourage prisoners from seeking care. These systems rely on good triage, and in the best cases employ nurses who conduct "rounds" of the housing units daily to assess the medical needs of prisoners. In this way, prisoners know that care is available when and if they need it. In fact, we learned that in the award-winning Hampden County, MA, Correctional Center, officers and nurses are trained to look for medical problems and to be proactive about treating prisoners to prevent serious illness. The result, they say, is that prisoners can be screened where they live, which relieves strain on the staff physicians and assures that prisoners will not abuse sick-call simply to get to the medical unit.

There are many reasons why prisoners might be inclined to abuse the prison medical services, and we believe that among these are idleness, boredom, and a perception that medical staff are sympathetic while security staff are antagonistic. Rather than create a barrier to medical care that can cost more in the long-run and endanger the health of prisoners and staff, we believe it is more appropriate to provide prisoners with meaningful and productive activities. Combined with a well-run system of medical triage, this will go a long way to reducing the number of true malingerers.

4. The City of New York Department of Corrections submitted a letter and asked that it be made part of the record. In their letter, they said that the commission chose not to use stories and data which the NYC Department and their colleagues presented to them. They also said that the Commission failed to identify best practices and gave short shrift to the data that NYC sent to them painting a different picture.

   How would you respond to this?

As the Commission states in the Preface to "Confronting Confinement," "Readers looking for a report card on safety and abuse in all the prisons and jails across America will not find it in these pages." However, we consulted hundreds of experts including current and past leaders of state and federal correctional systems and current and former prison wardens and jail administrators. The New York City Department of Correction was one of the many facilities from around the country that submitted information to the Commission.

While we could not provide a report card on prisons and jails around the country, our report highlights best practices in every chapter, including the award-winning medical care provided at the Hampden County Correction Center in Massachusetts, and the humane treatment of prisoners in maximum security and segregation at Oak Park Heights in Minnesota. In addition, the report mentions two good practices in the New York City jails. First, we note that a far-thinking program developed by the NYC-DOC in the early 1990s to attend in an aggressive and timely manner to instances of drug-resistant tuberculosis paid extraordinary public health dividends, evidenced by a reduction in cases city-wide. Second, we note with approval an agreement reached by NYC-DOC to voluntarily expand its use of fixed surveillance video cameras to augment its efforts to reduce violence against prisoners in its jails.

Finally, we are thoroughly familiar with the national data on violence that Commissioner Horn sent to the Judiciary Committee, and we reference the steady decline nationally in homicides and suicides in our report. On the other hand, we question the reliability of data on non-deadly violence and explore in detail weaknesses in that data on pages 24-25 of our report. We also reached different conclusions than Commissioner Horn about the use of segregation and offer national data showing a recent rise in the use of segregation on p. 56 of our report.

Judge John J. Gibbons

1. In the hearing, you stated that the Prison Litigation Reform Act (PLRA) was not necessary to screen out frivolous cases. You argued that federal judges have always been able to separate the frivolous cases from the meritorious cases. Can you please elaborate? Also, will you please share any available data that shows:
    a. How many cases were filed by prisoners in federal courts annually before the passage of the PLRA;
    b. How many of these cases were dismissed on procedural grounds or by summary judgment;
    c. How many of these cases were decided for the plaintiff;
    d. The same statistics annually for the years since the passage of the PLRA.

No one, perhaps especially federal judges, likes frivolous lawsuits. Nonetheless, I believe that the indignation over frivolous prisoners' suits was somewhat overblown and that the PLRA was in some ways an unfortunate product of that over-concern. As our report notes, at the time of the PLRA's enactment, a very small fraction (4.8% according to Professor Fradella) of prisoners' suits were legally or factually frivolous. On the other hand, a very large portion (approximately 87%) of prisoners' suits were resolved against the plaintiff prisoner. But this does not mean that these suits were frivolous. Rather, as can be expected of suits brought by incarcerated lay persons without attorneys who face well-resourced defendants and not surprisingly unsympathetic juries, these suits rarely prevail even when they make legally and factually cognizable claims. To a large extent, such "unsuccessful" suits are often considered to be "frivolous." I think they are quite distinct.

The PLRA added nothing significant to the arsenal at the disposal of federal judges to deal with frivolous or non-cognizable suits. Prior to its enactment, 28 U.S.C. §1915 provided the means by which judges screened cases for frivolousness or the failure to state a legally cognizable claim. Specifically, former §1915(d) authorized courts to dismiss suits brought *in forma pauperis* if the judge concluded that it was "frivolous or malicious." The addition of §1915A (through the PLRA) changed the timing of that screening such that it now takes place before the defendant correctional agency must provide an answer to the complaint. This offers some efficiency for correctional agencies (for this reason, we did not recommend revisiting this provision of the PLRA) but does not add to the powers or duties of the courts. Further, federal judges have always had, and have used, their inherent power to enjoin "frequent filers" of frivolous litigation in the prison context. Courts had the power to take deterrent or coercive action against litigants who were found to have abused the judicial system through frivolous or malicious lawsuits. Federal Rule of Civil Procedure 11, which provides for monetary and non-monetary penalties for litigation that is frivolous or motivated by harassment or other improper purpose, was adopted in the 1980s and amended in 1993, and was applied in numerous cases to *pro se* prisoners whom the courts believed had abused the judicial

system.[1] And courts also had the inherent power to enter prospective orders curbing the behavior of abusive litigants.[2] If I am not mistaken, the Judicial Conference of the United States did not ask for or support enactment of the PLRA and may even have objected to its not being consulted prior to enactment of the statute.

The principal drawback of the PLRA is that it works indiscriminately to discourage prisoner litigation. Indeed, as we note in "Confronting Confinement," there is some indication that it is having the effect of discouraging meritorious suits more than non-meritorious ones, at least as measured by success in litigation. The attached spreadsheet, prepared from Administrative Office of the US Courts data by Commission member Professor Margo Schlanger, summarizes original District Court filings and District Court dispositions from 1987 through 2003.[3] This data indicates a small but steady and significant decrease in the success of prisoners' suits following the enactment of the PLRA, from 13.0 percent in 1995 to 9.2 percent in 2001.

Scholars reviewing the pre- and post-PLRA data, as well as practitioners, have identified the provisions driving the decline in filings and noted that these provisions do not filter out non-meritorious suits and in some instances act to bar meritorious suits more frequently than non-meritorious ones. The filing fee provisions for indigent prisoners discourage meritorious suits that would result in small damage awards. The fee limitation provisions that discourage counsel from accepting prisoners' suits suppress the filing of meritorious cases as these are the cases attorneys would otherwise have tended to accept. The exhaustion rule functions to defeat meritorious cases only; non-meritorious cases will fail through dismissal or a merits-based adjudication regardless of the rule. The Supreme Court's recent decision recognizing a procedural default provision within the PLRA's exhaustion rule will impose an even greater burden on meritorious suits.[4] As the dissenting justices noted, "the procedural default sanction . . . bars litigation at random, irrespective of whether a claim is meritorious or frivolous. . . . Indeed, if anything, it will have a worse effect on meritorious claims; prisoners who file frivolous claims are probably more likely to be repeat filers, and to learn the ins and outs of all procedural requirements."[5]

One need not look far for instances of meritorious claims being barred from federal court review by various provisions of the PLRA. A prisoner claiming to be subject to strip

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[1] *See, e.g.*, *Gelabert v. Lynaugh*, 894 F.2d 746, 748 (5th Cir. 1990); *Knoll v. Webster*, 838 F.2d 450, 451 (10th Cir. 1988); *Robinson v. Moses*, 644 F.Supp. 975, 982-83 (N.D.Ind. 1986).

[2] *See In re Martin-Trigona*, 737 F.2d 1254, 1261 (2d Cir. 1984) ("Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions"). This power was used by federal courts in numerous cases involving both prisoners and non-prisoners.

[3] See Margo Schlanger, *Inmate Litigation*, 116 Harvard Law Review 1555 (April 2003). Administrative Office of the US Courts data is available at the Inter-University Consortium for Political and Social Research (ICPSR), www.icpsr.umich.edu. The Administrative Office does not identify summary judgment dispositions.

[4] *Woodford v. Ngo*, 548 U.S. ____, slip opinion No. 05-416 (June 22, 2006).

[5] *Id.* at 15 and n.13.

searches in retaliation for his refusal to alter his religious practice is barred from federal court by virtue of the physical injury requirement.[6]

- A prisoner seeking judicial relief from an unprovoked beating by staff followed by the denial of medical care is barred by virtue of the exhaustion rule although he waited six months for a decision from the prison grievance system before filing suit.[7]
- A juvenile detainee who has been raped and repeatedly assaulted with the knowledge and assistance of staff has no access to the federal courts because he is deemed to have procedurally defaulted his claim by missing the 48-hour administrative filing deadline.[8]
- A prisoner alleged that he was beaten by jail officers after asking for grievance forms, injuring his neck and aggravating a pre-existing skull fracture and his claim was dismissed for non-exhaustion because he did not file a grievance, even though he cooperated in an internal affairs investigation in which one of the officers was disciplined for his actions.[9]
- A prisoner complained about inadequate medical care by Correctional Medical Services, Inc., but his case against CMS was dismissed for non-exhaustion because he did not name the corporation as responsible in his grievance–even though he named individual medical practitioners employed by the provider.[10]
- A prisoner who alleged he had been assaulted by two officers and brought suit against them and against supervisory officials whose inaction he alleged made them also liable for the assault, was not allowed to proceed against the supervisors because he had not made his allegations of supervisory liability in his prison grievance.[11] The proposition that prisoners must figure out who the proper defendants in a lawsuit are and name them in a grievance that must be filed within days or weeks of the incident is an impossible burden.

We believe that the changes to the PLRA we recommend in our report will better achieve what Senator Hatch commended as the purposes of the Act, to reduce truly frivolous litigation while not "prevent[ing] inmates from raising legitimate claims."[12] Since the report was written, the *Ngo* decision makes me feel even more strongly that we should return to an exhaustion rule that is triggered only by the availability of meaningful prison grievance and jail systems with reasonable and flexible procedural requirements. Indeed, requiring effective and, just as importantly, safe prison and jail grievance systems will itself serve to limit the number of filings in federal court. Although one cannot eliminate vexatious and frivolous lawsuits by prisoners—certainly not with the high percentage of mentally ill persons incarcerated today—one can structure systems that offer timely and

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[6] *Adams v. Rockafellow*, 66 Fed Appx. 583 (6th Cir. 2003).
[7] *Ford v. Johnson*, 362 F.3d 395 (7th Cir. 2004).
[8] Minix v. Pazera, 2005 WL 1799538 (N.D. Ind. July 27, 2005).
[9] *Panaro v. City of North Las Vegas*, 432 F.3d 949, 953 (9th Cir. 2005).
[10] *Vandiver v. Martin*, 304 F.Supp.2d 934, 943-44 (E.D.Mich. 2004)
[11] *Nichols v. Logan*, 355 F.Supp.2d 1155 (S.D.Cal. 2004).
[12] 141 Cong. Rec. 27044; quoted in *Woodford v. Ngo*, at 14-15.

fair hearings and remedies while providing a source of useful information to prison managers, and in the process reduce the impetus to seek relief in the courts.

(See the attached Excel tables demonstrating the effects of the PLRA on prisoner lawsuits.)

2. The report mentions the lack of resources to recruit qualified officers, train them properly, and maintain a professional workforce over time. Aside from assuring that the Federal Bureau of Prisons has adequate funding to accomplish those goals, is there an appropriate role for Congress to play in helping states and localities overcome these same workforce problems – problems that are essentially the product of state and local budgetary constraints?

Yes. The National Institute of Corrections runs a training and management development program that currently reaches only a small fraction of the corrections workforce nationwide. By increasing funding specifically to NIC, Congress can make a contribution toward developing a more skilled and capable workforce.

While NIC's programs should never substitute for the important training each state and locality provides, NIC is well-positioned to share cutting edge curricula and to help train managers and staff trainers and, thereby, have a significant impact on the knowledge base and culture of the workforce nationwide.

3. The City of New York Department of Corrections submitted a letter and asked that it be made part of the record. In their letter, they said that the commission chose not to use stories and data which the NYC Department and their colleagues presented to them. They also said that the Commission failed to identify best practices and gave short shrift to the data that NYC sent to them painting a different picture.

   How would you respond to this?

Please see Commissioner Katzenbach's response to this question.

4. The Commission's biggest frustrations seem to come from the fact that data is sparse. Do you think it would be a good idea to try to gather more data on abuse before widespread changes to corrections policy are implemented? Explain.

Please see Commissioner Katzenbach's response to this question.

5. I served as a jail doctor for 4 years. One thing I noticed was that prisoners have a tendency complain about anything to get out of the general population. Therefore, co-pays do seem to serve a legitimate function to prevent prisoners who are not sick from receiving attention. On the other hand, I think that the idea to create a health-care / Security Officer is good. If someone with medical

knowledge can monitor the prisoners, they can recognize a problem and ensure that it is addressed. Any thoughts?

Please see Commissioner Katzenbach's response to this question.

Gary D. Maynard

1. Has the American Correctional Association taken an official position on the findings and recommendations of the Commission? If so, in what ways does the ACA agree or disagree with the Commission report?

The Commission Report was released only last month, and the Congress of the American Correctional Association does not meet until this coming August. Therefore, ACA has not had the opportunity to take an official position on the findings and recommendations. However, there has been comment made by the President, Gwendolyn Chunn, and the Executive Director, James Gondles, relative to their opposition to the recommendation of independent oversight of prisons and jails. They express the opinion that Corrections has a number of external entities providing oversight now, to include the Justice Department, ACLU, fire marshals, health inspectors, and others. And it is a fact that most state correctional systems have legislative and executive oversight, in addition to the oversight provided by the local, state, and federal courts. In my own state of Iowa, in addition to the Legislative Oversight Committee, we have an active Ombudsman's Office that reports to the Legislature, and we meet with them quarterly to discuss issues relative to prison operations.

The leadership of ACA also disagrees with the recommendation that the Congress should limit the scope of the Prison Litigation Reform Act. The ACA believes that the PLRA serves a legitimate purpose and should be continued in its present form. There was support for the majority of the other recommendations. In addition, there was general support and positive comment by a large number of Corrections Directors around the country.

Another significant organization that followed the hearings, and participated in some of the discussion was the Association of Correctional Administrators (ASCA) This organization's membership are the directors of the 50 states, the Federal Bureau of Prisons, four large urban jail systems, U.S. Territories and Commonwealths, as well as Correctional Services of Canada, and the Ontario Department of Corrections. Although ASCA did indicate disagreement with some of the findings in the report, they also indicated a belief that a number of the Commission's recommendations highlight very important issues in American Corrections. They also emphasized the necessity of appropriate research to clarify and revise as necessary some of the findings that were made. Over 20 state corrections directors testified before the Commission, and it was, in my opinion, the most significant amount of testimony by corrections professionals on issues of national concern in the recent history of our profession. The hearing before your Corrections and Rehabilitation Subcommittee of the Senate Judiciary was again, a very significant event, and we all appreciate your allowing the Report to be heard.

2. What steps can the American Correctional Association take to encourage more jails and prisons to become accredited?

One of the reasons that some correctional facilities do not seek accreditation is that the cost – which includes both the fee to the American Correctional Association and any facility upgrades that are necessary to comply with accreditation standards – can be prohibitive, particularly when correctional administrators and state or local legislators are looking for ways to trim the budget. My personal position is that corrections departments should be spending the money to maintain their facilities in concurrence with the standards whether or not they seek accreditation. However, more facilities would be encouraged to pursue accreditation if state legislators protected money in the budget for accreditation. The federal government is in a position to help as well by earmarking funds for state and local correctional systems that choose to seek accreditation.

The American Correctional Association can further encourage more jails and prisons to become accredited by improving communication and outreach to educate wardens and administrators about the benefits of accreditation. The ACA can and should provide more information through trainings and seminars to prisons and jails about the process and gains in safety to prisoners, staff, and to the community at large.

Finally, I believe that it would be possible to overcome the natural impediment that the smallest jails face in becoming accredited through a process of regionalization, whereby counties or jurisdictions could work together to run joint facilities with a minimum of 50 – 75 beds. Currently, the smallest lock-ups and jails with beds as few as eight or ten and minimal staff cannot reasonably expect to meet accreditation standards because they do not have the resources to provide programming or services that we expect of larger facilities. There may be a role for the federal government to play in helping counties to consolidate their smallest jails into regional facilities, which would make these facilities eligible for accreditation – and more importantly, would assure that these facilities could run according to the standards we expect of all correctional facilities.

If the consolidation of jails were not readily feasible, another possibility would be to encourage ACA to look at the development of a set of Basic or Core Standards that would be applicable to small jails. These Core Standards would concentrate on the Life Safety Issues and basic treatment issues that would be possible for them to achieve. The 200 plus Standards for Jails now are extremely difficult, if not impossible, for the small jail to meet. In my opinion, it would be better to have jails aspire to meet a smaller number of significant, yet achievable standards, than not try to meet any standards at all.

3. What changes, if any, need to be made to the American Correctional Association accreditation standards?

The ACA has a system in place whereby the accreditation standards are reviewed by professionals from within and without corrections community on a regular basis and then updated. Its Standards Committee, made up of corrections professionals, advocates, volunteers and others, meets two times a year and does a thorough review of the

standards. Suggested changes are presented and the committee members evaluate the suggested changes and then vote on whether or not to approve the changes.

In August, I will become President of the ACA, and I will appoint a new Chair of the Standards Committee. It is my intention to ask the Chair to consider the Commission's Report and how the findings and recommendations can be useful to American Correctional Standards.

4. The Commission's biggest frustrations seem to come from the fact that data is sparse. Do you think it would be a good idea to try to gather more data on abuse before widespread changes to corrections policy are implemented? Explain.

Please see Commissioner Katzenbach's response to this question. In addition, I would like to add:

One promising event in the area of data collection is the Performance Based Measures System (PBMS) project of ASCA. This project, in its third year, has focused on the previous data collection system and looked at the inconsistency of the definitions from state to state. A common language and system for collecting data, as well as counting rules have been developed which should enhance the value of the tremendous amount of information we currently have. We have a lot of data, but it needs to be consistently defined, and collected in a format that permits effective research. The PBMS project needs to be properly funded so that it can continue its crucial work.

Corrections systems are also in need of resources to develop research departments at various levels that can focus on data collection and analysis. We are fast moving to a system that utilizes data and research to make decisions, and any resources that would make staff available to collect and analyze the data we now have would be helpful both locally and to the Bureau of Justice Statistics.

5. I served as a jail doctor for 4 years. One thing I noticed was that prisoners have a tendency complain about anything to get out of the general population. Therefore, co-pays do seem to serve a legitimate function to prevent prisoners who are not sick from receiving attention. On the other hand, I think that the idea to create a health-care / Security Officer is good. If someone with medical knowledge can monitor the prisoners, they can recognize a problem and ensure that it is addressed. Any thoughts?

Please see Commissioner Katzenbach's response to this question. In addition, I would like to add:

There are other good systems that do not use the co-payment, or the health care/security officer, but rather a system that simply assigns officers on a more permanent basis to the health care area, provides them some special training, and involves that officer in the

operations of the health care unit. The problem in some health care operations occurs when the assignment of the correctional officer is not permanent, and a new officer is assigned each day. It makes it difficult to be a part of the professional health care system when the assignment is just a post to fill.

Most of the states that utilize the medical co-payment have found uses for the revenue that it places back into the medical budget. If medical co-pay is ended in a system, there will be a concomitant reduction in the ability to fully fund the medical operations. Even though that amount would be a small percentage of the entire medical budget, it would have an impact. That amount will have to be replaced somehow.

6. The report suggests that the ACA begin unannounced inspections. Are you aware of any unannounced inspections? Why are all inspections announced? How can we expect unannounced inspections to improve accredited prisons?

Currently, the American Correctional Association does not conduct unannounced inspections as part of its accreditation process. Because the accreditation process is voluntary and it is in everyone's best interest to encourage more facilities to become accredited, it has not seemed appropriate to make the process an adversarial one between inspectors and facilities seeking accreditation. Furthermore, there would be additional costs associated with conducting these inspections that would ultimately need to be passed onto facilities through the accreditation fee. Instead, the current process is meant to be a collaborative one by which the ACA helps facilities to do their best to meet the standards.

Having said this, I believe that if there are reasons to be concerned about the climate in a facility or if the ACA hears allegations of problems at a given accredited facility, the ACA should have the authority to make unannounced inspections. I personally do not believe that this kind of unannounced inspection would injure the process, but rather should strengthen it. In this way, facility wardens and administrators would know that they must maintain compliance with the standards in order to maintain their accreditation, and those facilities that are running well would have no reason to be concerned. After I become President of ACA, I intend to have an open debate in the Commission on Accreditation for Corrections relative to the benefits and disadvantages of unannounced accreditation audits. I also believe it is feasible that should additional funding be provided either to facilities or to the ACA to cover the costs of additional inspections, it would be possible to add one or two unannounced inspections each year in order to spot-check a small number of randomly chosen standards at each accredited facility. As long as the inspectors understood that their role is to assess the actual state of compliance with those standards and not solely to find fault, there is no reason this kind of inspection should jeopardize the collaborative nature of the process. However, currently, the costs of additional inspections would either overburden the ACA or raise the accreditation fee for facilities so as to make it further prohibitive. Therefore, I would support adding additional inspections only if additional funding assistance for accreditation was made available. And finally, the American Correctional Association has stated their

willingness to partner with the Federal Government to conduct independent inspections of prisons and jails.

7. On page 74 of the report you cite problems that occur as a result of prison workers creating a staff union. Can you elaborate on this problem? Do you have suggestions of how to combat any potential problems that arise between administrators and union workers?

The Commission did not conclude that the unionization of the officer force in and of itself creates problems or exacerbates the potential for abuse. To the contrary, we noted that "the collective bargaining rights of corrections officers are extraordinarily important for officers individually and for the development of the profession." We made the further point, however, that there are limits that should be applied to the concession of power by corrections administrators through the bargaining process. We are reluctant to create a checklist of potential delegations of authority, which exceed those limits, as there are simply too many factors in individual jurisdictions' practices and conditions, as well as in state law, to do so at the level of generality with which we discuss this issue. Nonetheless, the ability of a facility manager to protect the safety of prisoners and staff in fundamental ways must be retained. Of course, as we also note, that retained authority must be applied fairly and consistently, and internal and external oversight mechanisms are needed to ensure that the rights of staff persons are appropriately balanced with the nonnegotiable need to protect the health and safety of all who live and work in the institution. We also believe that there are too few opportunities for labor and management to solve problems together and thus to build trust and respect for one another, which is something that the National Institute for Corrections has identified as an important way to address problems with institutional culture.

Marc H. Morial

1. The Commission's biggest frustrations seem to come from the fact that data is sparse. Do you think it would be a good idea to try to gather more data on abuse before widespread changes to corrections policy are implemented? Explain.

Please see Commissioner Katzenbach's response to this question.

2. In the report's coverage of problems with abuse and retaliation, there are several mentions of "goon squads." Ron McAndrew, the former warden of a maximum security prison in Florida, told the Commission that these squads of violent officers were beyond his control. Why? Do criminal penalties not apply equally to violent corrections officers?

As the recent shooting in a federal prison in Florida between federal agents and corrections officers indicted for conspiracy to commit bribery, witness tampering, mail fraud, and interstate transportation in aid of racketeering should remind all of us - despite the fact that criminal penalties apply equally to corrections officers - there are a number of reasons why it is difficult to prosecute officers who abuse prisoners. As we note in the Commission's report, the only federal entity that investigates state and local correctional facilities is the Department of Justice, and in recent years both criminal and civil investigations have become sparse. Meanwhile, local jurisdictions often lack the political will, and sometimes the expertise, to thoroughly investigate and prosecute abusive corrections officers within their own communities.

Aside from the lack of prosecution resources, the Commission heard from many sources that there is often a strong code of silence among corrections officers, making it difficult to find officers who are willing to report abuse by their colleagues or corroborate such reports. And it takes strong leadership, up to the very top of any correctional system, to overcome this problem. Where the problems are worst, that kind of leadership is often lacking.

The Commission recommends a layered approach to oversight, which includes enhancing DOJ's Special Litigation and Criminal Sections and their capacity for mounting civil and criminal investigations and prosecutions in correctional facilities, a commitment by states to develop greater capacity to investigate and prosecute criminal misconduct in prisons and jails; and a commitment by correctional administrators to create safe mechanisms for both prisoners and for staff to report abuses.

Currently, the National Prison Rape Commission is developing standards for federal, state, and local facilities regarding the investigation and resolution of rape complaints that can be used to address other forms of violence than only prison rape.

3. I served as a jail doctor for 4 years. One thing I noticed was that prisoners have a tendency complain about anything to get out of the general population.

Therefore, co-pays do seem to serve a legitimate function to prevent prisoners who are not sick from receiving attention. On the other hand, I think that the idea to create a health-care / Security Officer is good. If someone with medical knowledge can monitor the prisoners, they can recognize a problem and ensure that it is addressed. Any thoughts?

Please see Commissioner Katzenbach's response to this question.

4. You described the remarkable transformation of the Louisiana State Penitentiary in Angola. How was that change accomplished and is it the kind of change Congress can contribute to in any way through the National Institute of Corrections? In other words, is this the sort of change that happened through the effort and will of leaders in Louisiana who understood their particular problems, or do you believe that such changes could come about through federal intervention?

Before Warden Cain came to Angola the problems there, including the level of violence, were thought by many to be insurmountable. There is no question that the transformation at Angola is the result of a warden who had a positive vision for that prison and who understands how to implement reform in Louisiana. This is not to say that conditions at Angola are perfect, but that dramatic change is possible.

We should not expect the National Institute of Corrections (NIC) to spearhead reform in any state or local system. But NIC provides valuable assistance to local leaders who are committed to reform. NIC does that by helping them assess their needs and respond to problems with strategies that are appropriate for their systems and their political climate. We heard from corrections officials that they would like more help from NIC.

NIC's role is to ensure that dedicated corrections managers do not have to reinvent the wheel to promote positive change. Congress should do more to support and promote the valuable work of the NIC.

Pat Nolan

1. The Commission's biggest frustrations seem to come from the fact that data is sparse. Do you think it would be a good idea to try to gather more data on abuse before widespread changes to corrections policy are implemented? Explain.

Please see Commissioner Katzenbach's response to this question.

2. In your report you cite the importance of rehabilitating offenders. I recognize the many benefits of rehabilitation programs. They can potentially reduce

    i. The re-arrest rate which the Bureau of Justice Statistics cite at 67.5% (BJS report, June 2002)

    ii. Re-conviction which BJS cites at 46.9% (BJS report, June 2002)

    iii. Idle time which can lead to outbursts in prison.

    In your discussion of rehabilitation, you mentioned the importance of post-release employment. We know both by state statistics and federal statistics that about 80% of the offenders that are re-arrested where unemployed. Do you believe that employment is one of the most significant deterrents to re-arrest? Do you believe that we should therefore focus efforts to prevent recidivism on finding employment for inmates after they reenter society?

Employment, along with education and family stability, is one of the most important factors in determining a person's success upon release from prison or jail, and employment is closely linked with education and family stability as well. While this Commission did not study re-entry programs in great depth, we believe strongly that corrections should work to improve the education, training, and skills of prisoners while they are incarcerated and assist in re-entry planning, which includes preparation for the job market. However, corrections officials cannot do this alone. Currently, there are tremendous barriers to employment for prisoners returning to their communities with felony convictions. Aside from the overwhelming stigma attached to incarceration and criminal conviction, many civil penalties, including ineligibility for certain jobs and professions, hinder ex-offenders' ability to find meaningful employment upon their release.

The Commission urges corrections officials, state governments, and the federal government to look at the most promising jobs programs inside and outside corrections as models. One such program is run by the U.S. Probation Office for the Eastern District of Missouri, where the unemployment rate of that office's caseload is lower than the unemployment rate in St. Louis, Missouri, and the nation. This program provides

important work-force training and assistance with job search and placement to ex-offenders. There is no reason why similar work-force preparation should not begin while people are still incarcerated, in order to improve their chances for success when they are released.

3. I served as a jail doctor for 4 years. One thing I noticed was that prisoners have a tendency complain about anything to get out of the general population. Therefore, co-pays do seem to serve a legitimate function to prevent prisoners who are not sick from receiving attention. On the other hand, I think that the idea to create a health-care / Security Officer is good. If someone with medical knowledge can monitor the prisoners, they can recognize a problem and ensure that it is addressed. Any thoughts?

Please see Commissioner Katzenbach's response to this question.

Senate Committee on the Judiciary
Subcommittee on Corrections and Rehabilitation
Hearing on "The Findings and Recommendations of the Commission on Safety and Abuse in America's Prisons"
June 8, 2006

Questions Submitted by U.S. Senator Russell D. Feingold

1. Commissioner Gibbons, the report of the Commission on Safety and Abuse in America's Prisons makes the point that the Prison Litigation Reform Act (PLRA) may have had the effect of discouraging meritorious lawsuits. At the hearing, you commented that the federal judiciary did not need the PLRA to discourage frivolous lawsuits. Please provide additional information regarding the impact of the PLRA and elaborate on possible alternative ways to discourage or otherwise to deal with frivolous lawsuits by prisoners.

No one, perhaps especially federal judges, likes frivolous lawsuits. Nonetheless, I believe that the indignation over frivolous prisoners' suits was somewhat overblown and that the PLRA was in some ways an unfortunate product of that over-concern. As our report notes, at the time of the PLRA's enactment, a very small fraction (4.8% according to Professor Fradella) of prisoners' suits were legally or factually frivolous. On the other hand, a very large portion (approximately 87%) of prisoners' suits were resolved against the plaintiff prisoner. But this does not mean that these suits were frivolous. Rather, as can be expected of suits brought by incarcerated lay persons without attorneys who face well-resourced defendants and not surprisingly unsympathetic juries, these suits rarely prevail even when they make legally and factually cognizable claims. To a large extent, such "unsuccessful" suits are often considered to be "frivolous." I think they are quite distinct.

The PLRA added nothing significant to the arsenal at the disposal of federal judges to deal with frivolous or non-cognizable suits. Prior to its enactment, 28 U.S.C. §1915 provided the means by which judges screened cases for frivolousness or the failure to state a legally cognizable claim. Specifically, former §1915(d) authorized courts to dismiss suits brought *in forma pauperis* if the judge concluded that it was "frivolous or malicious." The addition of §1915A (through the PLRA) changed the timing of that screening such that it now takes place before the defendant correctional agency must provide an answer to the complaint. This offers some efficiency for correctional agencies (for this reason, we did not recommend revisiting this provision of the PLRA) but does not add to the powers or duties of the courts. Further, federal judges have always had, and have used, their inherent power to enjoin "frequent filers" of frivolous litigation in the prison context. Courts had the power to take deterrent or coercive action against litigants who were found to have abused the judicial system through frivolous or malicious lawsuits. Federal Rule of Civil Procedure 11, which provides for monetary and non-monetary penalties for litigation that is frivolous or motivated by harassment or other improper purpose, was adopted in the 1980s and amended in 1993, and was applied in numerous cases to *pro se* prisoners whom the courts believed had abused the judicial

system.[1] And courts also had the inherent power to enter prospective orders curbing the behavior of abusive litigants.[2] If I am not mistaken, the Judicial Conference of the United States did not ask for or support enactment of the PLRA and may even have objected to its not being consulted prior to enactment of the statute.

The principal drawback of the PLRA is that it works indiscriminately to discourage prisoner litigation. Indeed, as we note in "Confronting Confinement," there is some indication that it is having the effect of discouraging meritorious suits more than non-meritorious ones, at least as measured by success in litigation. The attached spreadsheet, prepared from Administrative Office of the US Courts data by Commission member Professor Margo Schlanger, summarizes original District Court filings and District Court dispositions from 1987 through 2003.[3] This data indicates a small but steady and significant decrease in the success of prisoners' suits following the enactment of the PLRA, from 13.0 percent in 1995 to 9.2 percent in 2001.

Scholars reviewing the pre- and post-PLRA data, as well as practitioners, have identified the provisions driving the decline in filings and noted that these provisions do not filter out non-meritorious suits and in some instances act to bar meritorious suits more frequently than non-meritorious ones. The filing fee provisions for indigent prisoners discourage meritorious suits that would result in small damage awards. The fee limitation provisions that discourage counsel from accepting prisoners' suits suppress the filing of meritorious cases as these are the cases attorneys would otherwise have tended to accept. The exhaustion rule functions to defeat meritorious cases only; non-meritorious cases will fail through dismissal or a merits-based adjudication regardless of the rule. The Supreme Court's recent decision recognizing a procedural default provision within the PLRA's exhaustion rule will impose an even greater burden on meritorious suits.[4] As the dissenting justices noted, "the procedural default sanction . . . bars litigation at random, irrespective of whether a claim is meritorious or frivolous. . . . Indeed, if anything, it will have a worse effect on meritorious claims; prisoners who file frivolous claims are probably more likely to be repeat filers, and to learn the ins and outs of all procedural requirements."[5]

One need not look far for instances of meritorious claims being barred from federal court review by various provisions of the PLRA. A prisoner claiming to be subject to strip

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[1] *See, e.g.*, *Gelabert v. Lynaugh*, 894 F.2d 746, 748 (5th Cir. 1990); *Knoll v. Webster*, 838 F.2d 450, 451 (10th Cir. 1988); *Robinson v. Moses*, 644 F.Supp. 975, 982-83 (N.D.Ind. 1986).

[2] *See In re Martin-Trigona*, 737 F.2d 1254, 1261 (2d Cir. 1984) ("Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions"). This power was used by federal courts in numerous cases involving both prisoners and non-prisoners.

[3] See Margo Schlanger, *Inmate Litigation*, 116 Harvard Law Review 1555 (April 2003). Administrative Office of the US Courts data is available at the Inter-University Consortium for Political and Social Research (ICPSR), www.icpsr.umich.edu. The Administrative Office does not identify summary judgment dispositions.

[4] *Woodford v. Ngo*, 548 U.S. ____, slip opinion No. 05-416 (June 22, 2006).

[5] *Id.* at 15 and n.13.

searches in retaliation for his refusal to alter his religious practice is barred from federal court by virtue of the physical injury requirement.[6]

- A prisoner seeking judicial relief from an unprovoked beating by staff followed by the denial of medical care is barred by virtue of the exhaustion rule although he waited six months for a decision from the prison grievance system before filing suit.[7]
- A juvenile detainee who has been raped and repeatedly assaulted with the knowledge and assistance of staff has no access to the federal courts because he is deemed to have procedurally defaulted his claim by missing the 48-hour administrative filing deadline.[8]
- A prisoner alleged that he was beaten by jail officers after asking for grievance forms, injuring his neck and aggravating a pre-existing skull fracture and his claim was dismissed for non-exhaustion because he did not file a grievance, even though he cooperated in an internal affairs investigation in which one of the officers was disciplined for his actions.[9]
- A prisoner complained about inadequate medical care by Correctional Medical Services, Inc., but his case against CMS was dismissed for non-exhaustion because he did not name the corporation as responsible in his grievance–even though he named individual medical practitioners employed by the provider.[10]
- A prisoner who alleged he had been assaulted by two officers and brought suit against them and against supervisory officials whose inaction he alleged made them also liable for the assault, was not allowed to proceed against the supervisors because he had not made his allegations of supervisory liability in his prison grievance.[11] The proposition that prisoners must figure out who the proper defendants in a lawsuit are and name them in a grievance that must be filed within days or weeks of the incident is an impossible burden.

We believe that the changes to the PLRA we recommend in our report will better achieve what Senator Hatch commended as the purposes of the Act, to reduce truly frivolous litigation while not "prevent[ing] inmates from raising legitimate claims."[12] Since the report was written, the *Ngo* decision makes me feel even more strongly that we should return to an exhaustion rule that is triggered only by the availability of meaningful prison grievance and jail systems with reasonable and flexible procedural requirements. Indeed, requiring effective and, just as importantly, safe prison and jail grievance systems will itself serve to limit the number of filings in federal court. Although one cannot eliminate vexatious and frivolous lawsuits by prisoners—certainly not with the high percentage of mentally ill persons incarcerated today—one can structure systems that offer timely and

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[6] *Adams v. Rockafellow*, 66 Fed Appx. 583 (6th Cir. 2003).
[7] *Ford v. Johnson*, 362 F.3d 395 (7th Cir. 2004).
[8] Minix v. Pazera, 2005 WL 1799538 (N.D. Ind. July 27, 2005).
[9] *Panaro v. City of North Las Vegas*, 432 F.3d 949, 953 (9th Cir. 2005).
[10] *Vandiver v. Martin*, 304 F.Supp.2d 934, 943-44 (E.D.Mich. 2004)
[11] *Nichols v. Logan*, 355 F.Supp.2d 1155 (S.D.Cal. 2004).
[12] 141 Cong. Rec. 27044; quoted in *Woodford v. Ngo*, at 14-15.

fair hearings and remedies while providing a source of useful information to prison managers, and in the process reduce the impetus to seek relief in the courts.

(See the attached Excel tables demonstrating the effects of the PLRA on prisoner lawsuits.)

2. Commissioner Gibbons, you mentioned at the hearing "federal standards" for prisons and jails. Is the Commission on Safety and Abuse in America's Prisons recommending the establishment of such standards? If so, how would they be promulgated and who would enforce them?

In my testimony, I was referring to the only comprehensive national standards presently in use, those of the American Correctional Association (ACA). The ACA should be encouraged to strengthen the standards and accreditation process and correctional systems should be encouraged to participate. There are also standards established by the National Commission on Correctional Health Care standards that should be followed.

The Commission does not see the wisdom of federal standards at this time. This is one area where federal intervention, whether legally justified or not, is not necessary to achieve the goal. There are some areas where federal standards are appropriate and indeed being developed, such as by the National Prison Rape Elimination Commission. Also, federal standards for certain types of data collection.

States and localities should be free to implement locally appropriate standards and to serve as laboratories of best practices. Some are already doing so. The important thing is that they take standards seriously and require compliance.

3. Commissioner Katzenbach and Commissioner Gibbons, the report of the Commission on Safety and Abuse in America's Prisons recommends that federal reimbursement for Medicaid and Medicare be made available to prisons and jails that provide health care to otherwise-eligible prisoners. Given that prisoners are denied certain other entitlements, what is the case for federal Medicaid and Medicare reimbursement?

The denial of federal Medicaid and Medicare reimbursement for medical care provided to indigent prisoners by prisons and jails punishes state and local corrections systems foremost because states and localities then bear the full burden of the cost of that medical care, and so in that respect it is unlike certain entitlements that we deny to individuals when they are convicted of a crime. Moreover, excepting prison health care from the public health system – Medicaid and Medicare being at the heart of the federal public health system – punishes entire communities by making it more difficult to appropriately deal with prisoners' medical and mental health problems both inside correctional facilities, where resources are overburdened, and back in the community when prisoners are released without medical coverage and may carry untreated illness home with them.

This form of federal assistance would be an investment in public health that would ease the burden on corrections officials and would accrue savings to the public who ultimately pay the costs and consequences of unchecked communicable diseases and untreated illnesses in their communities.

4. Commissioners Maynard and Nolan, I understand there is often a lack of adequate funding at the state and local level to fund educational and other programs that increase prisoners' chances of successful reintegration into society upon their release. What does research show about the importance of education and other programming for successful reentry, as well as for safer prisons and jails?

There is a clear link between education and successful reintegration into society. As the Commission reported in, "Confronting Confinement," in some inner city areas more than half of all African-American males do not finish high school, and by their mid-thirties, 60 percent of all African-American men who have dropped out of high school will spend some time in prison. While most correctional facilities offer GED programs, there are often long waiting lists to gain access to these programs. We know that inmates who learn to read and write in prison are three times less likely to return to prison. The same is true for inmates who receive a high school education while incarcerated. We need to increase funding to Literacy and GED programs nationwide.

In addition to educational programs, one of the most proven programming methods for reducing recidivism, as well as reducing rule-breaking in prisons, is cognitive behavioral therapy. We also know by reliable research that offenders in prison who receive treatment for drug addiction are far less likely to return to prison. Other important programs include therapeutic communities for substance abuse treatment coupled with after care, job training and post-release employment assistance, and prison industries that are focused on inmates successfully re-entering the communities and the work force. The key to success is evidence-based practice. The National Institute of Justice as well as the Association of State Corrections Administrators support practical research in this area, and a number of state correctional systems have developed their own methods for measuring the success of the programming opportunities they provide. The federal government should support efforts to determine what kinds of programs work best. Supporting those treatment programs that are proven by reliable research to reduce the likelihood of an offender creating another victim and returning to prison is by far the most significant contribution the government could make.

In addition, Pat Nolan would like to add:

Studies show that post-secondary education can cut recidivism rates by nearly half and is shown to reduce rule-breaking and disorder in prisons as well. A 50-state study conducted by the Institute for Higher Education Policy found that only 5% of prisoners were enrolled in any form of post-secondary education. In addition to the recommendations above, funding for higher education in prisons should be restored.

Written Questions from Senator Edward M. Kennedy to Gary Maynard

Question 1.

As you indicated in your testimony, the lack of adequate healthcare and drug treatment for prisoners is a serious threat to the surrounding community and to public safety. The Commission suggests that one of the most significant barriers to good correctional health care is finding willing medical and mental health staff to do the prison work. What specific incentives would you propose to overcome this obstacle and strengthen healthcare in prisons?

The National Health Service Corps already provides opportunities to work in correctional facilities around the country in return for medical school loan repayment. Unfortunately, there appear to be more openings than willing medical professionals to fill them, suggesting that the loan repayment incentive is not adequate to bring some medical professionals into correctional medicine. Clearly, higher pay is one necessary incentive. However, the Commission examined the success of different models for bringing qualified medical and mental health staff into prisons and jails and found that one way to do this is to allow providers to work in a correctional setting while maintaining connections with community institutions or practices. Doing so has the potential to raise the profile of correctional health care by integrating it into our larger public health system.

While there is clearly no single model that works in every correctional setting, some of the most successful systems have sought partnerships with community health providers – public hospitals, teaching institutions, community clinics, departments of public health, and private clinicians who have practices near the prison or jail – and have brought community providers into their facilities. These partnerships can overcome many of the barriers to getting quality care providers into corrections by broadening the pool of qualified staff and allowing them to remain connected with clinics, hospitals, and the public health system. These partnerships increase the likelihood that medical and mental health care providers will be committed to working with the population in the prison or jail and will have some sensitivity to the particular cultural and language barriers that can diminish care to poor people of color in any setting. And by bringing their community practice into the prison or jail, providers are bringing the community standard of care inside as well.

In some rural and remote areas, this model is more difficult to replicate, and systems need to find other incentives to get qualified and committed providers into their facilities. However, it is clear that recruiting good staff requires strategies to overcome the low esteem and low pay attached to correctional medical care.

Question 2.

In your testimony, you describe Los Angeles County jails as "de facto psychiatric hospitals." A third of inmates in American prisons have serious mental disorders, and the Commission suggests those left as untreated prisoners are a safety risk to other prisoners, to correctional officers, and the surrounding community. The Commission believes that neither integration nor segregation of mentally ill prisoners is the answer. What solution do you propose to deal with the high proportion of mentally ill inmates?

Actually estimates of the degree of mental illness in our prisons and jails ranges from a low of 16 percent to more than 50 percent. It is likely that the percentage is more consistent than that, but the difference in the reported degree of mental illness is a function of definition, rather than degree. Some states count only the number of mentally ill currently in treatment at one time. Other states count those in treatment, plus those not receiving treatment that may be in remission. Once again, we may have sufficient data, but the definitions differ, and make the data less useable at the national level. Notwithstanding uncertainty about prevalence, we do know that the presence of mentally ill inmates in prisons and jails is a problem across the country. To address the problem, we need to take at least three important steps.

First, we must commit to improving community-based services for people with mental illness. Treatment and social services in the community can, in many cases, prevent arrest and incarceration. Such services can also greatly shorten periods of pre-trial detention for people accused of low-level crimes, if jail administrators collaborate with those community-based programs. On page 44 of our report, we describe this kind of collaboration at work in Montgomery County, Maryland, and this is not the only effective program that can stimulate and guide reform in other jurisdictions.

Second, we must make a greater investment in mental health care inside our jails and prisons. For those prisoners who need acute care or who present a danger to themselves or others, we do need to separate them from the general population, placing them in secure mental health units or psychiatric hospitals, until their illness is under control. That kind of specialized acute care is in very short supply in correctional systems – and in some facilities it simply does not exist. On the other hand, some mentally ill prisoners can be successfully treated while living in the general population. On pages 43-46 of our report, we describe the different levels of care that are needed in all correctional facilities.

Third, we must stop segregating mentally ill prisoners in ordinary high-security units, used to discipline prisoners and isolate those individuals who pose a danger to others. These units are not set up or staffed to humanely and safely care for people with mental illness. Most jail and prison administrators know that segregation is not an appropriate environment for someone who is mentally ill, but if they lack treatment units and other forms of care, segregation is where mentally prisoners are likely to end up. In our report, we describe the terrible suffering and violence that can result from this misplacement. It will take commitment by lawmakers, as well as correctional administrators to remedy this

problem. There are signs of progress. In New York, for example, the state legislature just passed a bill that would prohibit the solitary confinement of mentally ill prisoners, and the bill's supporters note that the safety of officers as well as prisoners hinges on this proposed law yet to be signed by the Governor. The bill aims to make policy reality by also funding new treatment programs in the state's prisons and by expanding mental health training for correctional officers. This is the kind of reform that we need nationwide.

In sum, your question suggests that there is no appropriate response to the mentally ill in our jails and prisons, and I would like to underscore just how much is possible and what a difference these three reforms would make.

Written Question from Senator Edward M. Kennedy to Pat Nolan

In your testimony, you cite juveniles in adult prisons as a class in need of protection. You indicate that after their release, an overwhelming number of juveniles are permanently scarred as victims of violence, assault, and rape during the time they spent in prison. You recommend an objective classification system to protect vulnerable prisoners from violence. What should the federal government do to help protect these juveniles?

This Commission did not address problems specific to juveniles. However, I also serve as a commissioner on the National Prison Rape Elimination Commission (NPREC), and NPREC is studying this issue and will be developing federal standards to protect all prisoners, including juveniles, from sexual violence. It will be incumbent upon the federal government to adopt these standards into law and to assure that they are supported by adequate enforcement mechanisms once established.

There is no reason why federal standards should not address violence in our correctional facilities more broadly. I urge Congress to stay apprised of the findings of the National Prison Rape Elimination Commission and to consider legislation that would study violence in correctional facilities more broadly. One of the things that both commissions heard considerable testimony on is the importance of good objective classification systems to protect all prisoners. Some local jurisdictions have shown real leadership in developing standards for classifying prisoners. For example, Sheriff Michael Hennessy, who runs the San Francisco County Jail, is a strong proponent of standards in general and has developed an excellent classification system. We can learn from the best models and should work hard to promote objective classification standards in systems nationwide.

From the perspective of oversight, the federal government has tools to ensure that all prisoners, including incarcerated juveniles, are treated in ways consistent with minimal constitutional and federal statutory standards. Our report notes the Commission's concern with the small numbers of Department of Justice investigations and court filings in recent years under the Civil Rights of Institutionalized Persons Act (CRIPA) that address conditions in adult facilities across the country. The numbers for juvenile facilities are only slightly higher (there were seven investigations and three court filings in fiscal years 2003 and 2004 combined). Congress might inquire as to the reasons for these small numbers and whether additional resources are necessary to adequately protect juveniles and adults in custody.

SUBMISSIONS FOR THE RECORD

STATEMENT OF SENATOR RICHARD J. DURBIN

Ranking Member, Corrections and Rehabilitation Subcommittee
United States Senate Committee on the Judiciary

"The Findings and Recommendations of the Commission on Safety and Abuse in America's Prisons"

Thursday, June 8, 2006

This is an important hearing about a subject that we rarely discuss on Capitol Hill. Most of us in Congress and most Americans do not spend a lot of time thinking about the conditions of the prisons across our nation, but we should.

We should, because, in the words of the Commission on Safety and Abuse in America's Prisons, "What happens inside jails and prisons does not stay inside jails and prisons."

The conditions in our jails and prisons directly affect millions of Americans who are incarcerated or work in the corrections system. They also indirectly affect the family members, relatives, and friends of these Americans. They affect the public safety and public health of our communities.

And, as the Russian author Fyodor Dostoevsky once reflected, "The degree of civilization in a society can be judged by entering its prisons."

I would like to welcome the members of this Commission who will be presenting their report at this hearing. The report reminds us that we need to judge our civilization from time to time, and this Commission did so by entering our prison system. They spent a year listening to experts from across the nation and from all viewpoints covering many aspects of this complex world of the corrections system.

Now, they have laid down a challenge to us all to take a hard look at the conditions of confinement in our nation's jails and prisons. Will we respond with solutions for reforming those areas where the system is broken? Will we provide the right tools and resources to the state and local governments and others to help improve the system?

I am proud to note that in my state of Illinois, prison reform is a high priority.

In recent years, Illinois Governor Rod Blagojevich has introduced several innovative programs that have now become national models.

For example, Governor Blagojevich provided funding in his Fiscal Year 2007 budget for the creation of a National Model Meth Prison and Reentry Program. This program would provide specialized 200-bed treatment unit for inmates with methamphetamine addictions at the 667-bed Southwestern Illinois Correctional Center. The new unit, which will receive funding from both state and federal governments, is modeled after another highly successful reentry program in Illinois that has become a national model, resulting in re-incarceration rate that is nearly 50 percent lower than those of other groups.

These innovative programs in my state and others address a serious and widespread problem in prisons, but for now, they are limited in scope to assist only a fraction of eligible inmates in these states. We need to find ways to devote more resources to encourage these programs, and I agree with the Commission that we need to make this a federal priority.

Prison reform is an important state priority, but it must also be a federal priority. Data from Illinois and from around the country reveal that states cannot do this alone. That is why I look forward to working with the Commission and our colleagues here to implement many of the recommendations that depend on action by Congress.

We need to work together to tackle the unacceptably high level of violence in our prisons today. Incidents of assaults, rapes, and other forms of violence are all too common in the correction system, and far too often, these incidences go unreported.

We need stronger investments in programs that focus on education, addictions, and employment. These programs have been proven to improve public safety and reduce recidivism. It makes sense. If prisons are to be truly "correctional" and "rehabilitative," then we need a plan to help prisoners return to society after they have served their time and paid their debt to society.

We need smarter ways to manage segregation and maximum security facilities so that our prison dollars are not wasted on policies that are counterproductive.

We need to recruit and retain professional correctional staff and to employ their skills in efficient and effective ways. These men and women deserve to be treated as the professional law enforcement officials they are.

Finally, we need to reduce the unacceptable levels of communicable diseases and other public health hazards in the prison systems. And, we cannot ignore the sad reality of mental illness as part of that challenge.

I look forward to this conversation today, and I want to thank Subcommittee Chairman Coburn for his leadership on this issue.

# # #

Statement of U.S. Senator Russell D. Feingold

Senate Committee on the Judiciary
Subcommittee on Corrections and Rehabilitation

Hearing on "The Findings and Recommendations of the Commission on Safety and Abuse in Americas Prisons"

June 8, 2006

Mr. Chairman, I am pleased that we are hearing from members of the Commission on Safety and Abuse in America's Prisons, to bring to our attention an issue that has been somewhat hidden from the public eye – the conditions of confinement in our nation's correctional facilities. This subject has not received much attention in recent years, but it is very important. The effects of poor prison conditions extend far beyond the prison walls, and reach into many aspects of our society.

The Commission's report, released today, provides a valuable and candid look at the current state of our nation's jails and prisons, identifying a variety of structural and administrative problems within our corrections system. It pinpoints factors that have greatly contributed to the level of violence in prisons, such as prison overcrowding, the lack of funding for rehabilitation programs and an associated lack of outlets for productive activities. Prison officials also face health care problems, as the prison population has a higher rate of disease than the general public, yet prisons often have little funding for correctional health care systems. The report also points to the lack of independent oversight mechanisms for many prisons and jails, and the lack of nationwide data and reporting about prison conditions.

The 15-month study conducted by the Commission makes innovative yet viable recommendations for prison reform that Congress should seriously consider. Of course, we must ensure that those who commit crimes are appropriately punished. But prison does not have to be a place where violence is a way of life, one where inmates and staff alike are constantly fearful for their own safety. It is in our interests as a society both to provide incarcerated individuals with the rehabilitation tools that will allow them to emerge from prison without returning to crime, and to provide correctional professionals with the training, staffing levels and other resources they need to do their jobs.

The comprehensive findings and recommendations in this report are due in large part to the accomplished professionals who make up the Commission itself, and I commend them for their dedication. I also want to recognize the contribution of Alex Busansky, the Commission's executive director, who previously served as a detailee from the Justice Department to my Judiciary Committee staff. The Commission is very lucky to have him as its executive director.

Mr. Chairman, the issue of prisoner abuse and safety deserves our attention, and I appreciate your willingness to focus attention on this important new report. Thank you.

Remarks of John J. Gibbons, Commission co-chair; Director, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C.; former Chief Judge, United States Court of Appeals for the Third Circuit

Chairman Coburn and Senator Durbin.

I would like to reiterate what General Katzenbach said at the outset: ensuring safe and humane and productive prisons and jails is not, and must not be, a partisan matter.

Witness after witness before our Commission spoke of the closed nature of prisons and jails and the danger to the health and safety of all of us when there is insufficient oversight. A former prison warden told us: "When we're not held accountable, the culture inside the prison becomes a place that is so foreign to the culture of the real world that we develop our own way of doing things." Our jails and prisons require the sort of external oversight systems that we demand for every important public institution, be it our public hospitals, our public schools, or our publicly traded corporations.

Too few U.S. correctional systems are monitored by an independent government body with enough authority and funding to regularly inspect conditions of confinement and to report findings to lawmakers and the public. The federal government has an excellent model. The Office of the Inspector General within the Department of Justice inspects federal correctional facilities and answers to the Attorney General and Congress, rather than to the Bureau of Prisons. The Office does an admirable job in maintaining its independence and everyone—from the BOP to the public—benefits. Congress, exercising the authority conferred on it by the Fourteenth Amendment, should actively support a similarly independent and strong authority in every state.

The federal courts have played a historic role in watching over America's prisons and jails, shedding light on and remedying many of the most dangerous conditions and abuses. Indeed, we heard from a number of corrections professionals that they welcome—and sometimes quietly invite—lawsuits: they are often the only way to shake free the resources needed to make prisons safe and effective. The courts' role in prison oversight should in no way be impaired.

The Department of Justice's activity in overseeing correctional facilities, through civil rights investigations and litigation, has diminished significantly in recent years. In fiscal years 2003 and 2004 combined, DOJ's Special Litigation Section initiated only six investigations and filed only one civil case in federal court addressing conditions in prisons and jails. This diminished activity is not the result of diminution of problems in our penal institutions.

The Prison Litigation Reform Act of 1996 brought down by nearly half the number of federal cases by prisoners alleging constitutional violations. In part, this was the PLRA's goal—to reduce what were deemed to be frivolous lawsuits. But the PLRA has proven to be a crude weapon: meritorious lawsuits are suppressed at a greater rate than non-meritorious ones. The Commission recommends that the PLRA be amended to ensure

that those individuals who suffer some of the worst abuses like rape, medical neglect, and physical violence have a meaningful way to achieve accountability.

First, Congress should eliminate the requirement which bars the courthouse to prisoners, such as victims of sexual assault, unless they can prove a physical injury.

Second, Congress must eliminate provisions that discourage prisoners from going to court and from having lawyers when they do, such as the filing fee for indigent prisoners and the restrictions on attorneys' fees.

Third, Congress should remove provisions that discourage consent decrees, such as the requirement that correctional agencies concede liability as a prerequisite to settlement.

Finally, Congress should relax the "exhaustion rule," which requires prisoners to fully exhaust all administrative processes, regardless of whether those processes are meaningful. As some courts have interpreted it, the PLRA bars the courthouse forever when a prisoner misses a single administrative deadline.

We must hold out a genuine hope for humane treatment in our prisons and jails and be willing to let courts and other institutions shed light on how we treat the millions of people we incarcerate and the hundreds of thousands who work inside. The Commission on Safety and Abuse and the Vera Institute look forward to an ongoing dialog on these issues with members of the United States Congress.

NEW YORK CITY DEPARTMENT OF CORRECTION
Martin F. Horn, Commissioner

Office of the Commissioner

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New York, NY 10013
212•266•1212
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June 6, 2006

Hon. Tom Coburn
Chairman
Hon. Richard J. Durbin
Ranking Member
U.S. Senate Committee on the Judiciary
Subcommittee on Corrections and Rehabilitation
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Coburn and Ranking Member Durbin:

On Thursday June 8 your Committee will receive a report from the Vera Commission on Safety and Abuse in America's Prisons.

I am writing to tell you that in my estimation this report adds nothing new to the discussion of imprisonment in the United States. As they confess, "readers looking for a report card on safety and abuse in all the the jails and prisons across America will not find it in these pages."

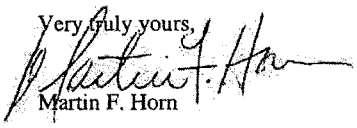
Although not acknowledged in their report, America's prisons and jails are safe and getting safer. This conclusion is borne out by the data. Attached for your reference is some data about safety in America's prisons and it tells a far different story from what your witnesses would have you believe. Indeed, in New York City, the story is vastly different. Over the last several years we have made tremendous strides in reducing the incidence of violence, and we measure literally everything that goes on inside our jails, contrary to what the Commission would suggest.

Most unfortunately, the Commission began and ended its work with a predisposition to finding abuse. The evidence of this one-sidedness is found in the very anecdotes they chose to demonstrate their points and their choice to not use other stories and data which myself and my colleagues presented to them. They fail to identify best practices and give short shrift to the data that we sent to them painting a different picture.

In New York City our standard of care is to treat inmates with the recognition that they are our neighbors and our neighbors' children. We hold ourselves to a high standard of accountability and transparency. Though I recognize instances of abuse occur, they are rare and aberrational. Pockets of poor performance in a nation as vast as ours do not change the facts, America's prisons and jails are safe.

The Commission's discussion of the issues is superficial and their recommendations merely echo those made by the Corrections profession for years. Nobody speaks for the New York City Department of Correction but us. If you and your colleagues want to know what happens in our jails we invite you to visit and will be happy to cooperate directly with you in any way we can be helpful.

Very truly yours,



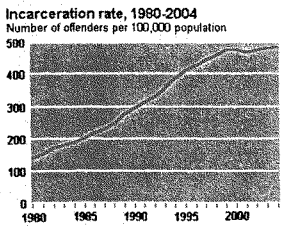
Martin F. Horn

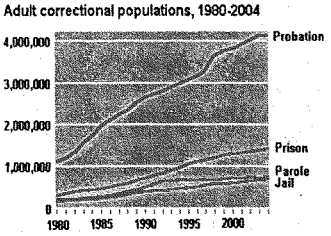
Research Brief for ASCA's Response to the Prison Commission on Safety and Abuse in America's Prisons and Jails.

What the Research Says:

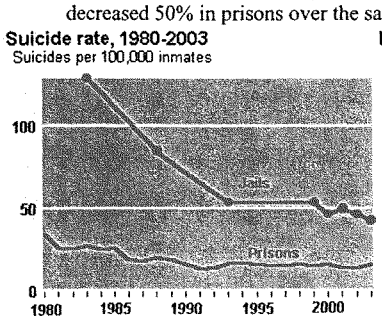
America's prisons and jails are safe and getting safer. Over the last twenty years, the incarcerated population has increased 330%, while key indicators of safety and order, including homicides and suicides, riots, staff homicides by inmates and prison escapes have all improved dramatically. Inmate-on-inmate assaults are declining, while assault and sexual assault in prison and jail occur at rates comparable to those in the community at large. Furthermore, the use of restrictive measures, such as protective custody and administrative segregation, has decreased indicating that **these gains in safety are the result of high-quality correctional leadership and management** (Beck 2005, Bottoms 1999, Corrections Yearbook 2002, Dilulio 1991, Useem and Piehl 2006).

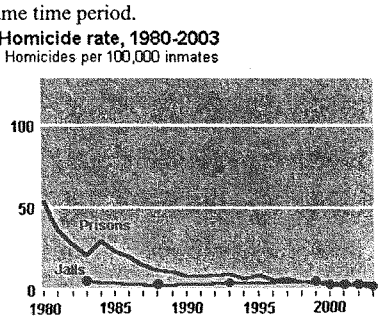
- The number of individuals incarcerated in the United States has increased **330%** between 1980 and 2004.



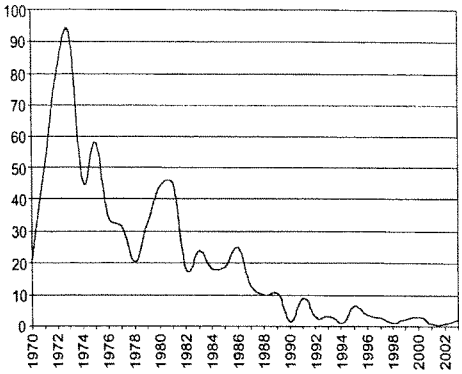


- Homicide and Suicide in Prisons and Jails occur very infrequently and have declined dramatically, even while the incarcerated population has exploded.
  - From 1973 to 2003, the homicide rate in prisons has decreased 92%, (from more than 60 per 100,000 inmates to less than 5 per 100,000 inmates).
  - Similarly, the suicide rate in jails has decreased 70% from 1983 to 2003 and has decreased 50% in prisons over the same time period.



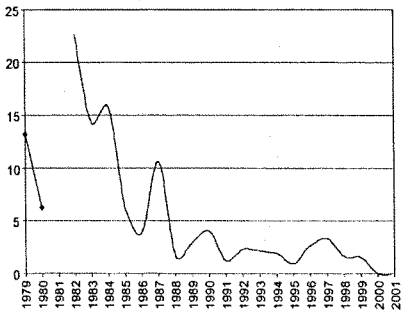


Riots: The number of riots has declined dramatically from a peak in 1973 to a rare event in recent years, despite the increase in prison population (Useem and Piehl 2006).

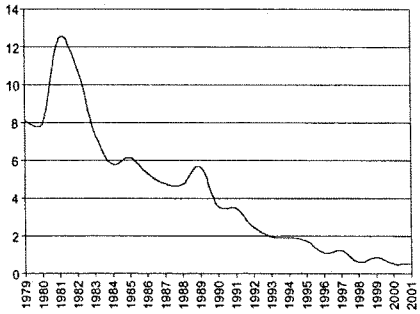


•Figure 1 Prison riots per 1,000,000, 1970–2003

Staff Homicides and Escapes: Staff homicides have declined dramatically (figure 2), from 22 in 1982 to 0 in 2000 and 2001*. This trend also holds for prison escapes (Figure 3), from 12.4 escapes per 1,000 inmates in 1981 to .5 per 1,000 in 2001 (-95%) (Useem and Piehl 2006).



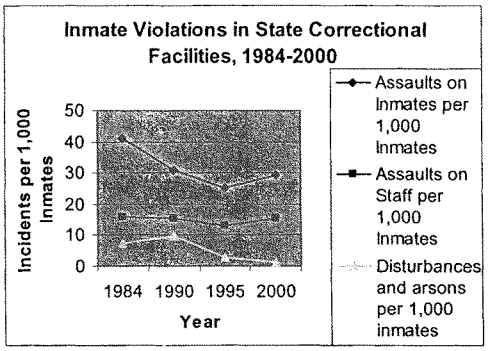
•Figure 2 Correctional staff murdered per 1,000,000, 1979–2001



•Figure 3 Number of escapes per 1000 inmates, 1979–2001

Assault and Sexual Assault

- **ASSAULTS: available BJS data indicates a 29% decline in inmate-on-inmate assaults from 1984 to 2000**[1]. In his testimony before the Commission, BJS statistician Allen Beck stated that the likelihood of an individual inmates experiencing assault is 7%.



- **SEXUAL ASSAULT**: The recent BJS study on sexual assault found 3.15 allegations of sexual violence per 1,000 inmates held in 2004. In State prisons, fewer than 20% of allegations of non-consensual sexual acts were substantiated (Beck & Hughes, 2005).

Comparing Correctional Facilities and the Community-At-Large

Likelihood of experiencing:	**In Prisons and Jails in the United States**	**In Communities in The United States** (as measured and aggregated by FBI UCI)
Assault	**7/100** as stated before the Prison Commission.[2]	**2/100** (simple and aggravated assault combined)[3]
Sexual Assault	**1.16** incidents per 1,000 inmates [4]	**1** incident per 1,000 residents [5]

What this shows: *The likelihood of experiencing assault and/or sexual assault is not considerably higher in prisons and jails than in the community at large.*

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[1] Data on assaults is incomplete and difficult to aggregate because of differences in the definition of assault across jurisdictions—however this problem is being proactively engaged by ASCA's work to standardize Performance Measurement across jurisdictions

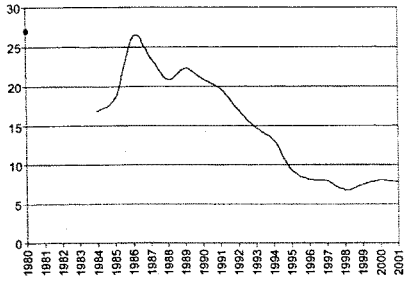
[2] In his testimony before the Prison Commission on Safety and Abuse, BJS statistician Allen Beck stated, based on his research regarding the victimization rates of inmates, the likelihood of an individual inmate experiencing assault while incarcerated is 7%.

[3] Catalano, Shannan, M. (2005) *Crime Victimization, 2004*. National Crime Victimization Survey. Washington DC: US Department of Justice, Bureau of Justice Statistics.

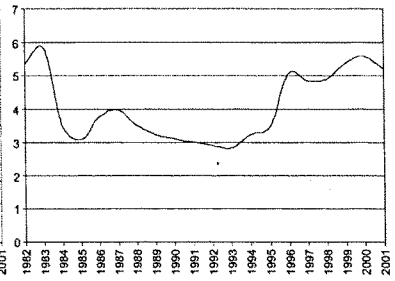
[4] Beck, Allen & Hughes, Timothy (2005). *Sexual Violence Reported by Correctional Authorities, 2004*. Washington, DC: US Department of Justice, Bureau of Justice Statistics. This number is based on reports of inmate-on-inmate *nonconsensusal sexual acts*, the more serious of the two types of sexual violence included in this study, the other being abusive sexual contacts, which included non-consensual touching. The overall rate of allegations of sexual violence was 3.15 allegations/1,000 inmates.

[5] Catalano, Shannan, M. (2005) *Crime Victimization, 2004*. National Crime Victimization Survey. Washington DC: US Department of Justice, Bureau of Justice Statistics. This number represents the aggregation of rape, attempted rape and sexual assault, as reported in the national victimization survey.

Finally, the relative number of inmates held in protective custody **(figure 4)** has dramatically declined (-69% from 1986 to 2001) and the number of inmates placed in administrative segregation **(figure 5)** has declined even as population has increased (Useem and Piehl 2006).

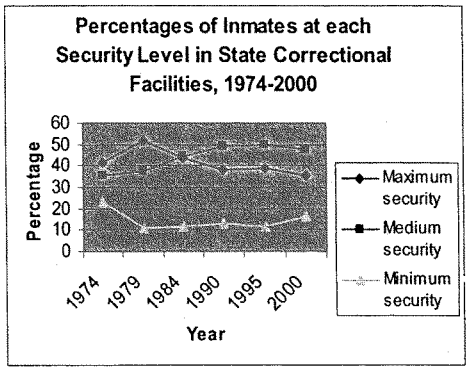


•Figure 4 Inmates in protective custody per 1000 inmates, 1980-2001



•Figure 5 Inmates in administrative segregation per 100 state inmates, 1982-2001

In addition, the percentage of inmates housed in maximum-security facilities has decreased 30% from 1980-2004.



America's prisons and jails are safe and getting safer, despite a huge growth in the number of people incarcerated and without the use of restrictive measures. Correctional leadership and innovative management are the key to these gains (Beck 2005, Bottoms 1999, Corrections Yearbook 2002, Dilulio 1991, Useem and Piehl 2006).

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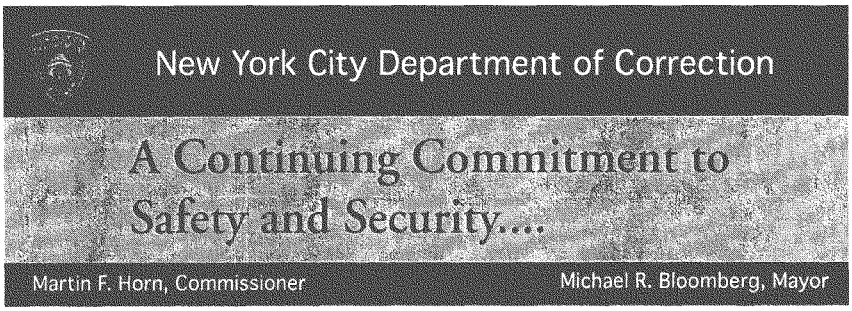


Overview

The following pages highlight recent accomplishments and initiatives implemented in The City's jail system.

Current Safety & Security Improvements....
Inmates & Staff are safer....

Inmate violence continues to decline....

In fiscal year 2005 inmate-on-inmate slashing and stabbing incidents are down by 25% over 2004.

Inmate-on-inmate injuries and inmate infractions for rules violations are down....

Inmate-on-inmate injury incidents and infractions issued to inmates for rules violations - also key indicators of jail safety-are down.

Use of Force incidents are declining....

Serious use of force incidents (class A) are down 15% from the previous year.

Serious assaults on staff have declined....

Serious (class A) assaults on staff are down 23% over 2004.

Escapes from Custody....

There were no escapes from custody in FY2005, compared to two escapes in FY2004.

Uniformed absence rate continues to decline...

The uniformed absence rate for fiscal year 2005 is at 12.61 days per employee. This is an 8.5% reduction from the previous year and a 35% reduction from the 19.56 rate of fiscal 1995, the highest rate historically.

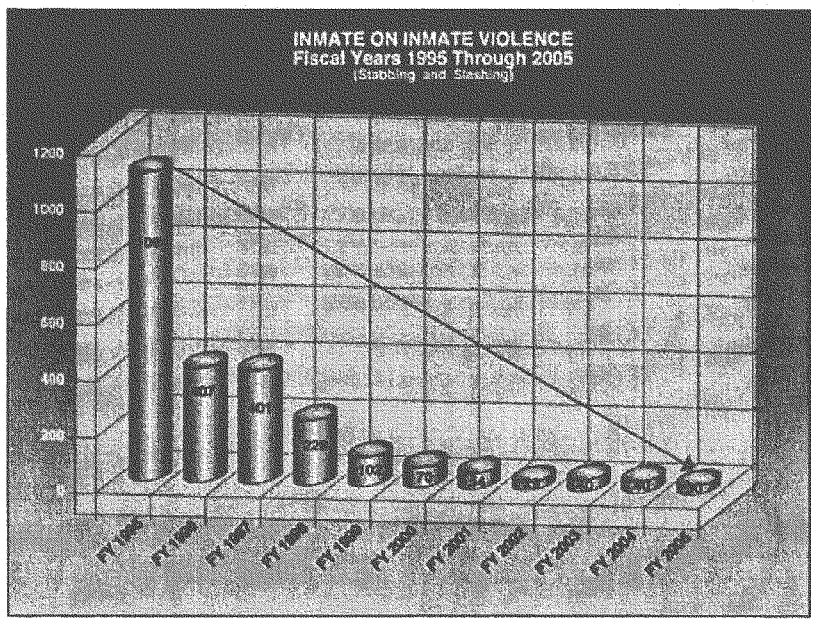
Promoting Sobriety....

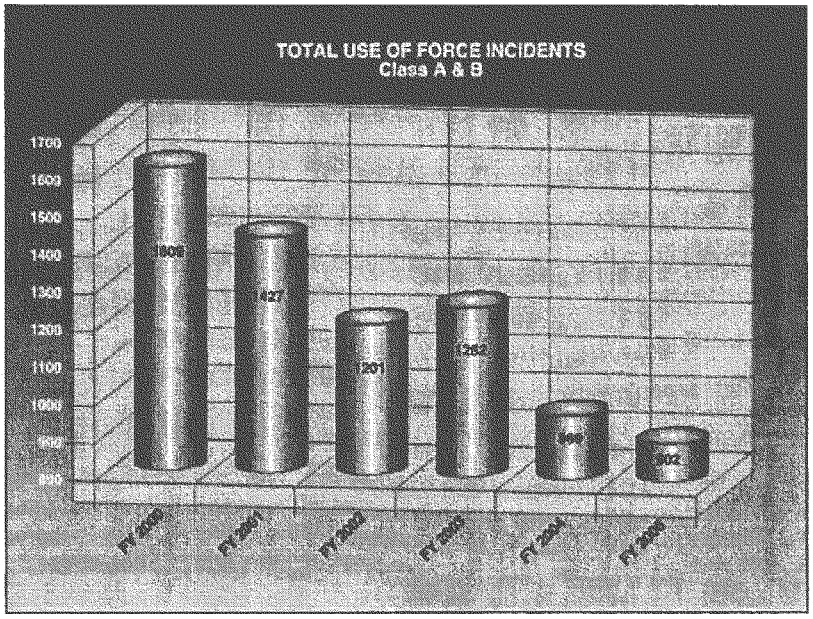
The Department has recently begun a drug interdiction initiative to stop contraband drugs from entering the jails. Random drug testing of inmates and increased canine searches are slowing the use of drugs. Inmate arrests for drug possession are up 95% the first months of 2005 over all of 2004 and the number of inmates testing positive has declined from 7% at inception of the program to 3%.

Obtaining Better Outcomes...

In 2004 the Department initiated a new discharge-planning program for sentenced inmates to assist their transition to the community. The program focuses on addiction, housing and employment issues with the goal of ending the cycling of certain populations between jail and homeless shelters. Upon discharge, participating inmates are delivered directly to a transitional work cite by a program provider. Through May FY 2005, the number of inmates discharged directly to a job increased by 600% to 3,460, from 493 the previous year.

Results — Inmates are Safer...

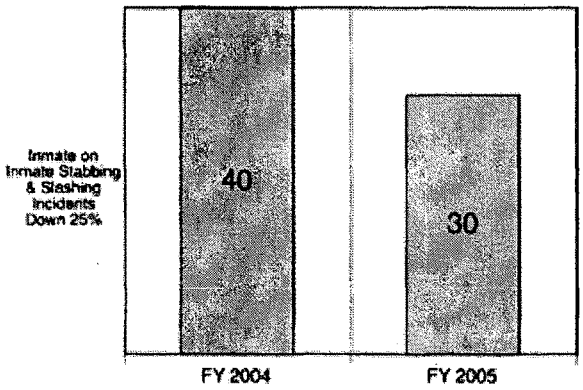




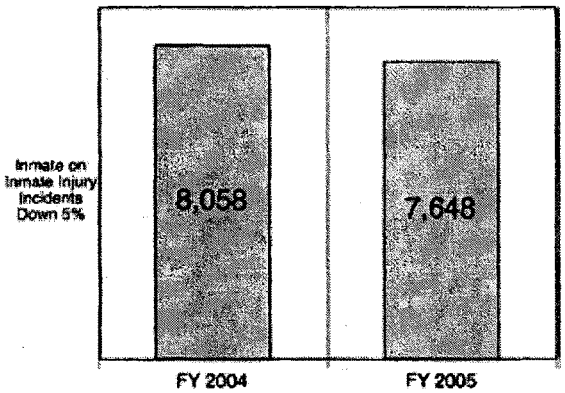
A Continuing Commitment to Safety and Security....

Current Safety & Security improvements....

Inmate-on-inmate assaults with a weapon are down...



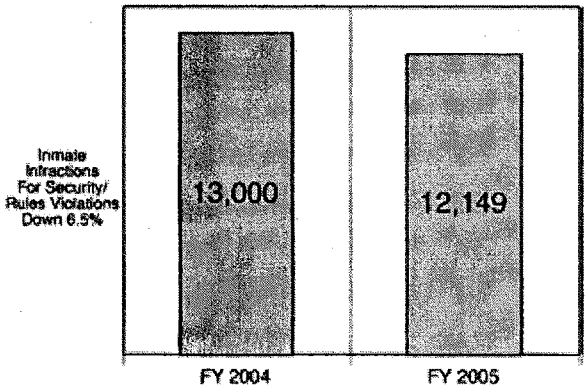
Inmate-on-Inmate Injuries have been reduced...



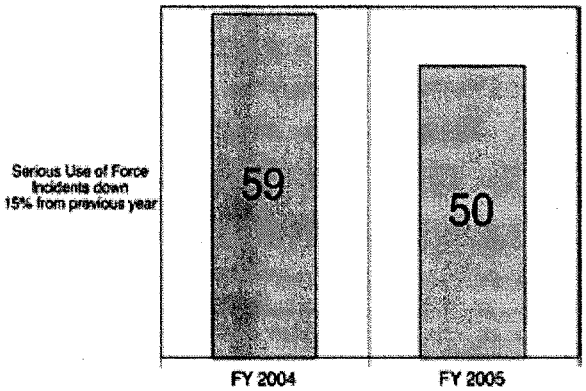
A Continuing Commitment to Safety and Security....

Current Safety & Security improvements....

Inmate infractions have also declined...



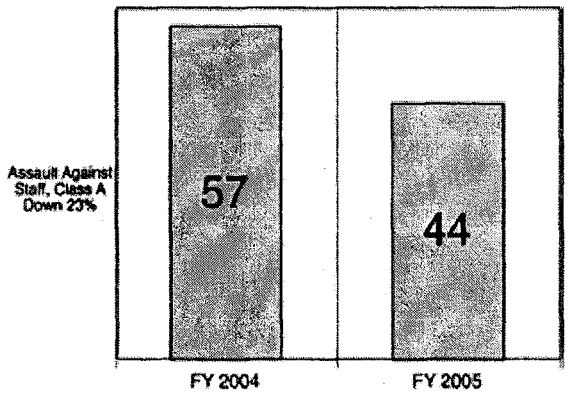
Use of force incidents are down...



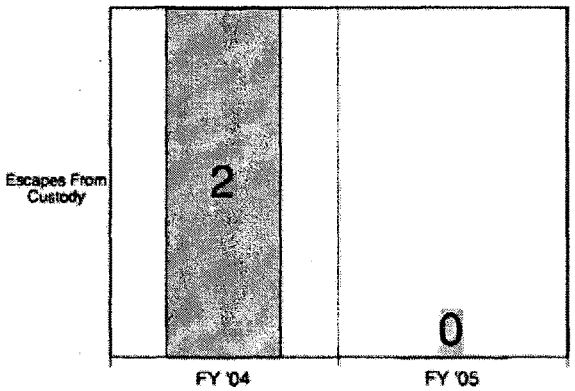
A Continuing Commitment to Safety and Security....

Current Safety & Security improvements....

Staff are Safer...



The Public is safer...

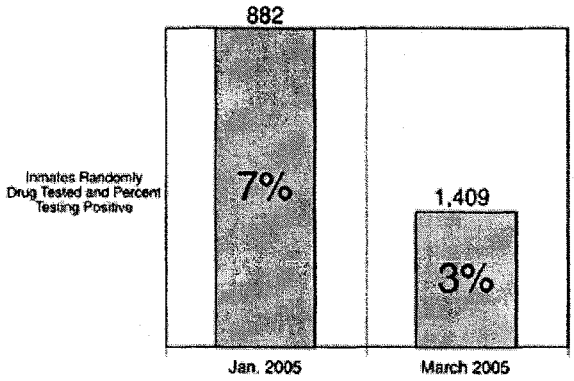


A Continuing Commitment to Safety and Security....

Working Toward Drug Free Jails....

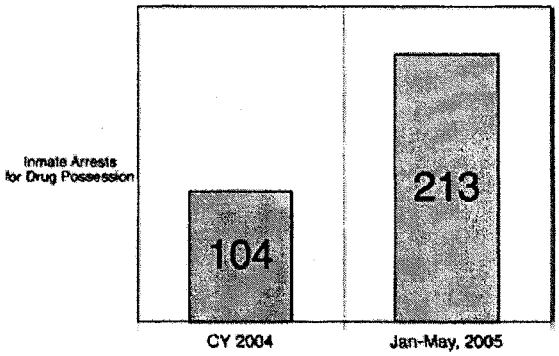
Promoting Sobriety...

In January 2005, random drug testing of inmates began at two facilities on Rikers Island. In the first month, 7% of inmates tested positive. Since then, the rate has declined to 3%. Additional jails will be added in the near future.



Inmate arrests for drug possession are up...

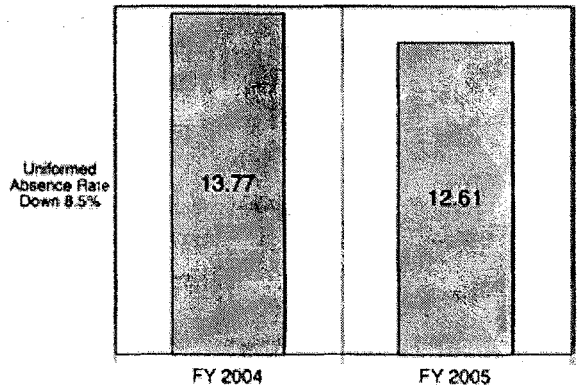
We have also introduced passive alert canine dogs and increased canine searches of visitors and inmates. In the first three months of 2005, arrests of inmates for drug possession are up 95% over the entire 2004 calender year.



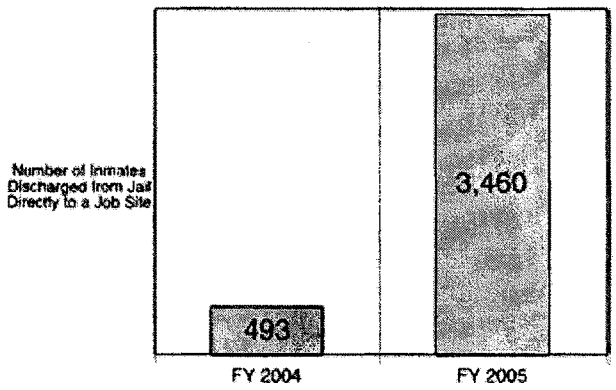
A Continuing Commitment to Safety and Security....

Current Safety & Security improvements....

When the Jails are Safer, Staff are Less Likely to Call in Sick...



Obtaining Better Outcomes...



Remarks of Nicholas de B. Katzenbach, Commission co-chair; former Attorney General of the United States

Mr. Chairman, Members of the Committee:
It is a pleasure to testify before this Committee; it brings back pleasant memories.

I would not want you to think that my interest in prisons is new. As Attorney General I brought before this Committee proposals later enacted into law to ease prisoner reentry into society and got bipartisan support for their enactment. Indeed, I remember perhaps the strongest advocate for attention to the problems of prisons and their personnel was a conservative Republican from Nebraska, Senator Roman Hruska. It was not then a partisan issue and in my view need not be today. My co-chair – Judge John Gibbons, a life-long Republican – agrees.

My own interest did not begin with my time in the Justice Department. During WWII, I spent 27 months in Italian and German prison camps and, while that experience is very different from being in prison as a result of a criminal conviction, there are some similarities. Until one experiences it, I think it hard to appreciate what the loss of freedom entails: boredom and frustration, the tedium of idleness, the fear of the unknown that one cannot control. Most importantly, the need for enforceable standards and independent oversight of prison conditions – in that case through the Geneva Convention and the Swiss government– cannot be overstated.

When I was in the Department and chaired the Crime Commission there were about 200,000 persons in prison. Now there are more than ten times as many – and that's just on any given day. Over the course of a year the number of Americans who spend some time in jail or prison exceed 13.5 million. We spend more than 60 billion dollars annually on corrections, but problems of public safety and public health persist.

The Commission chose to focus on problems of safety and abuse, both within prisons – the safety of both prison officials and prisoners and the abuse of prisoners by guards and by other prisoners – and outside prisons, especially in the surrounding communities where prison officials live and those communities to which prisoners return. When people live and work in facilities that are unsafe, unhealthy, unproductive or inhumane they carry those effects home with them.

Over the past year we investigated these problems by listening to corrections professionals, criminal justice experts, medical experts, lawyers who litigate for improved conditions, court appointed monitors, and prisoners themselves. We found a surprising amount of agreement among these groups as to the nature of the problems and how they might be solved. For all the hard work of corrections officials – most of which the public never hears about –there is still too much violence in prisons and jails, far too little medical care, a culture which too often pits officers against prisoners and prisoners against each other, and far too little support for the men and women who work the tiers and pods and for those who run facilities and entire systems.

It is not only wrong but it is incredibly short-sighted not to talk honestly about what is going on behind bars and whether our approach to incarceration serves our country's best interests. Our failure to do so puts at ever-increasing danger the health, safety, and well-being of all of us.

What has personally given me the greatest satisfaction has been the fact that a Commission of twenty persons from differing backgrounds, experiences, and political preferences could agree on so many recommendations to deal with problems of safety, health, and fair treatment. Our Report addresses four key areas: (i) conditions of confinement, (2) labor and leadership, (3) oversight and accountability, and (4) knowledge and data. In each of these areas, my colleagues on the Commission will tell you about the problems, how they might be resolved, and why it is important to do so.

Statement of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee,
Corrections Subcommittee Hearing
June 8, 2006

I thank Senator Coburn and Senator Durbin for bringing attention to the vital issue of prison conditions with this hearing, and I thank Attorney General Katzenbach, Judge Gibbons, and the rest of the Commission on Safety and Abuse in America's Prisons for their hard work and their thoughtful and important recommendations for improving America's prisons.

This country sends more and more people to prison every year. There are right now more than 2 million people in jail or prison, and there are more than 13 million people who spend some time in jail or prison each year. Most of these people will at some point return to our communities. What kind of experience inmates have in prison, how we prepare them to rejoin society, and how we integrate them into the broader community when they get out are issues that profoundly affect the communities in which we live. As a former prosecutor, I believe strongly in securing tough and appropriate prison sentences for people who break our laws. But it is also important that we do everything we can to ensure that, when these people get out of prison, they enter our communities as productive members of society, so we can start to reverse the dangerous cycles of recidivism and violence.

The Commission on Safety and Abuse in America's Prisons has today proposed a set of recommendations to make the country's prisons operate more effectively for the good of the country's prison employees, the prisoners who will be reentering society, and the cities and towns they will be rejoining. They have proposed specific strategies to reduce violence in prisons, to provide better health care for prisoners in order to protect both prisoners and the public at large, to improve the culture and training of prison employees, and perhaps most relevant to us, to increase oversight of prisons and require transparency and accountability. We on the Senate Judiciary Committee take our oversight responsibilities seriously, and I know we will give appropriate consideration to these thoughtful recommendations. I am also sure that the State of Vermont, which has often been at the forefront on correctional issues, will be very interested in these recommendations as well.

Improving prison conditions, as the Commission aims to do, goes hand in hand with working to integrate prisoners effectively into the community when they leave prison. That's the focus of the Second Chance Act, which is before the Senate this year. The Second Chance Act expands and funds grants for collaborations between state and local corrections agencies, nonprofits, educational institutions, service providers, and families to ensure that offenders released into society have the resources and support they need to become constructive members of the community. The bill would require that the programs supported by these grants demonstrate measurable positive results, including a reduction in recidivism. The bill would also set up a task force to determine ways to improve the effectiveness and efficiency of federal programs related to prisoner reentry

and would authorize additional programs that would encourage employment of released prisoners, improve substance abuse treatment programs for prisoners, streamline the process of transitioning out of prison, and assist the children of prisoners. The Vermont Department of Corrections is working hard to make improvements in many of these same areas and would welcome assistance from the federal government in continuing to do so.

While this bill would be a significant step toward preventing recidivism, an especially important goal considering the rising numbers of prisoners being released into society, it can be better still. I am working to make the Second Chance Act even more effective for the people of Vermont and the people of the United States.

Specifically, I am working to address concerns expressed by Vermont's victim services agencies and advocates, with whom I have long worked closely – by making sure that victim services agencies have a role administering grants, that victims' needs are specifically addressed, and that provisions aiming to integrate families of offenders include sufficient safeguards to protect vulnerable children. I am also working to make sure that the bill helps less populated areas, like many parts of Vermont, that have a significant need for reentry services, and not just large urban areas. I am hopeful that these reasonable suggestions will be made part of the bill and will result in the Second Chance Act being a strong and effective step toward transforming former offenders into productive members of society. The work of this Commission should bring us closer still to that important goal.

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Statement of Gary D. Maynard, Commission member; Director, Iowa Department of Corrections; President-elect, American Correctional Association

Chairman Coburn and Senator Durbin.

I want to speak to you about medical and mental health issues in our prisons and jails and bring to your attention the reality I see in facilities across the country. We know how to secure prisoners behind walls, but the physical and mental health problems they bring with them are not so easily secured. These health problems quickly become problems for corrections officers, for other prisoners, and for surrounding communities. And the burden of solving these problems cannot rest solely with state and local correctional agencies.

Prisoners are probably the least healthy group of Americans. They are ill with some of the most destructive diseases—ranging from diabetes to HIV, hepatitis C, and tuberculosis—and at far higher rates than other Americans. Every year, as many as a million and a half people are released from jail and prison to our communities carrying a life-threatening infectious disease. In California, a federal judge recently appointed a receiver to run the prison medical system after learning that every six or seven days a prisoner dies unnecessarily from inadequate medical care.

And correctional facilities are filled with people who have a mental illness. At least 16 percent or 350,000, and maybe twice that number, are mentally ill. You have heard it said many times over because it is true: prisons and jails have become America's de facto psychiatric hospitals. I am not here to tell you that the mentally ill prisoner should not be held accountable. I am just saying that prisons and jails—try as we might—are not good places to help people cope with, or recover from, serious mental illness. In facilities around the country today we are struggling to deal appropriately with mentally ill prisoners. And we are releasing mentally ill prisoners without the necessary supply of medications and without any clear pathway to treatment. That threatens public safety and almost guarantees that those individuals will fail and be re-incarcerated.

These are difficult problems, but they are not without solutions. We need real partnerships between correctional agencies, departments of public health, and health care providers working in the community. The health care challenges in prisons and jails are public health problems and they demand public health solutions. We have come to a point where the doctors in some prisons and jails practice under licenses that restrict their work to correctional settings: They would not be permitted to provide care to you or me. Congress should find ways to encourage public health partnerships because they have been demonstrated to work and help correctional facilities hire only fully qualified medical staff.

When we must incarcerate someone who is mentally ill, we need properly trained and caring staff to treat the person's illness. And we must avoid isolating mentally ill prisoners in high-security segregation units where their mental state deteriorates and their suffering increases.

Money alone will not guarantee these crucial reforms, but without adequate funding for correctional health care, we have no hope of real change. Some correctional systems ration services by requiring prisoners to pay to see a nurse or doctor. Correctional systems that require medical co-pays by prisoners risk the spread of disease and the potentially high cost of delaying necessary care in exchange for a small cost-savings. The federal government, along with state and local governments, should end the use of medical co-pays in correctional facilities. It will take tremendous political will to make that change, and the shift is much more likely to occur if we can also increase the financial resources available to states to pay for medical care in jails and prisons.

One of the most important contributions Congress can make to improve the public health of this country is by changing federal law so that correctional health care providers—just like every other public health care provider—can be reimbursed by Medicaid and Medicare. If I ran a public hospital system rather than a correctional health system, my facilities would be entitled to federal reimbursement for the medical and mental health care we provide to persons who are low-income or elderly. The public health depends on seeing prisons and jails as part of the public health system. Medicaid reimbursement is a key part of that system.

We have a responsibility to provide decent health care to people who are not free to seek medical care on their own. In over 30 years of working in corrections, the opportunity to participate with the Commission on Safety and Abuse in America's Prisons has been the best chance for me and others in my profession to have a public voice. Thank you.

Remarks of Marc H. Morial, Commission member; President and CEO, the National Urban League; former Mayor of New Orleans.

Good afternoon Chairman Coburn and Senator Durbin. I too would like to thank you for the opportunity to testify today.

Corrections is a tough profession, and a poorly understood one. Corrections officers often work long shifts in tense, overcrowded facilities without enough backup, support or training – stressful conditions that take a toll on them personally and professionally. Many wardens run aging and understaffed facilities and deal with a workforce in which experienced officers are likely to leave the profession for better paying, less stressful jobs just when they're ready to become good mentors for new recruits. And those who manage entire systems deal with ever-growing numbers of prisoners and comparatively fewer resources. Yet for all their hard work, corrections professionals receive little positive recognition.

These pressures on the labor and leadership of our prisons and jails cause stress, injury, and illness among the workforce, and contribute to a dangerous culture inside. Because the exercise of power is an important part of the corrections officer's job, it's natural that in situations where officers are under stress, inexperienced, and under-trained they'll be more inclined to abuse that power. In facilities where the culture has devolved, rules aren't enforced, prisoner-on-prisoner violence is tolerated, and antagonistic relationships between prisoners and officers can erupt into overt hostility and physical violence. And in many places this kind of tension is exacerbated by racial and cultural differences between prisoners and staff. This conflict and violence not only harms staff and prisoners, but the families and communities officers and prisoners return home to as well.

In the 1960's my home state– by the Louisiana Department of Corrections' own admission – gained a reputation for running "America's bloodiest prison," the maximum security state penitentiary in Angola. I don't know which prison carries that distinction today, but I can say with some confidence that it is no longer Angola. Reforms at Angola began decades ago, but the most dramatic changes were accomplished over the course of the last ten years when the fundamental institutional culture of the prison was profoundly transformed. Prisoners at Angola are treated with dignity and respect by everyone who works in that facility, and the prisoners are equally expected to treat staff that way. Prisoners have been given hope through education and morally centered programming, and responsibility through meaningful employment. And the fair and reliable enforcement of the rules for both prisoners and staff means less violence. Prisons that add punishment on top of the sentence – those that are run in ways that stamp out hope and kill the spirit – will be violent places. In contrast, prisons that reward the best in those who are incarcerated, institutions that treat prisoners with basic human dignity and respect, are more likely to be places where violence and abuse are the rare exception and not the rule.

Institutional "culture change" may sound like a soft approach to combating violence behind bars, but this Commission heard overwhelmingly that when one changes the

culture one changes the entire institution. There are clear, concrete steps that institutions can take, and many are taking, to create a safer environment for both prisoners and staff. Congress can support the National Institute of Corrections, Institutional Culture Initiative that is currently providing prison and jail managers with the tools and training to change the culture of their institutions. But the NIC cannot do it alone. Managers and wardens need support at the local, state, and federal level to be able to make change over time, and they need the resources to hire a qualified and diverse staff. Officers need training that emphasizes ways to resolve conflict without force and communication skills – particularly communication across cultural and racial differences.

These are just some of our important recommendations. I hope that the hearing today does not represent the end of the Commission's work, but rather the beginning, as we begin to talk about and find ways to advance the important recommendations contained in our report. Thank you.

NEW YORK POST

DECEMBER 21, 2004

Rikers busts visitors for con-job smuggles

By DAVID SEIFMAN

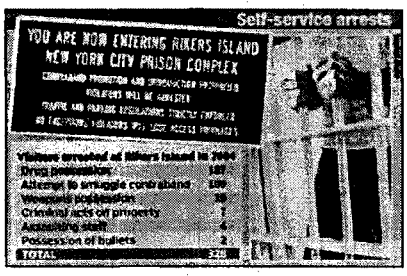
More than 300 visitors who thought they could beat the rigorous security system on Rikers Island have been arrested this year for trying to sneak in illegal items to inmates. Apparently ignoring the warning signs, shrugging off drug-sniffing dogs and metal detectors, the brazen visitors were nabbed 187 times with drugs, on 19 occasions with weapons, and 109 times with other contraband that included cigarettes.

In two cases, correction officers even seized concealed bullets. "I know we're not 100 percent effective and they're playing the odds," Correction Commissioner Martin Horn said of the would-be smugglers. "Everybody believes it won't be them" who is apprehended, Horn said.

But the anecdotal evidence is that most smugglers do get caught. Cigarettes are going for $20 a pack inside the jail system, proof that they're hard to come by since a tobacco ban took effect last year. Horn said that for the first time in memory an inmate was found trying to brew his own alcohol using filched fruit. "That tells me drugs aren't getting through. If you're an addict, you need to get high. If you can't get heroin or cocaine, you try to get high with whatever you can," he explained. Most tellingly, there have been only 34 slashings and stabbings this year, a record low, down from 49 in 2003.

But obvious security measures don't deter everyone. A machine installed two years ago called an Ionscan is capable of detecting drug residue in much the same way airport scanners can detect the residue of explosive materials. Faced with a positive drug reading, "people have turned and walked away" and abandoned their visit, recalled Horn.

Others, amazingly, have continued as if nothing had



happened - only to be arrested later with drugs in their possession. Although prominent signs warn that all packages are subject to search, Horn said there have been instances when visitors brought along packages with drugs inside. "They give us the package knowing full well we're going to search it," he said. A bright red "amnesty box" at the entrance greets visitors, who routinely drop in knives, drugs and other illegal items.

"We're not looking to arrest people," said Horn. "We're looking to keep contraband out of our jails." But the inventiveness of the smugglers knows no bounds. Correction officers rifle through the pages of every magazine brought to inmates, having discovered flattened-out tobacco in some issues. Mail gets intense scrutiny.

On one occasion, screeners discovered cocaine hidden beneath the stamp on an envelope. "It might not have been much, but it could have been enough for one hit," said one official. Perhaps as a result of the reduced violence in jails, there were two months in the last couple of years November 2003 and June 2002 - when more visitors were arrested for crimes than inmates.

"We know we're having an effect," concluded Horn.

The New York Times

August 22, 2003

City Creates Post-Jail Plan For Inmates

Program to Supply Jobs, Housing and Counseling

By PAUL von ZIELBAUER

For the first time, New York City officials from several agencies have agreed to create a comprehensive post-jail employment, drug treatment and housing plan that they say will prevent far more Rikers Island inmates from committing new crimes that return them to jail.

Though much of the concept is still being planned, some aspects, like a 6-week-old work program that pays Rikers inmates a weekly salary for picking up litter and scrubbing graffiti in city neighborhoods, are already under way.

"We may be on the way to unknotting this very difficult knot," Martin F. Horn, commissioner of the city's Department of Correction, said at a City Council committee hearing yesterday.

"Discharge planning," as the new effort to cut recidivism rates is called, has become a topic of intense interest to many state and municipal governments eager to stem the spiraling cost of imprisonment and close yawning budget deficits.

Nationally, two out of three discharged prisoners are rearrested within three years of release, according to a study last year by the federal Bureau of Justice Statistics, and that rate is expected to increase.

The city has never tried to offer outgoing inmates a comprehensive set of employment, housing and treatment programs to keep them from returning to jail, city officials and jail-reform advocates said.

"The fact that it's now at the city agency level is big," said Marta Nelson, director of Project Greenlight for the Vera Institute of Justice. The institute is working with the Departments of Correction and Health and Mental Hygiene to help outgoing inmates get birth certificates or Social Security cards — necessary documents to find a job. "This was not going on at the beginning of the year," Ms. Nelson said.

The idea for a coordinated jail-discharge

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plan began this year with Commissioner Horn, who organized meetings among commissioners and deputy commissioners from several departments, including Health and Mental Hygiene, Homeless Services and Employment. The group held its second daylong discharge-planning meeting on Thursday.

Though the plan is to help discharged city inmates stay out of trouble, a guiding force is the expected savings.

Almost half of discharged Rikers Island inmates are re-arrested within a year, 80 percent abuse drugs, 30 percent were homeless before going to jail, and 15 percent suffer from serious mental illnesses, Department of Correction statistics show.

It is an expensive confluence of problems. On average, each Rikers inmate — the jail's average daily population is about 13,900 — costs New York City more than $50,000 a year.

"You want to spend as much as you can in that period after they first get released" to avoid paying for jailing them again later, said Michael P. Jacobson, a former correction commissioner who is a professor at the John Jay College of Criminal Justice.

The new effort to coordinate discharge planning is aimed primarily at Rikers Island inmates serving three-month to one-year jail terms, a small segment of a general inmate population consisting mainly of detainees awaiting court dates who leave the jail within a week.

Even for the city's sentenced inmates, the average jail stay is 39 days, requiring any post-release program to respond quickly and effectively to a changing set of people, Commissioner Horn said.

"I think the way that people are released from jails and prisons can certainly be more thoughtful than it has been," he said in an interview on Tuesday.

The Department of Correction's budget allocates about $3.8 million for discharge planning, city officials said. By most accounts, it is not nearly enough to address the needs of all outgoing inmates.

Thus far, only the jobs aspect of the Bloomberg administration's post-jail initiative has taken hold; city officials and prison experts said developing drug and mental health treatment programs and affordable housing would require millions of dollars and months of more planning.

Early accounts of the jobs program have been encouraging, advocates of jail-release programs said.

Since early August, about 280 Rikers inmates have begun minimum-wage jobs cleaning New York City neighborhoods of litter and graffiti and learning the value of earning a weekly paycheck that, hopefully, will translate into a steady job after jail, said John Feinblatt, New York City's criminal justice coordinator, who helped create the program.

By June, 2,800 inmates are expected to be in the jobs program; eventually, 5,000 Rikers inmates will be on the program's payroll, paid for mostly through a $2.5 million federal grant.

"An ex-con with a job is more likely to stay an ex-con," Mr. Feinblatt said.

At the end of yesterday's hearing, City Councilwoman Yvette D. Clarke, the chairwoman of the Council's Fire and Criminal Justice Services committee, said she was pleasantly surprised at the commitment the city had to inmate discharge planning. Many of the experts who spoke at the hearing agreed.

"The test is that it leads to a reduction in the re-arrest rates and leads to improved safety," said Nicholas Freudenberg, a professor of public health at Hunter College who spoke to the committee yesterday.

Remarks of Pat Nolan, Commissioner member, Vice President of Prison Fellowship and President of Justice Fellowship

Good afternoon, Chairman Coburn and Senator Durbin.

I am Vice President of Prison Fellowship and President of their criminal justice reform arm, Justice Fellowship. In addition to serving on this commission, I also am Speaker Hastert's appointee to the Prison Rape Elimination Commission.

I bring a unique background to this work. I served for 15 years as a member of the California State Assembly, four of those as the Assembly Republican Leader. I was prosecuted for a campaign contribution I accepted, which turned out to be part of an FBI sting. I pleaded guilty to one count of racketeering, and served 29 months in a federal custody.

The best way to describe being imprisoned is that I felt like an amputee. I was cut off from my family, my friends, my work, my church and my community. Then, with my stumps still bleeding, I was tossed into a roiling cauldron of anger, bitterness, despair and often violence.

In prison, inmates are completely defenseless. They are deprived of the usual ways we protect ourselves. They do not choose where to live and sleep, they have no choice in their companions, they cannot avoid going in dark places, and they are prohibited from arming themselves for self-defense.

Because prisoners are deprived of the ability to defend themselves, the government has the responsibility to protect them from violence and harm. No sentence, no matter how terrible the crime, includes being threatened, beaten, or raped while in the custody of the government.

Sadly, many prisons fail in their responsibility to protect their inmates and staff from violence. At the Commission's hearings around the country, we heard many accounts of violence and abuse behind bars. These were reports not just from prisoners and their families, but line officers and administrators, as well. On the other hand, we also heard accounts of many facilities where prisoners and staff are safe and healthy. Plainly, there are practices and policies that make for safer prisons.

The clear consensus among the experts is that to prevent violence in prison we must:

- Reduce crowding.
- Increase access to meaningful programs and activities.
- Encourage a climate of mutual respect between staff and inmates.
- Increase the transparency of the institutions by increasing accessibility to outside agencies and volunteers.
- Identify at-risk prisoners and potential predators, and classify them accordingly.
- Make better use of surveillance technology.

- Strengthen family relationships by: placing inmates close to their families, encouraging family visits, and lowering the cost of phone calls.

How do we hold administrators of institutions plagued by violence accountable for adopting these reforms that are proven to make prisons so much safer? One important way Congress can help is to develop a uniform system for collecting data on violence in prison. Currently, there is no way to track the number of assaults by prisoners on other prisoners, by prisoners against staff, or the use of excessive force by corrections officers. This prevents us from comparing levels of violence in different facilities and systems around the country, or tracking trends over time. For instance, in the year 2000, one state with 36,000 prisoners reported just 17 assaults. Three states reported zero assaults among prisoners statewide. Zero. These numbers just are not credible. I'm confronting the same a problem in my role as a Commissioner on the Prison Rape Elimination Commission.

Without accurate numbers we cannot hold prison administrators accountable for the safety of their staff and inmates. We end up fighting over anecdotes – pitting good stories against bad ones. More importantly, it means that successful corrections leaders are not recognized and rewarded, and that dangerous institutions do not receive the attention and reform they so desperately need.

Corrections administrators need accurate information to monitor safety, and the public needs it to hold them accountable.

Thank you.

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