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FEDERAL BUREAU OF PRISONS OVERSIGHT

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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FEDERAL BUREAU OF PRISONS OVERSIGHT

TUESDAY, JULY 21, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:04 a.m., in room 2237, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Conyers, Lofgren, Jackson Lee, Gohmert, Poe, and Goodlatte.

Staff present: (Majority) Bobby Vassar, Subcommittee Chief Counsel; Jesselyn McCurdy, Counsel; Karen Wilkinson, (Fellow) Federal Public Defender Office Detailee; Joe Graupensperger, Counsel; Veronica Eligan, Professional Staff Member; (Minority) Caroline Lynch, Counsel; Kimani Little, Counsel; Robert Woldt, FBI Detailee; Kelsey Whitlock, Staff Assistant.

Mr. SCOTT. The Subcommittee on Crime, Terrorism, and Homeland Security will now come to order.

I would like to welcome you today to the oversight hearing on the Federal Bureau of Prisons. The Subcommittee will examine a number of topics related to the responsibilities of the prison. And one of the topics I am particularly interested in hearing our witnesses discuss today is the Federal Prison Industries program.

The Federal Prison Industries, or FPI, inmate work program also known as UNICOR, is very important for public safety, prison management and cost-effectiveness, by assisting in rehabilitation and post-release employment prospects of former offenders. The objective of FPI is to encourage the rehabilitation of offenders by improving their work skills and work habits while they are incarcerated.

All able-bodied inmates are required by Federal law to work. About 85 percent of the work in prisons constitutes assigned jobs for which they earn about 12 to 40 cents per hour. FPI inmates can earn up to $1.15 an hour. To be eligible for this program, or even be on the waiting list for the program, an inmate must be of good conduct and have graduated from high school or be currently making progress toward acquiring a GED.

No more than 40 cents an hour can be earned by an inmate who has not graduated from high school or acquired a GED. Thus, it is a great incentive, not only for good order and decorum in the prison, but also for educational achievement.

Therefore, it is no surprise to show that the FPI graduates are 35 percent less likely to reoffend and 14 percent more likely to be employed 1 year after release. Inmates who have participated in FPI are 24 percent less likely to recidivate as long as 12 years after their release than those who had not participated in a work program.

But limiting the losses of FPI jobs is not simply an academic exercise, but it is also vital to maintaining safety and order within the prisons, rehabilitating the offender, keeping the public safe and saving the taxpayers money.

However, over the last 8 years, the number of inmates participating in the FPI program has declined significantly. As recently as last year, an amendment to the National Defense Authorization Act eliminated the mandatory source requirement for purchases of FPI products by the Department of Defense.

On July 15, the Bureau of Prisons announced that it has begun closing FPI factories at 14 prisons and scaling back operations in four others. According to BOP, the FPI has lost $20 million this year, and BOP officials expect that 1,700 inmates will lose their jobs as a direct result of the factory closings.

Fewer inmates in FPI means not only less efficient and less safe prisons, but eventually more victims of crime from prisoners released without the FPI experience.

Another topic I am interested in hearing from the BOP is the implementation of the Second Chance Act. In 2008, Congress passed the Second Chance Act to provide resources to the BOP and to State and local governments to better address the growing number of ex-offenders returning to communities around the country. The law directs the BOP to asses inmate skills upon entry to prison, generate a skills development plan and ensure that priority is given to a high-risk prison population.

I am pleased to hear that BOP is currently in the process of developing the Inmate Skills Development Strategy, which is required by law in order to ascertain prisoner skills upon incarceration and provide programming based on that assessment.

I would like to hear more about the skills assessment and how the bureau plans to assist inmates to make a smooth re-entry back to society.

The Second Chance Act authorized the BOP to begin an inmate's transition into the community up to 12 months before their release date. The act authorized BOP to begin releasing inmates to halfway houses, as early as 12 months before the end of their sentences, with the understanding that, after the completion of a halfway house program, individuals would transition to home confinement or gradual release programs for the remainder of their sentence.

I am interested to learn how this is progressing, as it would not only be better for inmates to transfer, but could substantially relieve prison overcrowding. Of course, the BOP is required to consider public safety in making releases to half-way houses or other community supervision programs, and the new authorities do not diminish their responsibility.

Considering that it costs a little less to house inmates in halfway houses toward the end of their sentences, and that it helps

them re-enter society successfully, I look forward to hearing how the BOP is utilizing their new authority to address costs and improve re-entry success.

Another important area of authority given to BOP is the area of drug treatment. When offenders do not address their alcohol and drug addictions, it often results in these individuals becoming repeat offenders. The bureau's Residential Drug and Alcohol Program provides drug treatment and after-care services for offenders who are convicted of non-violent crimes.

As incentive to encourage inmates to participate in drug addiction treatment while they are in prison and to recognize the impact of the program, the BOP has the authority to give a year off the sentence of an eligible offender who successfully completes the program. However, I understand that BOP does not give offenders the full year of sentence reduction, and I am interested in understanding why inmates are not benefiting from the full reduction of their sentence.

There have been also criticisms of how the BOP determines eligibility for the program within its discretion. I am also interested in understanding how BOP determines who is non-violent and, therefore, eligible for the program.

Other important implementation and management issues will be discussed by our witnesses, and I look forward to their testimony.

For today's oversight hearing, we have three panels of witnesses. The first panel will consist of our colleague, the gentleman from the 18th District of California, Congressman Dennis Cardoza. The bureau's director, Harley Lappin, will testify in the second panel with two of his colleagues from BOP. And the final panel will include advocates of Federal prison issues and a representative from the correctional officers union.

I will now recognize the esteemed Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott.

This is important that we have this hearing. We have not had one in a while. And oversight is such an important responsibility and, perhaps, one of our most important functions.

The Federal Bureau of Prisons, or BOP, was established in the 1930's to provide better care for Federal inmates, to professionalize the prison service, and to ensure consistent and centralized administration of the Nation's Federal prisons.

Today, the BOP consists of 115 corrections institutions and 28 community corrections offices. Administration of the BOP is handled by regional offices, and the headquarters uniquely provides oversight and support to bureau facilities and community corrections offices. As many of you know, the community corrections offices oversee residential re-entry centers and home confinement programs.

Presently, the BOP is responsible for the custody and care of more than 204,000 Federal offenders. BOP employs approximately 36,000 employees, who have the mutual goal of protecting public safety by ensuring that Federal offenders serve their sentences in a safe, secure and efficient facility.

In addition to securely maintaining Federal facilities, the BOP also has programs that help to reduce the potential for future re-

cidivism. Federal inmates are encouraged to participate in a range of educational, vocational and faith-based programs, including the Life Connections and Threshold programs.

Under the Second Chance Act, Congress imposed new requirements on the BOP to facilitate the successful re-entry of offenders back into their communities. Among those requirements are the establishment of recidivism reduction goals and increased collaboration with State, tribe or local community and faith-based organizations to improve the re-entry of prisoners.

BOP is currently developing an Inmate Skills Development Strategy as required by the Second Chance Act to assess prisoner skills upon incarceration and provide programming based on that assessment to fill skills deficits and address other re-entry needs.

I and other Members of the Subcommittee look forward to hearing about the present and future results of these efforts, or, in some cases, the lack or failure of efforts as required. In that regard, we really appreciate Representative Cardoza being here today.

We know this is a matter of personal interest to you, especially after what has occurred at the prison. And I just really appreciate you taking such a personal interest, and I am grateful for that input.

There are, obviously, many problems that still exist within the Federal prison system. According to the union that represents many BOP correctional officers, Federal facilities are becoming increasingly overcrowded with offenders.

Further, the BOP system is currently staffed at about 87 percent level, which is much lower than the 95 percent staffing levels of the mid-1990's. This overcrowding and alleged understaffing is creating dangerous situations for some Federal facilities. Anecdotal evidence from correctional officers alleges a rise in inmate-on-inmate and inmate-on-officer assaults.

I think Representative Cardoza will address that, as well. One recent assault against a correctional officer was widely reported, and that is the one I anticipate hearing Representative Cardoza talk about.

Although other officers quickly responded in that case, the wounds Officer Rivera received were terrible, and to which he later succumbed. We look forward to hearing more about that incident.

I understand the BOP has reviewed the suggestions, and has implemented some additional safety measures for correctional officers that followed Officer Rivera's death.

Since we as a Nation ask BOP correction officers to secure our Federal prison facilities and the dangerous offenders housed within them, Members of Congress, as representatives of the citizens, must ensure that the BOP has the resources it needs to accomplish this mission.

We also know that, for the sake and safety of American citizens, recidivism must be reduced. We also know that mentoring and follow up after prison has helped create dramatic reductions in recidivism when it has been allowed by faith-based groups. Now we are told by BOP such follow up is prohibited by BOP policy, which cannot be changed until unions agree to it.

The Second Chance Act requires the follow up be permitted. So, it will be important to know for sure whether it is BOP, unions,

or both, or some other factor, which is intentionally violating the law and causing untold crimes against Americans by refusing to utilize the required and proven method of reducing recidivism.

I look forward to hearing from the BOP officials and representatives of correction officers, and also from the other witnesses.

Again, thanks again, Congressman Cardoza, for being here.

Mr. SCOTT. Thank you.

We have been joined by the Chairman of the full Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Scott and Judge Gohmert.

I think this is an important hearing—and I am happy that we are here starting off with our colleague, Dennis Cardoza—which is an overcrowding problem that I hope will be addressed right off the bat.

The Bureau of Prisons has a number of problems. I am sorry I did not catch both of the opening statements. But the prison medical facilities; the inability to get formulary discounts on drugs; the violation of proper staffing of the prison facilities; the whole idea of private prisons, whose cost-effectiveness is now being called into question, since nobody is measuring it; the fact that some legal defender groups have to sue to get health care for men and women that are incarcerated—all these are problems.

I am interested in finding out from my colleagues about whether the faith-based programs include the Muslim faith, which in the African-American incarceration, there is a huge number of converts there for some reason. I have never quite understood how that happens, or why it is happening. And I am not criticizing it at all.

The failure of the Bureau of Prisons to enforce and implement existing procedures—so, we have got a lot of problems. I am so proud of the Committee for taking this up, and I yield back the balance of my time.

Mr. SCOTT. Thank you. I thank the gentleman for joining us today.

Our first witness will be Representative Dennis Cardoza, serving his fourth term in Congress representing California's 18th District. He serves as Chair of the House Agriculture Committee's Subcommittee on Horticulture and Organic Agriculture. He also serves on the Subcommittee on Livestock, Dairy and Poultry, the Subcommittee on Conservation, Credit, Energy and Research, and the House Rules Committee.

He is testifying today, because of his intense interest about problems at Atwater Penitentiary in his district.

Mr. Cardoza?

TESTIMONY OF THE HONORABLE DENNIS A. CARDOZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CARDOZA. Thank you, Chairman Scott, Chairman Conyers, Mr. Gohmert and all the Members of the Committee.

Thank you for having me here today to discuss an issue of such significant personal and professional importance to me: congressional oversight of our Federal prison system.

As you know, just over a year ago, two inmates viciously attacked and killed Correctional Officer Jose Rivera at the Atwater

Penitentiary in my congressional district. Officer Rivera was a 4-year veteran of the Navy, had completed two tours of military duty in Iraq.

He began his career at the Bureau of Prisons as a correctional officer on August 5, 2007, and was in his probationary year, when he was senselessly murdered by two inmates in the housing unit he was supervising.

This tragic event rocked our community to its core, sparking outrage and shedding additional light on significant funding shortfalls plaguing our Federal prison system.

In response to this tragedy, a grassroots-led community organization was formed in my home community of Atwater, to advocate on behalf of correctional officers at the United States Penitentiary Atwater and around the country. I am proud to report that the Friends and Family of Correctional Officers now has over 1,000 members.

Last night, during a telephone town hall meeting I had with my constituents in Merced County, the issue was raised, and it demonstrates that the tragedy still remains high in the minds of my constituents.

While it is unclear whether Officer Rivera would be alive today were the institution fully staffed, I think we can all agree that Congress has a responsibility to ensure a tragic event like this never takes place again in our Nation's prisons.

Congress simply can and must do more to provide the Bureau of Prisons with greater resources and to ensure our correctional officers have the tools and the training they need to safely and efficiently do their jobs.

Across the Nation, staffing levels are decreasing while inmate populations are steadily on the rise, leaving correctional officers vulnerable. Over the last 20 years, the inmate population of the Federal prison system has increased by nearly 250 percent, while staffing has increased by less than 125 percent.

In my district, in Atwater, the Atwater Penitentiary is operating at 86 percent of the necessary staffing levels to watch over an inmate population 25 percent over capacity. Nationwide, the inmate-to-staff ratio is 4.9 to one, as contrasted with the 1997 number of 3.7 to one.

While I understand our correctional officers will always be subject to a certain level of risk, I strongly believe that increases in staffing levels will significantly reduce this threat. During my tenure in Congress, I have advocated for adequate funding for the Bureau of Prisons and sufficient resources for our Nation's correctional officers to perform the difficult and dangerous work they do.

Finally, I believe we are coming to be on the right track. Last month, the House passed the fiscal year 2010 CJS bill. It provides an increase of $481 million above the fiscal year 2009 level for BOP salaries and expenses. These additional funds will enable the Bureau of Prisons to hire over 1,000 additional correctional officers and activate two newly constructed prisons.

I have regularly communicated my concerns regarding the status of these facilities to Director Lappin. In particular, I have highlighted my concerns about inmate assault levels, overcrowding and understaffing in our prison facilities. Last July, I introduced legis-

lation to provide all Federal correction officers with stab-resistant vests to help our correctional officers from future inmate assaults.

Without delay—and I thank him for it—Director Lappin responded by enacting policy changes to provide all correctional officers with stab-resistant vests, to give local penitentiaries greater control over inmates, and to supply penitentiaries with additional staff during evening and weekend watch. While not perfect, this is certainly a step in the right direction.

Last month, I wrote Director Lappin, highlighting my concerns with the findings of the recently released Department of Justice Board of Inquiry Report, the official review of operations at USP Atwater leading up to Officer Rivera's death. The report reveals numerous concerns, including insufficient staffing levels, inadequate training of staff, a lack of accountability for inmate offenses and other issues which, had they been properly addressed by the previous warden, may have prevented the death of Officer Rivera.

I would like to just share with the Committee that I had sent this prior warden a letter of my concerns, and it had never been addressed when—and I repeated calls to this warden, and did not get action. The new warden is doing a much better job.

While I continue to be concerned with the insufficient staffing levels and overall safety levels at USP Atwater, Director Lappin has assured me that operations have substantially improved under the leadership of the warden I just spoke of, Hector Rios. I will continue to monitor the operations at our penitentiary in Atwater, and will keep the Committee updated.

The last issue I would like to raise is regarding non-lethal weapons for correctional staff.

In April of 2009, I introduced legislation that directs the Bureau of Prisons to conduct a pilot program to determine the effectiveness of issuing pepper spray to correctional staff. The bill also directs the GAO to report to Congress on a pilot program and to report on tools to improve officer safety in Federal prisons. While this bill is not a silver bullet solution for the problems affecting correctional officers in our Federal prisons, I believe it takes important steps to determine whether our correctional officers have the tools they need to effectively do their jobs.

Once again, Mr. Chairman, I want to thank you for inviting me to testify today. I look forward to working with you to explore practical solutions to ensure that our Nation's prisons and our communities are safe. I am happy to answer any questions you might have.

[The prepared statement of Mr. Cardoza follows:]

PREPARED STATEMENT OF THE HONORABLE DENNIS A. CARDOZA,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Statement of Congressman Dennis Cardoza
House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Hearing on *Federal Bureau of Prisons Oversight*
July 21, 2009

Mr. Chairman, Members of the Committee, thank you for having me here today to discuss an issue of significant personal and professional importance to me – congressional oversight of our federal prison system.

As you know, just over a year ago, two inmates viciously attacked and killed Correctional Officer Jose Rivera at Atwater Penitentiary in my congressional district. Officer Rivera was a four-year veteran of the Navy, and had completed two tours of military duty in Iraq. He began his career with the Bureau of Prisons as a correctional officer on August 5, 2007, and was in his probationary year when he was senselessly murdered by two inmates in the housing unit he was supervising.

This tragic event rocked our community to the core, sparking outrage and shedding additional light on the significant funding shortfalls plaguing our federal prison system. In response to this tragedy, a grassroots-led community organization was formed in Atwater to advocate on behalf of correctional officers at USP Atwater and around the country. I am proud to report that *The Friends & Family of Correctional Officers* now has over 1,000 members.

While it is not clear whether Officer Rivera would be alive today were the institution fully staffed, I think we can all agree that Congress has a responsibility to ensure a tragic event like this never takes place again in our nation's prisons. Congress simply can and must do more to provide the Bureau with greater resources and ensure our correctional officers have the tools they need to safely and efficiently do their jobs.

Across the nation, staffing levels are decreasing while inmate populations are steadily on the rise, leaving correctional officers vulnerable. Over the last twenty years, the inmate population in the federal prison system has increased by nearly 250% while staffing has increased by less than 125%. In my district, USP Atwater is operating at 86% of necessary staffing levels to watch over an inmate population 25% over capacity. Nationwide, the inmate-to-staff ratio is an abysmal 4.9 to 1, as contrasted with the 1997 level of 3.7 to 1. While I understand our correctional officers will always be subject to a certain level of risk, I strongly believe an increase in staffing levels will significantly reduce this threat.

During my tenure in Congress, I have advocated for adequate funding for the BOP and sufficient resources for our nation's correctional officers to perform the difficult and dangerous work they do. Finally, I believe we are on the right track.

Last month, the House passed the FY10 CJS appropriations bill, providing an increase of $481.5 million above the fiscal year 2009 level for BOP Salaries & Expenses. These additional funds will enable BOP to hire over 1,000 additional correctional officers and activate two newly constructed prisons.

I have regularly communicated my concerns regarding the status of BOP facilities to Director Lappin. In particular, I have highlighted my concerns about inmate assault levels, overcrowding, and understaffing in such facilities. Last July, I introduced legislation to provide all federal correctional officers with stab-resistant vests to help protect our correctional officers from future inmate assaults. Without delay, Director Lappin responded by enacting policy changes to provide all correctional officers with stab-resistant vests, give local penitentiaries greater control over inmates, and supply penitentiaries with additional staff during evening and weekend watch. While not perfect, this is a step in the right direction.

Last month, I wrote a letter to Director Lappin, highlighting my concerns with the findings of the recently released Department of Justice *Board of Inquiry Report* -- the official review of operations at USP Atwater leading up to Officer Rivera's death. The report reveals numerous issues of concern, including insufficient staffing levels, inadequate training of staff, a lack of accountability for inmate offenses, and other issues which, had they been properly addressed by the previous warden, may have prevented the death of Officer Rivera. While I continue to be concerned with the insufficient staffing levels and overall safety levels at USP Atwater, Director Lappin has assured me that operations have substantially improved under the leadership of the new warden, Hector Rios. I will continue to monitor the operations at USP Atwater.

The last issue I'd like to raise is regarding non-lethal weapons for correctional staff. In April 2009, I introduced legislation that directs the BOP to conduct a pilot program to determine the effectiveness of issuing pepper spray to correctional staff. The bill also directs the GAO to report to Congress on the pilot program and on tools to improve officer safety in federal prisons. While this bill is not a "silver bullet" solution for the problems affecting correctional officers in our federal prisons, I believe it takes important steps to determine whether our correctional officers have the tools they need to effectively do their jobs.

Once again, thank you, Mr. Chairman for inviting me to testify today. I look forward to working together to explore practical solutions to ensure that our nation's prisons and our communities are safe.

Mr. SCOTT. Thank you. And I thank you for bringing these concerns to our attention. And the director will be testifying right after you, so perhaps he could answer some of these questions.

Mr. CONYERS. Mr. Chairman?

Mr. SCOTT. The gentleman from Michigan?

Mr. CONYERS. Could we ask the distinguished colleague of ours from California, if he feels like it, to submit both the letters he has written to both of the wardens——

Mr. CARDOZA. I would be happy to.

Mr. CONYERS [continuing]. And any responses he may have received?

Mr. CARDOZA. I would be happy to submit those to the Committee.

Mr. SCOTT. And they will be made part of the record.*

The gentlelady from California?

Ms. LOFGREN. I would just note, first, I am sorry I was slightly delayed, but I had the benefit of reading the written testimony.

And I appreciate Congressman Cardoza's advocacy for his district, not only in many other ways, which I am very familiar with as chair of the California Democratic Delegation, but for his constituents who are employees in this important Federal facility, that their safety should be in our minds. And I wanted to note, Congressman Cardoza is well known as an advocate for his constituents. And once again, he shows that.

So, thank you, Mr. Chairman.

Mr. CARDOZA. Thank you, Ms. Lofgren.

Mr. SCOTT. The gentleman from Texas?

Mr. GOHMERT. I will look forward to seeing those letters. You know, it is our job to have oversight. And I really—you know, we always say thank you for holding this hearing, but this is critical that we do adequate oversight over something so important.

But for you to have seen the need before the terrible event happened with Officer Rivera, and had called that to people's attention, I know is of no comfort to you to say "I told you so." But thank you for your sensitivity.

And the bill, I was not familiar with the bill that you had introduced before, but I sure would be interested in seeing that. I would like to work with you in any way we could on it.

Mr. CARDOZA. Thank you, Mr. Gohmert.

I will tell you that it is always dangerous for—you know, I ran a small business. And when you do not listen to your staff, you are going to get yourself in trouble, whether you be a small business owner or the warden of a prison.

And clearly, the prior warden did not listen to his staff, so they called their local congressman and started complaining about the situation in Atwater. When I wrote to him, and then I called him, he did not respond as well.

And I have not always gotten my way as a congressperson, but I have never had a situation where the person that I was trying to make an inquiry with would not return my phone calls, when I directly placed those calls.

I will tell you that after the incident, I called Director Lappin, and he was very responsive to me, and always has been since then. And I appreciate the working relationship I have with him.

And the new warden is fantastic. I have met with him several times. The officers think he is moving in the right direction. And

*The information referred to was not available to the Committee prior to the printing of this hearing record.

we are very grateful for the change that Mr. Lappin has made at Atwater.

And so, while I want to be critical of what happened in the past, I certainly understand the challenges the Bureau of Prisons have. And the whole purpose of this hearing, as the Chairman said, is to try and improve the situation for all concerned.

Mr. GOHMERT. Thank you.

Mr. SCOTT. The gentleman from Texas?

Mr. POE. Just brief comments. Thanks for coming by and sharing these concerns with you.

We have a lot of Federal prisons down in Texas, Southeast Texas, that I represent. And concerns that you have talked about, I think are universal to staff, the guards, the ones that do the hard work in those prisons. I think those are the toughest—that is the toughest beat in America——

Mr. CARDOZA. Absolutely.

Mr. POE [continuing]. Guarding those Federal prisoners in our prisons, sometimes without any public support for the hard jobs.

I have been through those prisons. I would not last as a guard on one shift. So, I admire those people who have chosen that to be their profession. And I totally agree. Congress has a responsibility to provide a safe workplace for those people. They are not exactly, you know, guarding jaywalkers.

So, thanks for being here.

Mr. CARDOZA. Thank you, Mr. Poe. Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

Our second panel for today's hearing is the Federal Bureau of Prisons director, Harley G. Lappin. He is a career public administrator in the Federal Bureau of Prisons and the seventh director of the agency. He is responsible for the oversight and management of the bureau's 114 institutions and of the safety and security of more than 200,000 inmates under the agency's jurisdiction. He received a B.A. degree in forensic studies from Indiana University and a master's degree in criminal justice and corrections administration from Kent State University.

Mr. Lappin, it is good to see you today.

TESTIMONY OF HARLEY G. LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. LAPPIN. Mr. Chairman, it is a pleasure to be here. We appreciate the support of the Committee, and look forward to chatting with you about a number of issues today.

Joining me to support me in responding to questions is Admiral Newton Kendig, who is the Assistant Director of the Health Services Division for the Bureau of Prisons. He oversees all of the medical services' policies, budget and implementation for the 207,000 inmates.

To my right is Paul Laird, Assistant Director of our Industries, Education and Vocational Training, as well the Chief Operating Officer of Federal Prison Industries. And it is a pleasure to have the two of them joining me this morning.

Good morning again, Chairman Scott, Ranking Member Gohmert, Chairman Conyers, and other Members of the Sub-

committee. I appreciate the opportunity to appear before you today to discuss a variety of issues that present significant challenges for the Federal Bureau of Prisons.

All of our programs, services, and operations are affected by the number of inmates we are required to confine and the number of staff we have to provide these programs and services. In recent years, the growth in the inmate population has far outpaced BOP bed space, capacity, and staffing.

Correctional administrators agree that crowded prisons result in greater tension, frustration and anger among the inmate population, which leads to conflicts and violence. And we are confining an increasing number of inmates who are more prone to violence and disruptive activity, and more defiant to authority.

In order to reduce crowding, we must do one or more of the following: construct additional institutions and fund the necessary positions and other operating costs; expand inmate housing at existing facilities; contract with private prisons for additional bed space; or reduce the number of inmates or the length of time inmates spend in prison.

Higher levels of crowding and reduced staffing limit our ability to prepare inmates for re-entry into the community. Many inmates are being released without the benefit of programs that enable them to gain the skills and training necessary to reintegrate successfully.

As an example of the problem we were facing, for the last 2 fiscal years we have been unable to meet our statutory mandate to provide residential drug abuse treatment to all eligible inmates. The waiting list for other inmate programs continues to grow, as our staffing levels remain lower than necessary to maintain adequate programming opportunities for inmates.

We have other challenges that have significant impact on Bureau operations—health care, for one. We provide quality, medically-indicated health care services to all inmates in accordance with proven standards of care.

However, not all medical services that inmates desire are deemed medically necessary. In order to provide consistency and maximize cost-effectiveness, elective health care services are provided to inmates on a case-by-case basis.

Many Federal offenders come to prison having led unhealthy lives. These offenders have histories of drug or alcohol abuse, and have longstanding medical and dental concerns which they have neglected. As a result, inmates typically have greater health care needs than the average citizen.

Through a variety of initiatives, we have been able to control in-house health care costs to a significant degree. However, we rely heavily on contractual medical services, and it is primarily the rising cost of health care in the community and the cost of pharmaceuticals that are driving up our overall health care costs.

Traditionally, Federal prisons have offered a wealth of inmate programs to provide opportunities for inmates to gain important skills and training. We want inmates involved in meaningful programs. We know that inmates who participate in Federal Prison Industries, vocational or occupation training, education programs,

or residential drug abuse treatment programs are significantly less likely to recidivate.

Unfortunately, we have a limited number of jobs and program opportunities. Increasing crowding has made it difficult to keep all inmates working in full-day job assignments.

Our most important re-entry program—or one of them—Federal Prison Industries, is dwindling rather than expanding. We operate FPI factories primarily at our medium-security and high-security institutions, where we confine the most violent and criminally-sophisticated offenders. Working in FPI keeps inmates productively occupied, thereby reducing the opportunity for violent and other disruptive behavior. Work in FPI also teaches inmates, as you referenced earlier, valuable job skills and a work ethic, and it does so without the use of appropriated funds.

FPI's worker levels and earnings have dropped significantly in fiscal years 2008 and 2009, due to various provisions of the Department of Defense authorization bills and appropriations bills that have weakened FPI's standing in the Federal procurement process, along with administrative changes taken by the FPI Board of Directors.

These changes, coupled with the downturn in the economy and the significant reduction of products needed to support the war effort, has had a serious negative impact on FPI.

Last week, we began the process of closing or downsizing 19 FPI factories, resulting in the loss of approximately 1,700 inmate jobs, which is nearly 10 percent of the FPI inmate workforce. Additionally, FPI has reduced the number of work hours for many of the inmates, a practice that began several months ago to further reduce costs.

In order to increase inmate opportunities to work in FPI, new authorities are required to expand product and service lines. Absent any expansion of FPI, the BOP would need additional resources to create work and training opportunities for inmates to prepare them for successful re-entry into the community.

Again, Chairman Scott, Ranking Member Gohmert, it is a pleasure to be here. We look forward to answering questions you may have of us.

[The prepared statement of Mr. Lappin follows:]

PREPARED STATEMENT OF HARLEY G. LAPPIN

Department of Justice

STATEMENT OF

HARLEY G. LAPPIN
DIRECTOR
FEDERAL BUREAU OF PRISONS
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

HEARING ENTITLED

"FEDERAL BUREAU OF PRISONS OVERSIGHT"

PRESENTED

JULY 21, 2009

Good morning Chairman Scott, Ranking Member Gohmert, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss a variety of issues that present significant challenges for the Federal Bureau of Prisons.

The mission of the Bureau of Prisons (BOP) is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and to provide inmates with a range of work and other self-improvement programs that will help them adopt a crime-free lifestyle upon their return to the community. As our mission indicates, the post-release success of offenders is as important to public safety as inmates' secure incarceration.

The two parts of our mission are closely related—prisons must be secure, orderly, and safe in order for our staff to be able to supervise work details, provide training, conduct classes, and run treatment sessions. Conversely, inmates who are productively occupied in appropriate correctional programs are less likely to engage in misconduct and violent or disruptive behavior.

Continuing increases in the inmate population pose substantial ongoing challenges for our agency and has lead to an increase in the inmate-to-staff ratio in our institutions from 3.6-to-1 in 1997 to 4.9-to-1 in 2009. In recent years, growth in the inmate population has far outpaced increases in BOP bedspace, capacity, and staffing.

The BOP is responsible for the incarceration of more than 207,000 inmates. Approximately 82 percent of the inmate population is confined in Bureau-operated institutions, while 18 percent is under contract care, primarily in private sector prisons. Most Federal inmates (53%) are serving sentences for drug offenses. The remaining inmates are convicted of weapons offenses (15%), immigration law violations (10%), violent offenses (8%), fraud (5%), property crimes (4%), sex offenses (3%), and other miscellaneous offenses (2%). The average sentence length for inmates in BOP custody is 9.9 years. Approximately 7 percent of inmates in the BOP are women, and approximately 26 percent are not U.S. citizens.

Our agency has no direct control over the number of inmates who come into Federal custody, the length of sentences they receive, or the skill deficits they bring with them. We do have control, however, over the programs in which inmates can participate while they are incarcerated; and we can thereby affect how inmates leave our custody and return to the community. BOP also has authorities to award good time credit. Virtually all Federal inmates will be released back to the community at some point. Most need job skills, vocational training, education, counseling, and other assistance (such as drug abuse treatment, anger management, and parenting skills) if they are to successfully reenter society. Each year, approximately 45,000 Federal inmates return to our communities, a number that will continue to increase as the inmate population grows.

The Federal Inmate Population

The most significant net increases in the inmate population have occurred in the last 2 decades. While we are no longer experiencing the dramatic population increases of between

10,000 and 11,400 inmates per year that occurred from 1998 to 2001, the increases are still significant and include average annual net increases of approximately 5,800 inmates per year for the last 5 fiscal years (from 2003 to 2008); and thus far this year, we have already added another 5,227 inmates.

In 1930 (the year the Bureau was created), we operated 14 institutions for just over 13,000 inmates. By 1940, the Bureau had grown to 24 institutions and 24,360 inmates. The number of inmates did not change significantly for 40 years. In 1980, the total population was 24,640 inmates.

From 1980 to 1989, the inmate population more than doubled, from just over 24,000 to almost 58,000. This resulted from enhanced law enforcement efforts along with legislative reform of the Federal criminal justice system and the creation of many mandatory minimum statutes. During the 1990s, the population more than doubled again, reaching approximately 134,000 at the end of fiscal year 1999 as the BOP experienced the effect of efforts to combat illegal drugs, firearms violations, and illegal immigration. As a result of the National Capital Revitalization and Self-Government Improvement Act of 1997, the BOP became responsible for the District of Columbia's sentenced felon inmate population. Immediately after passage of the Act, we began gradually transferring sentenced felons from the District of Columbia into BOP custody and began accepting custodial responsibility of newly-sentenced D.C. felon inmates.

Institution Crowding

As of July 2, 2009, BOP facilities had a total rated capacity of 124,979 beds and confined approximately 170,700 inmates. Systemwide, the BOP was operating at 37 percent over its total rated capacity. Crowding is of special concern at high-security penitentiaries (operating at 50 percent over capacity) and medium-security institutions (operating at 47 percent over capacity) because these facilities confine a disproportionate number of inmates who are prone to violence. We manage crowding by double bunking throughout the system—95 percent of all high-security cells and 100 percent of all medium-security cells are double-bunked. In addition, approximately 20 percent of all medium-security cells are triple-bunked, and in many institutions inmates are being housed in space that was not designed for inmate housing.

Preparing inmates for reentry into the community is a high priority for the BOP. Unfortunately, higher levels of crowding and reduced staffing limit our ability to attend to this priority. We are hoping for an additional 3,000 more staff above the Fiscal Year 2010 budget request in the near term. The combination of elevated crowding and reduced staffing has decreased our ability to provide all inmates with the breadth of programs they need to gain the skills and training necessary to prepare them for a successful reentry into the community. We are experiencing the consequences of increased inmate idleness and the challenges in managing prisons that are becoming increasingly crowded with inmates who are more prone to violence and disruptive activity and more defiant of authority.

Crowding also affects an institution's physical plant and management's optimal use of security systems and security procedures; it affects the amount of time inmates have access to

important services, such as food services and recreation services; and crowding affects inmates' access to basic necessities, such as showers and telephones. Correctional administrators agree that crowded prisons result in greater tension, frustration, and anger among the inmate population, which leads to conflicts and violence.

In the past, we have been able to take a variety of steps to mitigate the effects of crowding in our facilities. For example, we have improved the architectural design of our newer facilities and have taken advantage of improved technologies in security measures such as perimeter security systems, surveillance cameras, and equipment to monitor communications. These technologies support BOP employees' ability to provide inmates the supervision they need in order to maintain security and safety in our institutions. We have also enhanced population management and inmate supervision strategies in areas such as classification and designation, intelligence gathering, gang management, use of preemptive lockdowns, and controlled movement. We have, however, reached a threshold with regard to our efforts, and are facing a serious problem with inmate crowding.

In 2005, we performed a rigorous analysis of the effects of crowding and staffing on inmate rates of violence. We used data from all low-security, medium-security, and high-security BOP facilities for male inmates for the period July 1996 through December 2004. We accounted for a variety of factors known to influence the rate of violence and, in this way, were able to isolate and review the impact that crowding and the inmate-to-staff ratio had on serious assaults. We found that both the inmate-to-staff ratio and the rate of crowding at an institution (the number of inmates relative to the institution's rated capacity) are important factors that affect the rate of serious inmate assaults.

Our analysis revealed that a one percentage point increase in a facility's inmate population over its rated capacity corresponds with an increase in the prison's annual serious assault rate by 4.09 per 5,000 inmates; and an increase of one inmate in an institution's inmate-to-custody-staff ratio increases the prison's annual serious assault rate by approximately 4.5 per 5,000 inmates. The results demonstrate through sound empirical research that there is a direct, statistically significant relationship between resources (bed space and staffing) and institution safety.

The BOP employs many resource-intensive interventions to prevent and suppress inmate violence. These interventions include: paying overtime to increase the number of custody staff available to perform security duties, utilizing staff from program areas to perform security functions, locking down an institution after a serious incident and performing intensive interviews to identify perpetrators and causal factors, and performing comprehensive searches to eliminate weapons and other dangerous contraband.

In order to reduce crowding, one or more of the following must occur: (1) construct additional institutions (and fund the necessary positions and other operating costs for these facilities); (2) expand inmate housing at existing facilities; (3) contract with private prisons for additional bedspace for low-security criminal aliens; or (4) reduce the number of inmates or the length of time inmates spend in prison. With regard to the last point, BOP is committed to using

all of the tools at its disposal to ensure that inmates earn as much good time as is allowed under the law.

Inmate Health Care

Before I review our major inmate programs and address inmate reentry in more detail, I would like to discuss some important matters regarding inmate health care. We provide quality, medically indicated health services to all inmates in accordance with proven standards of care without compromising public safety. However, not all medical services that inmates desire are deemed medically necessary. In order to provide consistency and maximize cost effectiveness, elective health care services are provided to inmates on a case-by-case basis using federally recognized criteria with Regional and Central Office oversight.

The rising cost of health care is a serious issue facing the BOP. Despite our efforts to contain costs, BOP's health care expenditures continue to grow in a manner comparable to what is occurring in the private sector. We have seen the cost increase from $9.16 per inmate per day in Fiscal Year (FY) 2001 to $12.84 per inmate per day in FY 2008. Health care is the most expensive service we provide to inmates. Outside medical care and pharmaceutical costs account for a substantial portion of our medical expenditures. The escalating cost of medications highlights the need for legislation that would grant the BOP eligibility for what is called "Big Four Pricing," the reduced pricing that is already available to four Federal entities (the Department of Defense, the Department of Veterans Affairs, the U.S. Public Health Service, and the U.S. Coast Guard).

Providing health care within a correctional environment presents unique challenges, and lack of pay parity with the private sector makes it difficult for the BOP to recruit and retain clinicians. Shortages of staff result in increased dependence on contractors and outside medical resources to address issues that could otherwise be accommodated using internal resources.

In order to provide comprehensive, consistent, and cost-effective health care throughout the BOP, we have instituted Clinical Practice Guidelines for clinicians and a standardized national drug formulary. These guidelines rely on evidence-based medicine and provide guidance to staff in such areas as management of diabetes, hypertension, hepatitis, and HIV.

The BOP has undertaken several initiatives that allow us to continue to provide quality health care in the face of rising costs. We have instituted a Medical Classification System that identifies inmates' medical needs and assigns them to facilities with appropriate in-house and community health care resources. Through this system, we are ensuring the most efficient use of our scare health care resources. The BOP is realigning staff to mirror our institutions' health care and security needs using staffing guidelines that emphasize the use of appropriate, yet cost-conscious staffing.

The BOP is making use of technologies to expand our ability to provide access to particular health care services throughout our institutions. The deployment of a web-based electronic medical and pharmacy record in all BOP facilities has greatly enhanced our ability to

provide continuity of health services to inmates as they transfer from one institution to another. We have also expanded our telehealth capabilities to provide sub-specialty care, such as psychiatric services, to BOP locations where these services are unavailable or difficult to obtain. As required by law and to mirror community practice, the BOP charges a copayment fee for health care services provided in conjunction with a health care visit requested by the inmate. The current copay fee is $2.00. Preventive health care, emergency services, prenatal care, diagnosis and treatment of chronic infectious diseases, mental health care, and substance abuse treatment are exempt from the fee. No inmate is refused medical treatment for lack of ability to pay the copayment, and treatment decisions are based on the inmate's medical condition, not on his or her ability to pay. Implementation of the copayment has resulted in decreased reliance by inmates on "sick call" for unnecessary visits and has allowed clinicians to focus on preventive health measures and treatment of chronic conditions.

Through these various initiatives, we have been able to control in-house health care costs to a significant degree. However, we rely heavily on contractual medical services, and it is the rising cost of health care in the community that is driving up our overall health care costs. The BOP is subject to the same inflationary costs experienced by consumers of health care in the community.

Many Federal offenders come to prison having led unhealthy lives. Many offenders have histories of drug and/or alcohol abuse and have long-standing medical and dental concerns which they have neglected. As a result, inmates typically have greater health care needs than the average citizen. Still, we have been able to provide health care at an average cost of $4,700 per inmate per year in fiscal year 2008, as compared to $7,804 per person per year in the community (the projection for 2008 by the Centers for Medicare and Medicaid Services National Health Expenditure Data).

Health care in the BOP is subject to external and internal oversight. External reviews are conducted regularly by the Joint Commission on Accreditation of Healthcare Organizations, the nation's predominant standards setting and accrediting body in health care, and by the American Correctional Association (ACA). All BOP institutions are accredited by the ACA, which includes accreditation of health services programs. Internal reviews are conducted on an on-going basis through: program and policy compliance reviews, peer reviews of physicians, psychiatrists, and dentists, patient service surveys, and inmate Administrative Remedies.

Inmate Reentry

Our institutions offer a wealth of inmate programs, including work in prison industries and other institution jobs, education, vocational training, substance abuse treatment, observance of faith and religion, psychological services, counseling, release preparation, and other programs that impart essential life skills. We also provide other structured activities designed to teach inmates productive ways to use their time. We are in the midst of implementing the Inmate Skills Development Initiative that will unify our inmate programs and services into a comprehensive reentry strategy.

Rigorous research has found that inmates who participate in Federal Prison Industries are 24 percent less likely to recidivate for as long as 12 years after release, as compared to similar inmates who did not participate in the program. Similar findings exist for other programs: inmates who participate in vocational or occupational training are 33 percent less likely to recidivate 3 years after release; inmates who participate in education programs are 16 percent less likely to recidivate; and inmates who complete the residential drug abuse treatment program are 16 percent less likely to recidivate and 15 percent less likely to relapse to drug use within 3 years after release.

In 2001, the Washington State Institute for Public Policy evaluated the costs and benefits of a variety of correctional, skills-building programs, including those offered by the BOP. The study examined program costs; the benefit of reducing recidivism by lowering costs for arrest, conviction, incarceration, and supervision; and the benefit by avoiding crime victimization.

The study was based only on valid evaluations of crime prevention programs, including the BOP's assessment of our industrial work and vocational training programs (the Post Release Employment Project study) and our evaluation of the Residential Drug Abuse Treatment program (the TRIAD study). The "benefit" is the dollar value of criminal justice system and victim costs avoided by reducing recidivism and the "cost" is the funding required to operate the correctional program. The benefit-to-cost ratio of residential drug abuse treatment is as much as $2.69 for each dollar invested in the program; for adult basic education, the benefit is as much as $5.65; for correctional industries, the benefit is as much as $6.23; and for vocational training, the benefit is as much as $7.13. Thus, these inmate programs result in significant cost savings through reduced recidivism, and their expansion is important to public safety.

Inmate Work Programs

Prison work programs teach inmates occupational skills and instill in offenders sound and lasting work habits and a work ethic. All sentenced inmates in Federal correctional institutions are required to work (with the exception of those who for security, educational, or medical reasons are unable to do so). Most inmates are assigned to an institution job such as food service worker, orderly, painter, warehouse worker, or groundskeeper. We want to have inmates involved in meaningful work programs; but unfortunately, we have a limited number of these jobs. Increased crowding has made it very difficult to keep all inmates working in full-day job assignments. The waiting lists for other inmate programs continue to grow as our staffing levels remain lower than necessary to maintain adequate program opportunities for inmates.

Federal Prisons Industries (FPI) is among the BOP's most important correctional program because it has been proven to substantially reduce recidivism and does not require appropriated funds. We operate FPI factories primarily at our medium-security and high-security institutions, where we confine the most violent and criminally-sophisticated offenders. FPI provides inmates the opportunity to gain marketable work skills and a general work ethic, both of which can lead to viable, sustained employment upon release. It also keeps inmates productively occupied; those who participate in FPI are substantially less likely to engage in misconduct.

FPI's inmate worker levels and earnings have dropped significantly in fiscal years 2008 and 2009 due to various provisions in Department of Defense authorization bills and appropriations bills that have weakened FPI's standing in the Federal procurement process, along with administrative changes taken by FPI's Board of Directors. These changes, coupled with the downturn in the economy and the significant reduction of products needed to support the war effort has had a serious negative impact on FPI.

In fiscal year 2008, FPI generated sales of $854 million, with earnings of only $3 million. FY 2008 earnings were significantly less than in fiscal years 2004 to 2007 (at $63.5 million, $64.4 million, $17.2 million, and $45.7 million, respectively). FPI is projecting a loss of $18 million for fiscal year 2009. This projected loss is significantly greater than anticipated.

Thus far, FPI has drawn $25 million from its capital equipment fund to supplement operational expenses. At the current rate of draw, the capital equipment fund will decrease by $50 million in FY 2009. The capital equipment fund is used to purchase replacement equipment and machinery and to fund building repairs and the start up costs of new factories. FPI has not used the capital equipment fund to supplement operational expenses since 2001.

To address these losses, FPI has begun reorganizing its operations to reduce overhead expenses. Last week FPI began the process of closing or downsizing 19 factories, resulting in the loss of approximately 1,700 inmate jobs—nearly 10 percent of the FPI inmate workforce. Additionally, FPI has reduced the number of work hours for many of the inmates, a practice that began several months ago to further reduce costs. FPI is considering other options including reducing inmate worker levels even further, delaying activations of FPI factories at new BOP facilities, and further consolidating operations and closing existing factories.

Education, Vocational Training, and Occupational Training

The BOP offers a variety of programs for inmates to enhance their education and to acquire skills to help them obtain employment after release. All institutions offer literacy classes (GED), English as a Second Language, adult continuing education, parenting classes, recreation activities, wellness education, and library services.

With a few exceptions, inmates who do not have a high school diploma or a General Educational Development (GED) certificate must participate in the literacy program for a minimum of 240 hours or until they obtain the GED. The English as a Second Language program enables inmates with limited proficiency in English to improve their English language skills. We also facilitate vocational training and occupationally-oriented higher education programs.

Occupational and vocational training programs are based on the needs of the specific institution's inmate population, general labor market conditions, and institution labor force needs. On-the-job training is afforded to inmates through formal apprenticeship programs, institution job assignments, and work in the FPI program.

Substance Abuse Treatment

The BOP is mandated by statute (18 U.S.C. § 3621(b)) to provide drug abuse treatment to inmates. Our substance abuse treatment program includes drug education, non-residential drug abuse treatment, residential drug abuse treatment, and community transition drug abuse treatment.

Drug abuse education is available in all BOP facilities. Drug abuse education provides inmates with information on the relationship between drugs and crime and the impact of drug use on the individual, his or her family, and the community. Drug abuse education is designed to motivate appropriate offenders to participate in nonresidential or residential drug abuse treatment, as identified and referred by the drug abuse treatment staff.

Non-residential drug abuse treatment is also available in every BOP institution. Specific offenders whom we target for non-residential treatment services include:

- inmates with a relatively minor or low-level substance abuse impairment;
- inmates with a more serious drug use disorder whose sentence does not allow sufficient time to complete the residential drug abuse treatment program;
- inmates with longer sentences who are in need of and are awaiting placement in the residential drug abuse treatment program;
- inmates identified with a drug use history who did not participate in residential drug abuse treatment and are preparing for community transition; and
- inmates who completed the unit-based component of the residential drug abuse treatment program and are required to continue treatment until placement in a residential reentry center, where they will receive transitional drug abuse treatment.

Nonresidential drug abuse treatment is based on the cognitive behavioral therapy model of treatment and focuses on criminal and drug-using risk factors such as antisocial and pro-criminal attitudes, values, beliefs, and behaviors and replacing them with pro-social alternatives.

The BOP is required to provide residential drug abuse treatment to all inmates who are eligible for the program. For the last 2 fiscal years, the BOP has been unable to meet this requirement due to a lack of funding for expansion of the program. Currently, the waiting list is approximately 6,200 inmates. A study of a sample of inmates admitted to the BOP during fiscal years 2002 and 2003 indicate that approximately 40 percent of inmates entering BOP custody meet the criteria for a substance use disorder.

The foundation for residential drug abuse treatment is the cognitive behavior therapy treatment model, which targets offenders' major criminal and drug-using risk factors. The program is geared toward reducing anti-social peer associations; promoting positive relationships; increasing self-control, self-management, and problem solving skills; ending drug use; and replacing lying and aggression with pro-social alternatives.

Participants in the residential drug abuse treatment program live together in a unit

reserved for drug abuse treatment in order to minimize any negative effects of interaction with the general inmate population. The residential drug abuse treatment program is a minimum of 500 hours over a course of 9 to 12 months. Residential drug abuse treatment is provided toward the end of the sentence in order to maximize its positive impact on soon-to-be-released inmates. The residential drug abuse treatment program is available in 59 BOP institutions and one contract facility.

Drug abuse treatment in the BOP includes a community transition drug abuse treatment component to help ensure a seamless transition from the institution to the community. The BOP provides a treatment summary to the residential reentry center where the inmate will reside, to the community-based treatment provider who will treat the inmate, and to the U.S. Probation Office before the inmate's arrival at the residential reentry center. Participants in community transition drug abuse treatment often continue treatment with the same treatment provider during their period of supervised release after they leave BOP custody.

Specific Pro-Social Values Programs

Based on the proven success of the residential substance abuse treatment program, we have implemented a number of other programs to address the needs of other segments of the inmate population (including younger offenders and high-security inmates). These programs focus on inmates' emotional and behavioral responses to difficult situations and their mental health; emphasize life skills, the development of pro-social values, and respect for self and others; and the acquisition of responsibility for personal actions. Many of these programs have already been found to significantly reduce inmates' involvement in institution misconduct. The positive relationship between institution conduct and post-release success makes us hopeful about the ability of these programs to reduce recidivism.

Life Connections

The Life Connections Program is a residential multi-faith-based program that provides the opportunity for inmates to deepen their spiritual life and assist in their ability to successfully reintegrate following release from prison.

Life Connections programs are currently underway at FCI Petersburg, USP Leavenworth, FCI Milan, USP Terre Haute, and FMC Carswell. Our Office of Research and Evaluation has completed several analyses of the program and found a reduction in serious institution misconduct among program participants. The Office of Research will next assess the effect of the program on recidivism, once a sufficient number of graduates have been released for at least 3 years.

In fiscal year 2008, we initiated a non-residential faith-based reentry program known as Threshold. This program embraces the same principles as the Life Connections Program and targets inmates who have less than 2 years of time remaining on their sentence. Threshold currently operates in 27 institutions.

Inmate Skills Development Initiative

The Inmate Skills Development initiative refers to the BOP's targeted efforts to unify our inmate programs and services into a comprehensive reentry strategy. The three principles of the Inmate Skills Development initiative are: (1) inmate participation in programs must be linked to the development of relevant reentry skill needs identified through a comprehensive assessment; (2) inmates should acquire or improve a skill measured through demonstration, rather than simply completing a program; and (3) resources are allocated to target inmates with a high risk for reentry failure. The initiative includes a comprehensive assessment of inmates' strengths and deficiencies in nine core areas and the development of individualized plans to address the identified skill deficits through targeted programs. This critical information is updated throughout an inmate's incarceration and is provided to residential reentry centers, supervision agencies, and appropriate community organizations prior to the offender's release to assist in community reentry planning. As part of this initiative, the National Offender Workforce Development Partnership was established as a way for national agencies and organizations to collaborate and facilitate the transition of returning offenders.

Specific Release Preparation Efforts

In addition to the wide array of inmate programs described above, the BOP provides a Release Preparation Program in which inmates become involved toward the end of their sentence. The program includes classes in resume writing, job seeking, and job retention skills. The program also includes presentations by officials from community-based organizations that help ex-inmates find employment and training opportunities after release from prison.

Release preparation includes a number of inmate transition services provided at our institutions, such as mock job fairs where inmates learn job interview techniques and community recruiters learn of the skills available among inmates. At mock job fairs, qualified inmates are afforded the opportunity to apply for jobs with companies that have job openings. Our facilities also help inmates prepare release portfolios, including a resume, education and training certificates, diplomas, education transcripts, and other significant documents needed for a successful job interview.

We have established employment resource centers at all Federal prisons to assist inmates with creating release folders to use in job searches; soliciting job leads from companies that have participated in mock job fairs; identifying other potential job openings; and identifying points of contact for information on employment references, job training, and educational programs.

We use residential reentry centers (RRCs), also known as community corrections centers or halfway houses, to place inmates in the community prior to their release from custody in order to help them adjust to life in the community, find suitable post-release employment, and in many cases find suitable housing. These centers provide a structured, supervised environment and support in job placement, counseling, and other reentry services.

As part of their community-based programming, some inmates are placed on home

detention, typically after a transition period in an RRC. Inmates on home detention are subject to strict schedules, curfews, in-person check-ins, telephonic monitoring, and sometimes electronic monitoring.

The use of residential reentry centers is a topic of significant interest, especially with the enactment of the Second Chance Act. We understand the interest in placing inmates in halfway houses for periods of time longer than the current average of 4 months. We are limited, however,

- by the number of existing halfway house contracts and the number of beds available in these centers;
- the reticence in the public to allow halfway houses in many communities; and
- the concern that inmates will abide by the restrictions of a reentry center for a long period of time after their immediate reentry needs have been met.

Closing

Chairman Scott, this concludes my formal statement. I would be pleased to answer any questions you or other Members of the Subcommittee may have.

Mr. SCOTT. Thank you, Director Lappin.

First, let me ask a question on—I guess it is a medical question. There is a barbaric practice in some institutions, requiring the physical restraint of women who are in labor. Now, what is the policy of the Bureau of Prisons?

Mr. LAPPIN. Our policy is not to restrain women who are in labor or in the process of delivering of child. This has been the case for many years.

There are, obviously, exceptions that Dr. Kendig can reference. But this has not only been an issue for the Bureau of Prisons, but corrections in general. And so, we make it a practice not to restrain female offenders who are in labor.

And, in fact, I happen to be the chair of the standards committee for the American Correctional Association. And the American Correctional Association recently took this up, as well.

Many institutions—not only Federal, but State and local—are accredited. They have recently passed a new standard addressing this issue and giving direction as to, if, in fact, there is a need for a restraint, that there would be an appropriate medical authority who would provide guidance regarding what restraints, if any, would be allowed.

But, Dr. Kendig, why don't you expand on that. I know you have done some checking here recently with our staff at Carswell, who probably oversee the majority of the women in the Bureau of Prisons who are pregnant and ultimately give birth.

Admiral KENDIG. I did review with our clinical director at Carswell, which is our medical center for female inmates, and where the majority of our inmates who are pregnant are cared for by obstetricians, and then delivered in community hospitals. And they did confirm with me that, during delivery, they do not use any kind of custodial restraints.

Any restraints that would be medically indicated would be for inmates who may be mentally ill and psychotic during delivery. That would be very, very unusual. And we would use restraints in accordance with medical protocols. They would not be custodial in nature.

Mr. SCOTT. Thank you.

On medical care, what oversight do you have to make sure that inmates are getting the appropriate medical care?

Admiral KENDIG. All of our facilities are accredited by the ACA, the American Correctional Association. And they have performance-based standards for medical care that are used to assess the health care that we deliver.

We also have our facilities classified as care one, two, three, or four, based on their ability to provide medical care, with our care four facilities being our medical centers, care one being healthy institutions. The care two, three, and four facilities, where the majority of our chronically ill inmates are housed, are accredited by the Joint Commission.

And then, internally, we have a Program Review Division with standards, that goes in to see if we are implementing the policies and the clinical practice guidelines that we have established nationally.

Mr. SCOTT. Are all of the institutions up-to-date on their accreditation?

Admiral KENDIG. Yes, sir.

Mr. LAPPIN. Let me add one thing. There is also an Administrative Remedy Program in the Bureau of Prisons, by which an inmate can complain or provide a grievance to the warden, and it would work its way up through the Regional Director, and ultimately to the Central Office. That, too, alerts us to concerns that inmates have regarding medical care. I know that Dr. Kendig gets

involved in responding to those and agreeing with the inmates in some cases where it is warranted.

Admiral KENDIG. We also have performance-based standards for chronic diseases, such as hypertension, HIV infection, diabetes, where we actually look at outcome measures to see how well we are doing in managing those chronic illnesses. And we also have a Peer Review Program where we send out regional medical directors and dentists to do peer review, to look at the competencies of our practitioners.

Mr. LAPPIN. I think one other, if you do not mind. A lot of changes have occurred in this area that I think are noteworthy.

At one time, Dr. Kendig, or someone like him, was the only medical director in the Bureau of Prisons. But based on his direction, we now have clinical directors who are supervised by Dr. Kendig in each of the regions, who are providing direct oversight to decisions made at the local level by our doctors.

Could you expand on that, as well?

Admiral KENDIG. The regional medical directors are another set of eyes and ears for me, and they are going out and making staff assistance visits and looking at the kind of things I just mentioned—looking at performance-based outcomes and looking at the competencies of our practitioners.

Mr. LAPPIN. But I wanted to make a point in my opening statement specific to, you know, what care is provided. And I wanted to make a point in there that we try to—we provide what is medically indicated.

Without a doubt, we have individuals in our populations who want care provided that we determine is not medically indicated. They don't like that. They complain about that.

On the other hand are some things that we do not see the need to do. And it is one reason why I wanted to point that out. Sometimes the concerns are raised by folks who want something that we do not believe is medically indicated to provide as well.

Mr. SCOTT. Thank you. I have some other questions.

But let me defer to the gentleman from Texas.

Mr. GOHMERT. Thank you, Chairman Scott.

And thank you for your testimony.

We have heard this morning, and we have read previously, we are significantly understaffed for correction officers in our prisons. Why is that?

Mr. LAPPIN. Well, let me say that, first of all, our number one priority right now in the Bureau of Prisons is increasing the number of staff in our institutions who directly supervise inmates. And unlike many State operations, State prison operations, just so you know, all of our employees who work in institutions are law enforcement personnel—all trained to be correctional officers at any given time.

Now, granted, a portion of them have specialty areas, whether they are doctors or nurses or P.A.s, or case managers or counselors——

Mr. GOHMERT. Well, my time is so restricted, I was really wanting to get right to why we are so understaffed.

Mr. LAPPIN. I think, over the course of the last 4 or 5 years, with a shift in priorities, we have seen a slower funding flow for providing additional staffing.

Mr. GOHMERT. So, you are saying the funding has not been there to hire the additional officers.

Mr. LAPPIN. We have not had the available funding to fill as many positions as we would like to fill. It was not that long ago, I think someone referenced, that we were staffed at 98 percent.

Mr. GOHMERT. In the mid-1990's.

Mr. LAPPIN. In the mid-1990's.

Over the course of time, with increased medical costs, with increased salaries and benefit costs, with increased costs associated with utilities, all of these things have absorbed a greater portion of our S&E budget. And consequently, we have had to reduce staffing to pay our staff more and to pay higher costs of health care, utilities, and other requirements.

Mr. GOHMERT. Well, you probably heard the report that some are wanting the Gitmo detainees or other enemy combatants to be housed by the Federal Bureau of Prisons.

What concerns does that raise for you?

Mr. LAPPIN. Well, we currently house over 220 or so international terrorists, so our staff are very capable.

Mr. GOHMERT. So, you want them. Okay.

Mr. LAPPIN. No, I didn't say that. [Laughter.]

Let me be real clear. I did not say that.

We will do what we are asked to do. And I am very confident that our staff can handle that mission. But right now——

Mr. GOHMERT. And there is no chance of anybody recruiting terrorists in the Federal prisons. Is that correct?

Mr. LAPPIN. I think there is always a risk of radicalization of any type——

Mr. GOHMERT. Do you think?

Mr. LAPPIN [continuing]. In Federal prisons.

Mr. GOHMERT. Yes.

Mr. LAPPIN. We have put procedures in place, especially for the international terrorists that we currently house, to reduce the likelihood that that will occur. And that is through more restrictive and controlled management of those particular inmates.

Mr. GOHMERT. Do you know how many terrorists have been recruited by terrorists in Gitmo?

Mr. LAPPIN. No.

Mr. GOHMERT. It is not happening. They are there for a reason.

But let me ask you. I understand the Bureau of Prisons has resurrected the chapel library policy, which again will allow removal of religious books from prison chapel libraries. In the Second Chance Act, we specifically banned this policy.

But the BOP has adopted rules which seem to ignore those guidelines and allow any officer to remove religious books with no notice to inmates, faith groups like Prison Fellowship, the publisher of the books or even the central office of BOP.

Can you explain why that is?

Mr. LAPPIN. Well, I really do not think our procedures allow that to occur without proper notice and review of the materials, not only by our religious services staff, but as well by our legal staff.

Mr. GOHMERT. So, you will be surprised to find evidence that that is happening.

Mr. LAPPIN. Well, without a doubt, when this first began—let us reflect a little bit. Seventy-five years of collecting materials in our religious—our chaplains libraries without a lot of oversight. So, in the first review, there were documents found there that were not of a religious nature, some that were not inappropriate for prisons, but did not belong in prison.

Mr. GOHMERT. I was talking about religious books.

Let me also ask about Kevin Brady's bill. Apparently, there are instances of cell phones being used to conduct activity that should not be going on.

Do you have any position on the FCC permitting installation of devices to jam, to interfere with wireless communications within the geographic boundaries of the prison?

Mr. LAPPIN. Without question, not unlike many State and local institutions, we are, too, challenged by the introduction of inappropriate cell phones. The Department of Justice currently is reviewing the legislation you referenced. It has not taken a position as of yet. I am sure it will do so in the near future. But right now, I am awaiting——

Mr. GOHMERT. So, you are——

Mr. LAPPIN. I am working with the department.

Mr. GOHMERT. Till you are told what position to take, you do not have a position? Is that what you are saying?

Mr. LAPPIN. Oh, yes. We like to do whatever we can to eliminate or limit inmates' access or use of cell phones.

Mr. GOHMERT. Okay. Because you are the witness. That is why I was asking you.

Mr. LAPPIN. I know. But as far as the department's position on that specific piece of legislation, the department has not taken a position as of yet. Certainly, I am advocating for us to do whatever we can to be able to control the introduction of cell phones or the use of cell phones by inmates in our institutions.

Mr. GOHMERT. Well, where will that position that you would take come from?

Mr. LAPPIN. From the Department of Justice. Ultimately——

Mr. GOHMERT. Okay.

Mr. LAPPIN [continuing]. As they collect all of the input from other components of the department——

Mr. GOHMERT. DOJ tells BOP what your position will be.

Mr. LAPPIN. No, we all have—all of the components will have input into that legislation, at which point the department will land on a position——

Mr. GOHMERT. Okay.

Mr. LAPPIN [continuing]. For the Department of Justice.

Mr. GOHMERT. Well, see, and that is what I was asking for, your input before this body, because whatever DOJ does is subject to being changed by law from this body. And that is why I was kind of hoping we would have your input here, not just at DOJ.

So, your position is you would like to do whatever you could to control——

Mr. LAPPIN. There are a number of technologies out there.

Mr. GOHMERT. Right.

Mr. LAPPIN. There are some that block the cell phone transmission. There are some that search and find the cell phone.

Mr. GOHMERT. Right.

Mr. LAPPIN. And so, there are a number of strategies. And again, the department—I am in favor of doing whatever technology we can—is allowable, I am in favor of.

Mr. GOHMERT. Okay.

Mr. LAPPIN. The department just has not taken a position on that specific piece of technology, given the other concerns that there may be in the department with the use of that blocking technology.

Mr. GOHMERT. Okay. Thank you.

Mr. SCOTT. Thank you.

The gentleman from Michigan?

Mr. CONYERS. Thank you, sir.

Why do you have to—why do we have to pass a bill to allow you to do this, you know, intercepting these illegal phones?

Mr. LAPPIN. It is a violation of the Federal law right now to block a cell phone signal.

Mr. CONYERS. Even in prison?

Mr. LAPPIN. Even in prison.

Mr. CONYERS. Now, I want to disclaim any connection with legislation. [Laughter.]

Maybe that was passed, Judge Gohmert, before I got here. [Laughter.]

Let us talk for just a minute about all these pregnancies that are occurring in prison.

Mr. LAPPIN. I think this——

Mr. CONYERS. The pregnancies that are occurring in prison.

Mr. LAPPIN. The majority—I do not understand the context. I assume you mean the women at the—the female offenders we have that are pregnant, the majority of them come to us pregnant.

Mr. CONYERS. I see.

Mr. LAPPIN. And so, when they enter, either going through the court proceedings or during trial, or sometime in advance, but they tend to come to us pregnant.

And to give you numbers, in 2007, we——

Mr. CONYERS. Well, that is okay.

Mr. LAPPIN [continuing]. We had 120 babies.

Mr. CONYERS. But they are mostly——

Mr. LAPPIN. And to give you an idea.

Mr. CONYERS. If they come that way——

Mr. LAPPIN. Right.

Mr. CONYERS [continuing]. That is understandable. Okay.

Are there unions, collective bargaining among the staff, your staff in the prison?

Mr. LAPPIN. All of our line employees can join the American Federation of Government employees.

Mr. CONYERS. And what is the union and your staff's relationship through the management?

Mr. LAPPIN. We have an agreement, a collective bargaining agreement. We have okay relations, for the most part. There are issues we agree on. There are issues we do not agree on. But we typically work through those successfully.

Mr. CONYERS. Good.

I do not know if there is anything called "prisoner morale," but what is it like in the slammer there?

Mr. LAPPIN. Well, doing time is not easy anywhere. And we do assess—and again, it varies from location to location. And we actually do every 3 years an evaluation. It is called the Institution Character Profile, where we come in and interact with our staff.

We interview staff. We also interview inmates. And we get feedback from them on the conditions, how communication is flowing from the leadership or from line staff to the inmates, and vice versa. We look at the administrative remedies that have been initiated at those locations.

So, it varies from location to location. I can provide you our program statement on that specific initiative to kind of give you some background.

Mr. CONYERS. Thank you. I do not need that kind of detail.

But you might tell me a little bit about why so many of these people are petitioning to oust you.

Mr. LAPPIN. Of what people?

Mr. CONYERS. Not the people that are incarcerated. The people that work there in the prisons.

Mr. LAPPIN. I do not know that it is that many. And I think you could ask——

Mr. CONYERS. You don't know about that?

Mr. LAPPIN. Oh, I am aware that they are not pleased about the staffing levels in the Bureau of Prisons. And I think that is certainly one of the major issues.

That is an area we do agree. I, as well, am not pleased with the levels of staffing.

Mr. CONYERS. No, no. You do not agree with any kind of petition to kick you out——

Mr. LAPPIN. No, I do not.

Mr. CONYERS [continuing]. Remove you.

Have you heard of that?

Mr. LAPPIN. Yes, I have, sir.

Mr. CONYERS. Well, I have, too. So, tell me about it.

Mr. LAPPIN. That is about all I know. I know that some staff——

Mr. CONYERS. Oh, you know it that they want to kick—don't you talk with them at all?

Mr. LAPPIN. Well, sure. I just mentioned an issue of concern——

Mr. CONYERS. Well, what do they say?

Mr. LAPPIN. They——

Mr. CONYERS. What is their beef, in short?

Mr. LAPPIN. I think they are angry. They think that, in part, that it is my fault we have not gotten enough money to hire more people.

Mr. CONYERS. Well, we would defend you on that one. Is that about it?

Mr. LAPPIN. Oh, I am sure there are other issues regarding the provision of protective gear for staff, other issues. But I——

Mr. CONYERS. Sure.

Mr. LAPPIN. My guess is the primary issue of concern——

Mr. CONYERS. You can probably——

Mr. LAPPIN [continuing]. In my discussion with them is the issue of staffing.

Mr. CONYERS. You could probably negotiate that out, could you not?

Mr. LAPPIN. I would hope so.

Mr. CONYERS. I hope so, too. You sound like a pretty effective director of the prison systems.

Mr. LAPPIN. Thank you, sir.

Mr. CONYERS. Now, how many terrorists are presently incarcerated in our systems? Just a number roughly.

Mr. LAPPIN. We have got about 347 total. Two hundred and fifteen or so are international terrorists. The remaining 130-some are classified as domestic terrorists.

Mr. CONYERS. Domestic. Yes, right.

And you do not have any problem with handling them.

Mr. LAPPIN. Never without challenges. We have——

Mr. CONYERS. Well, of course. They have got a——

Mr. LAPPIN. They tend to be difficult——

Mr. CONYERS. I would imagine that there would be some challenges.

Mr. LAPPIN. There are. The communication issues, managing communication. Given their tendency to convey things that are inappropriate, they get——

Mr. CONYERS. But you are on top of that.

Mr. LAPPIN [continuing]. Upset and angry. They go on hunger strikes——

Mr. CONYERS. That, too.

Mr. LAPPIN [continuing]. Which would bar us to intervene.

Mr. CONYERS. But you can handle that.

Mr. LAPPIN. We have been successful so far in managing this group, I believe.

Mr. CONYERS. Well, I believe so, too. And I have not heard any complaints about it.

Now, could you take more, if more were given to you?

Mr. LAPPIN. As I have said——

Mr. CONYERS. Not that you are looking for them.

Mr. LAPPIN [continuing]. Anybody indicted or convicted in Federal court, they are ours. And we will take as many of them as required.

Mr. CONYERS. Yes. That is the spirit. [Laughter.]

Mr. LAPPIN. Yes, sir. They are our responsibility. We will take them.

Mr. CONYERS. Glad to hear that.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you, Mr. Conyers.

The gentleman from Texas?

Mr. POE. Thank you, Mr. Chairman.

Thank you for being here.

I have seen a lot of jails and prisons in my days, being on the criminal court bench for 22 years. The one in Beaumont, Texas, the Federal prison, I want to commend the Bureau of Prisons for the work there, because of the prison industries.

That prison makes 20,000 helmets a year for our troops in Iraq and Afghanistan. I have toured it. I have talked to the inmates. I am very impressed with the whole procedure. It works.

The inmates—you know, there is a waiting list to get on the list to work in the prison industries. They are real patriots. They have the American flag flying. I hope—I assume that is not a violation of FEC rules.

But it works, and it works very well. And so, don't mess it up, is my message. I know you are closing down some things with the FPI. And I am here to tell you, I think it works, and it works very well. So, be commended for that.

As I mentioned earlier, I talked to the prison guards, and they are concerned about what everybody is talking about. They think they are understaffed. Their morale is not the best. And they are not dealing with, you know, a bunch of choir boys that are in prison, either. So, I think that is something the bureau has to address and figure out what that issue is.

My concern is somewhat like Judge Gohmert's concern. We have got some real bad guys in the Federal prisons. And they do not like America. They want to do us harm. And they need to stay locked up.

But the problem is, they are converting folks to side with them. And radicalization in our Federal and State prisons is a big concern, because a lot of those people are going to get out. I mean, eventually, almost everybody gets out of a prison somewhere. And then they are loose in the country.

And they have—you know, they went to prison with one philosophy. They come out, and they, you know, they hate America. Call them terrorists, or whatever you want to call them, but they want to do harm to us.

What is being done to keep that from happening? I am not talking about the 347 outlaws. I am talking about the conversion techniques. What are we doing in prison to keep them from converting folks?

Mr. LAPPIN. We put a number of controls in place to ensure that that is not happening, at least on a wide-scale basis and, if possible, one-on-one. But obviously, the one-on-one is much more difficult to manage and determine, given the fact we house inmates with two to a cell.

But on a broader scale, the international terrorists are divided into categories. And our more higher concerned leadership, those that have the most influence, are managed in a very restrictive, controlled environment—at ADX Florence, for the most part. And as well as we listen to—live, most of the time—phone conversations, written communications and other. And they interact very little with other inmates, so that limits their ability to do that, obviously.

Then you have got a second tier where we do not have to have them as restricted, but we want to control their communications. They are housed in communication management units where we can target, again, communication, both written and verbal, and oversee visits more adequately than in our general population facilities.

The third tier are folks that we are less concerned about, have the potential to radicalize, but we believe it is safer and allowable to house them in more of a general population type facility like you saw at Beaumont. But even at those facilities, we have provided training over the years to our staff as to what to look for. Even at those locations, there is increased monitoring of mail and phone calls and other initiatives.

We have eliminated, for the most part, the provision of religious programs by other inmates. It is all overseen by a chaplain. Everything that is said, even that of a volunteer or a contractor, is overheard by a chaplain or another bureau employee.

Mr. POE. Let me ask you this, since time is limited. Since you all keep statistics on everything, do you have any numbers or percentage about how many folks go to Federal prison, and when they leave they have been radicalized?

Mr. LAPPIN. I do not. I mean, we know how—I mean, if you are talking about conversions, I think that is what some folks reference.

Mr. POE. You are concerned about these folks.

Mr. LAPPIN. Yes, we are concerned about them.

Mr. POE. Call it whatever you want to.

Mr. LAPPIN. And there are probably isolated incidents we could provide you examples of, where folks have misbehaved in that way. And what we do is we transfer them to a more secure location where they are less—there is less ability to do that.

But I do not know that we have—I will check—but I do not think we have numbers of identified inmates that have converted to terrorism.

We do keep track of inmates who convert from one religion to the other. For example, about 5.8 percent of our inmates are Muslim. And that has been pretty static over the course of years. Those types of things we track.

But on a given day, there are many inmates that switch religions. But we do have statistics on that. We can provide that to you.

But, no, I do not think that we have—you know, we identify—we have isolated incidents of inmates we have identified who have radicalized, and some who we believe may have been influenced. But again, that is a very small scale. I will check to see what we have.

Mr. POE. Please do.

Mr. LAPPIN. But I do not think that we have statistics on that, given the infrequency of that occurring.

Mr. POE. Please check on that and provide the information to the Chairman.

Mr. LAPPIN. Absolutely.

Mr. POE. Thank you very much.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentlelady from California?

Ms. LOFGREN. Thank you, Mr. Chairman. And thank you for holding this hearing.

In the 15 years I have been a Member of the Judiciary Committee, this is the first time I can remember that we have had an

oversight hearing such as this in the Bureau of Prisons. And it is something I think we ought to do frequently, because the role that the bureau plays is a very important one, although not one that is generally front in the minds of the American public.

I have a couple of quick questions on staffing. You are understaffed. Your staff says so. You say so.

Do you have a plan to get to where you need to be on staffing?

Mr. LAPPIN. We have had a plan for 4 or 5 years. And basically——

Ms. LOFGREN. Could you send that to me, please?

Mr. LAPPIN. It is pretty—what we have done is——

Ms. LOFGREN. No, just send it to me if it is in writing.

Mr. LAPPIN. We will send you an overview of what we are doing to try to——

Ms. LOFGREN. And what the plan for the future is.

Mr. LAPPIN [continuing]. Provide as much——

Ms. LOFGREN. Thank you.

Mr. LAPPIN [continuing]. Funding for staffing as we can.

Ms. LOFGREN. I would like to know also, what percentage the—your staff is patriotic Americans. A lot of them are in the National Guard and in the military reserves.

What percentage of your vacancies is related to deployment? Do you know the answer to that?

Mr. LAPPIN. We have about 240 currently deployed.

Ms. LOFGREN. And are they backfilled? Or do those just go vacant?

Mr. LAPPIN. It varies. If we have an institution that is hit extremely hard, they have eight, nine, 10 people on active duty at one time, we will try to—we come back and help backfill.

Ms. LOFGREN. Is that in your plan that you are going to send us?

Mr. LAPPIN. We can certainly provide that.

Ms. LOFGREN. I would appreciate that.

Mr. LAPPIN. At one time, just so you know, we had 600-andsome, at the peak.

Ms. LOFGREN. I would appreciate that, because we ought to make sure—obviously, those——

Mr. LAPPIN. Sure.

Ms. LOFGREN [continuing]. Individuals need to come back from the war field with their jobs. But we need to backfill them while they are gone, so that there is not a vacancy.

I want to talk a little bit about what is going on for inmates. And it relates to a couple of things.

My experience in corrections, really, is in local government. For 14 years, I was on the Board of Supervisors of Santa Clara County, and we had a county jail of about 5,500 people that we oversaw.

And one of the things that we did—and the staff was the biggest cheerleaders for this—is to make sure that every single inmate had an opportunity to improve themselves while they were there. One of the police chiefs in San Jose when I was first elected said, if you want to do something about recidivism, teach the inmates to read. The average literacy rate is about second grade.

And we did that. And when I left, about 65, 70 percent of the inmates were in parenting classes, literacy classes. And what we

found was that, when they got out, it had a very positive impact on their recidivism.

But while they were in—and this is why the staff was so enthused—busy hands were not busy stabbing the correctional officers. They were busy learning whatever is they were learning. It really was—it helped keep peace in the institution.

Furthermore, you need to keep those who are radicalizing from communicating. But you cannot beat nothing with nothing. And for those who would be radicalized, there has to be something else that is appealing to them. And the educational efforts are part of that.

What percentage of your prison inmate population are in classes that are either literacy or literature, or parenting, or drug treatment, or any of those things that would allow them to improve themselves and be solid citizens when they get out?

Mr. LAPPIN. That is a great question. Before I turn it over to Paul, let me tell you that we have been fortunate at the bureau for decades to provide a wealth of programs to the inmates, because we could not agree with you more.

The busier they are in our institutions, the less likely they are to get in trouble during that period of incarceration. Without a doubt, those inmates who are involved in programs are less likely..

Ms. LOFGREN. Yes, but I would like—do you know the percentage, though?

Mr. LAPPIN. We have some percentages for you.

Ms. LOFGREN. Okay, I would like to hear that.

Mr. LAPPIN. And secondly, we actually have done recidivism research, over the course of years, on the impact of an inmate getting a GED, getting a vocational certificate, working in prison industry. We can provide that to you, as well. But Paul, I think, has some numbers that he can provide to you.

Mr. LAIRD. On any given day, about 53,000 Federal prisoners are participating in one or more educational programs, whether it be English as a Second Language, General Equivalency Diploma, vocational training, recreation or post-secondary education. It is about 25 percent of the bureau's population.

Ms. LOFGREN. Twenty-five percent participate in something.

Mr. LAIRD. Yes.

Ms. LOFGREN. And of their day, what percent of their day is used, consumed with those activities?

Mr. LAIRD. It could vary. Some inmates are participating in multiple programs. Others may be enrolled in just one vocational training program which may, you know, take a couple of hours out of their day in addition to their work assignment, which would occur——

Ms. LOFGREN. Well, if I can, I would like to get that information, because I assume we will have a follow-up hearing. You know, it is only 25 percent. What are your goals?

I mean, we never made any of the participation mandatory, nor did we give credit for time served as a way to get out early. It was just an opportunity for individuals to be better people.

And since, on average, according to your testimony—or one of the testimonies—your inmates are staying for 10 years. So, we are going to see them at home. And it is to our advantage that they come out clean, and not predators for me and my family. And I

think, you know, having them learn to do right should be part of this experience.

So, I would like from you in writing, you know, what the plan is to allow those inmates, especially those that are going to have terms that are going to put them back in communities, to consume substantial parts of their time in improvement activities, whether it is drug treatment, education, parenting, literacy, philosophy, religious activities, should they choose that—obviously, that is a personal choice, not the government's—and what the staffing implications are, both in terms of safety for your staff, but also additional staffing that you might need to keep these folks busy.

And I would be interested in receiving the recidivism study that you have done. That would be pertinent, I would think, for all of us.

And I see I have consumed my time, Mr. Chairman. Just one note on the cell phones.

As I understand it, and obviously, you do not want inmates with cell phones.

Mr. LAPPIN. That is correct.

Ms. LOFGREN. I mean, nobody disagrees on that.

But it is possible that the jamming also jams the neighborhood. And so that anybody—you know, the wives of the guards are not going to be able to have a cell phone, either. And that is a significant issue for communities with a prison.

Mr. LAPPIN. I think some legitimate issues need to be worked out.

But let me just mention, you mentioned education, the 53,000. On any given day, as well, you have got 20,000 inmates working in prison industry, or thereabouts. Correct?

Mr. GOHMERT. Correct.

Mr. LAPPIN. And all of the other inmates are assigned a job. So, the only program that we mandate is work. We do not force inmates into the other programs. We do not make it mandatory, other than work.

In addition to that, on any given day, you have got about 8,000 inmates in a residential drug treatment program, as well as several other faith-based programs and others that are—and we will provide you the numbers of participants in those——

Ms. LOFGREN. Yes, that would be great.

Mr. LAPPIN [continuing]. How many are participating——

Ms. LOFGREN. And I do not want to abuse my time.

Mr. LAPPIN. Right.

Ms. LOFGREN. But if I could get just a grid——

Mr. LAPPIN. It will be an overview of our——

Ms. LOFGREN [continuing]. Of how many inmates——

Mr. LAPPIN. Yes.

Ms. LOFGREN [continuing]. How many hours per day per inmate, the percentage that are not doing something. That will give us—you know, and then, any insight you have into why there may be a reason why some inmates cannot or should not participate in terms of security. But just a picture of where we are and where we might need to go, I would appreciate it.

Mr. LAPPIN. Mr. Chairman, I do not want to overstep. But the Inmate Skills Development Initiative is part of the Second Chance

Act. It ties in perfectly with her question. If I can just expand on that a second.

We have not done as good a job in the past of matching an inmate's needs with the programs we have in institutions. And the direction of the Second Chance Act said you will do an assessment, and you will try to tie those—the needs of those inmates, based on that assessment, to programs that are available in an institution.

So, today, we are doing a much better job of that. It is not fully implemented. The assessment is completed. All new inmates coming into the Bureau of Prisons are assessed, as well as 25 percent of the existing inmates. So, over the course of the next 1.5 to 2 years, every inmate will have this assessment done.

And the responsibility of the warden is to make sure there is a program available at each location to address the lack of skills in the nine skill areas identified in the assessment. And then we encourage, we leverage, we prod the inmate to get involved more so in those programs where they have the greatest need, rather than probe things they would just like to do, which was part of what could have been occurring in the past.

So, I am happy to say we are well on our way to addressing the skills initiative I have alluded in the Second Chance Act. It ties in perfectly with the educational, vocational, work, and specialty program areas like drug treatment, pro-social value enhancement, religious needs, mental health needs, medical needs, and so on.

Ms. LOFGREN. Mr. Chairman, if I could, I won't go further.

But when you give this report, I would be also very interested in the percentage of your population that has been assessed with a mental illness.

Mr. LAPPIN. Fifteen percent, which we will put it in writing and send it to you.

Mr. SCOTT. Thank you.

The gentleman from Virginia?

Mr. GOODLATTE. Thank you, Mr. Chairman. I appreciate your holding this hearing.

And Mr. Lappin, welcome. We appreciate your participation.

I wanted to ask a couple of follow-up questions to those asked by the Ranking Member about the situation with the Guantanamo Bay detainees.

I am very concerned about the President's penchant to transfer these prisoners to the United States. And I am wondering if you can assure us that no Guantanamo Bay detainee transferred to a U.S. prison be granted additional constitutional rights by a court, by virtue of they are being detained on U.S. soil.

Mr. LAPPIN. Again, anybody convicted in Federal court, indicted or convicted, would end up in our custody. And they are going to have—I do not know a way around them having access to the same rights as anyone else.

I am not an attorney. I will go back and ask the folks in the department what limitations could be put in place. But I cannot speak to that, given my lack of education on the law and the Constitution in that regard.

But, you know, I mean, we have got 207,000 inmates in bureau prisons. And they are from all different countries and for all dif-

ferent types of reasons. And I cannot think of any that have much limitation to access of most rights that others would have.

Mr. GOODLATTE. But what kind of measures could you take to prevent these individuals from spreading their hatred and radicalizing others in our prison system?

Mr. LAPPIN. Just so you realize, we are concerned about inmates who spread any type of inappropriate behavior, whether it is gang association, getting involved in drugs, you name it. So, there is radicalization of all types.

And our staff, I think, do a good job of limiting that through two things—either disciplining inmates who behave in that manner, or isolating them, if, in fact, discipline does not stop that type of behavior.

But specifically with the international terrorists, we put additional controls in place through a classification system that places them in a more restrictive environment—that is, in cells, more staff control, greater oversight of phone calls, less access to other inmates. So, there are a number of those types of initiatives we have done.

There is also a Correctional Intelligence Initiative. And that is an initiative that we are part of the JTTF. And as these inmates transfer from local to State to Federal custody, and back, we are communicating between the States and the local those types of behaviors and those concerns they should have with these types of inmates. We are also sharing that information with the FBI as they transfer in and out of prisons and jails, to ensure that we are adequately tracking these folks.

And again, back to the congresswoman's question about what do you do just to keep them busy so they are not behaving this way, is we try to get those that are willing, those that are in a less restrictive environment, involved in more programs.

Mr. GOODLATTE. What kind of a problem do you have in the prison system with the spread of the use of cell phones?

It is my understanding that cell phones are not allowed in any U.S. prison. But officials, nonetheless, confiscated 947 phones in the Maryland prison system, 2,000 handsets and accessories in South Carolina, 2,800 mobiles in California.

Do you have this problem in the Federal prison system, as well?

Mr. LAPPIN. Yes, we do.

Mr. GOODLATTE. How can you assure us that these detainees from Guantanamo Bay would not be able to obtain a cell phone to perpetrate, perpetuate some of the things they are bent on doing?

Mr. LAPPIN. Yes, those in the higher custody levels, it is more restrictive. There are more pat searches. There are more visual searches.

It is not impossible, but we have not had a problem at that level for those folks.

But without a doubt, I mean, there are ways of getting these things into prisons. Unfortunately, we have a small group of employees, as my guess is other departments of corrections do, as well, who bring those in and sell them to inmates.

A year-and-a-half ago we began to search our employees. We have seen less of an insurgence of cell phones and other contraband through that process. But it continues to be a challenge.

And I certainly look forward to working with you all and the department, and others, on strategies to preclude that from happening, and if it does occur, how to limit their access in prisons.

Mr. GOODLATTE. Let me shift to one more question—since my time is about to run out—on a different subject.

Can you tell us what percentage of the Federal prison population is comprised of illegal aliens?

Mr. LAPPIN. Yes, I can.

Of the 207,000, 53,500 are non-U.S. citizens. That is 25.9 percent are non-U.S. citizens.

Mr. GOODLATTE. And are all of those illegal aliens, when they are released from prison, deported from the country? Or are any of them released onto the streets of our——

Ms. LOFGREN. Would the gentleman yield?

Mr. GOODLATTE. I would.

Ms. LOFGREN. The witness said non-U.S. citizens. That is not the same as an illegal alien. I mean, what percentage of those are undocumented?

Mr. LAPPIN. I can get that number. I do not have that with me. My guess is, most of the illegal aliens are deported.

Some of the non-U.S. citizens may stay in this country. We can probably get some statistics on that.

Mr. GOODLATTE. Do you keep records of that, what the disposition is of somebody who is not lawfully in the United States, once they complete their prison term?

Mr. LAPPIN. I can tell you, I am not sure how specific it gets. I can give you an idea. Last year, for example, we released about 60,000 to 62,000 inmates. About 43,000 were released back into the United States; 18,000 to 20,000 were deported.

So, I will go back and see what specific statistics we have regarding not only non-U.S. citizens, but—well, illegal immigrants, and what percentage of those are deported, if we have that.

Mr. GOODLATTE. Thank you.

Ms. LOFGREN. Would the gentleman further yield for a question?

Mr. GOODLATTE. I will certainly yield.

Ms. LOFGREN. You can be a legal permanent resident of the United States, and if you have committed a crime, still be deported. So, we need to find out at the inset, what is the status, because the deportation figure will not give you the information.

Mr. LAPPIN. And we may have to—we more than likely have to go the BICE to verify some of that, because we typically—we work closely with BICE. And as someone nears the end of their sentence, and they have a detainer, some of them are released from our facilities and are deported immediately.

Some are transferred to BICE, and those are the ones we lose track of. We do not know what happens when they get into their custody and become detainees, rather than incarcerated individuals in our system.

Mr. GOODLATTE. Well, the gentlewoman makes a good point. I would like to have both of those categories, because, quite frankly, the type of crimes committed by someone lawfully in the United States that would give rise to their incarceration in Federal prison, probably, in the minds of most people, would merit their deportation from the country, as well.

Ms. LOFGREN. In almost every case it would.

Mr. SCOTT. Thank you.

I had a couple of other questions, very quickly, Director Lappin.

When you provide the education information, can you provide us information about barriers to higher education? If somebody is going to be there for 10 years, there is no reason why they ought to stop at a GED.

About a decade or so ago, prisoners were eligible for Pell Grants, and whether or not there are still barriers, or whether or not they can pursue their education.

And finally, on the Federal Prison Industries, what is the policy of the Administration in terms of Federal Prison Industries, in terms of support, opposition, increasing, decreasing? Does the Administration have a policy on Federal Prison Industries?

Mr. LAPPIN. The Administration—I have been director for 7 years. They have all been very supportive of Federal Prison Industry.

Mr. SCOTT. Including the mandatory source?

Mr. LAPPIN. You know, I do not want to get into the details of that, since this Administration is so new. But we are working closely with the Administration to look for strategies to do what we have discussed, how to provide more work. How that occurs is yet to be determined.

Mr. SCOTT. Well, if you could provide for us an Administration policy on how we can increase the jobs.

Mr. LAPPIN. Did you want to elaborate on that, Paul?

Mr. LAIRD. Well, I know in the past, Mr. Chairman, and in our testimony last—almost a year ago we were here before you on prison industries—talked about a number of different suggestions and ways that we could add more job opportunities and minimize the impact on private sector employers.

Mr. SCOTT. Well, if you could—as the director has indicated, this is a new Administration. And if you could get to us something that would be official policy for this Administration.

Mr. LAIRD. Yes, sir. We can do that.

Mr. SCOTT. Apparently you do not have it. It has not been formulated yet. But if you can do it——

Mr. LAPPIN. We will work and let you know.

Mr. SCOTT. Thank you.

Other questions?

Mr. GOHMERT. Yes.

Mr. SCOTT. The gentleman from Texas?

Mr. GOHMERT. Thank you, Mr. Chairman.

Director Lappin, what is your position on Representative Cardoza's bill about allowing guards to carry non-lethal forms of weapons?

Mr. LAPPIN. Let me tell you what our philosophy and culture has been for decades. It is——

Mr. GOHMERT. No, I am familiar with that. I am just asking for——

Mr. LAPPIN. I want to make sure that we are.

Mr. GOHMERT [presiding]. Harley Lappin's——

Mr. LAPPIN. And that is going to lead into my position on that. Okay?

We believe——

Mr. GOHMERT. But see, my time is so restricted. I have done research on where we have been there. I have been in lots of prisons. I am wanting to know your particular input.

Mr. LAPPIN. We would be providing anything now that we thought would make our employees safer. And we continue to emphasize the importance of communication with inmates, and rely on our classification system to identify those inmates that are a greater risk and need to have greater controls.

Therefore, I am not a huge fan of putting Tasers and batons on our employees, given the risks that are created. Because you have got to realize, anything we give to an employee you must assume an inmate can have.

One reason why we manage the keys in the way that we do, and firearms are another thing.

So, you give it to an employee, you should assume the employee can have it. And when they have it, you have to deal with it. So, it has not been our practice, other than in situations that warrant it.

So, yes. Well, one, we do not have Tasers in the Bureau of Prisons. We do not use that. But we do have batons and other protective equipment that is issued to staff in those situations where it is warranted, the same as gas.

Now, as a result of some of the instances that have occurred, we have made gas more readily available than it was in the past. So, we are getting it closer to the employees, and we are working through the regulations to lower the decision-making authority on who can issue gas. That is taking a little time, but we are currently working to lower the approving authority for who can issue gas. We are getting the gas closer.

So, it has not been our position. It is still not that we don our staff with that type of protective gear, given the consequences, and our emphasis on working more closely and directly with inmates, and removing these inmates that are behaving in that manner.

So, right now, we have got a group of inmates, without a doubt——

Mr. GOHMERT. No, I understand.

Mr. LAPPIN [continuing]. They are not listening to us.

Mr. GOHMERT. But—and you said—you keep talking about the department, or the bureau's position. But I am wanting your personal input.

Mr. LAPPIN. That is my personal opinion.

Mr. GOHMERT. That is what—okay.

And I could not help but note in response to Mr. Goodlatte's inquiry—and I appreciate the sensitivity of Ms. Lofgren. These may not be illegal aliens. Some of them will be, some won't be. But out of 207,000 inmates, to have 53,000 non-U.S. citizens, just as an observation, that is a lot.

We are told that there are some jobs Americans just will not do. Apparently, there are 53,000 jobs involving crime that Americans would not do that we needed non-U.S. citizens to come do for us.

But there is another issue. And some guards I have talked to are very concerned about this, because you understand, people get out

of prison, and not everybody has been rehabilitated. And some carry grudges. And some do not like guards that were over them.

And you had pointed out yourself, director, that all of your people are law enforcement. And so, it is troubling to some guards to be law enforcement, and yet not have the ability to carry a weapon away from the prison.

We all understand you do not want them carrying weapons, lethal weapons, into the prison, because, as you say, then that means the inmates could get them.

But I know of a number of prisons where people carry them successfully, come in, they are totally secured when they check them in at the prison. But it gives them a level of protection when they leave.

What is your personal position on carrying by your law enforcement guards outside the prison?

Mr. LAPPIN. Well, again, all of our correctional staff are law enforcement——

Mr. GOHMERT. Right.

Mr. LAPPIN [continuing]. So they have the authority to carry a weapon personally on their own time. And they are certainly free to do that on their own time.

We are not in favor—we are opposed to them bringing those weapons on our property. There are three things we control very closely and do it very well: weapons, keys, and tools.

And I think any shift in policy in that regard jeopardizes all of our staff at that facility, because all it takes—and we do not allow it now—but we still have incidents where staff either brought a weapon, sometimes with approval to use the firing range, but have not managed that weapon appropriately.

And the thought of a weapon getting in the hands of an inmate is just something that we cannot have in prison. So, I am opposed to them bringing their weapon to work and us storing for them, given the risk of losing control of that weapon.

Beyond that, they are free to carry a weapon just like anybody else does. But that is our only hesitation.

Mr. GOHMERT. So, that would mean not having them in their car, not coming in to prison and checking them into a secure location.

Mr. LAPPIN. Yes, it is a Federal violation——

Mr. GOHMERT. Right.

Mr. LAPPIN [continuing]. To do that.

Mr. GOHMERT. That is what I understood. But we were looking at trying to——

Mr. LAPPIN. Sure.

Mr. GOHMERT [continuing]. Open that possibility up. So, apparently, the message is, if you are in prison and you have got a grudge getting out, the best time to go after a guard is when they are coming into work, it sounds like.

Mr. LAPPIN. But I have to say, I am not aware of incidents like that occurring. If it is, they have not been brought it to my attention. But, I mean, I started as a case manager. I have worked my way up through the system over 24 years. I was a warden, an associate warden—not seen that happen.

Mr. GOHMERT. Not seen a guard attacked?

Mr. LAPPIN. You know, out in the—by somebody who has made a plan to attack them outside of work. If it happens, it does not happen very often.

But that does not marry up with my biggest concern, and that is the failure to adequately control for those weapons that come on our property. I think that is a huge, huge risk that I think is unwise. And so, I am sorry that that limits them in part to carry, but I think there is good reason for that.

Mr. GOHMERT. But you understand how that directly contradicts your position about being able to take care of dangerous enemy combatants. On the one hand you say, we do not want weapons around the prison, because the inmates get them. On the other hand, sure, we can take care of these dangerous criminals.

I am a little uncomfortable with those two——

Mr. LAPPIN. Well, we have weapons that we issue to staff——

Mr. GOHMERT. Yes, but you have already said that you are concerned about—you have to believe, if somebody can legally bring something to prison, then the inmates can get them. If the guards can bring something, the inmates can get it. Right?

And that would be true of some dangerous terrorists coming to your prison, apparently.

Mr. LAPPIN. Well, again, those of the most, the greatest concern are, again, controlled——

Mr. GOHMERT. I understand.

Mr. LAPPIN [continuing]. In very restrictive, controlled environments. I doubt that is likely to happen.

Mr. SCOTT. The gentleman's time has expired.

Thank you, Director Lappin. Appreciate it. And I am sure you will have, if you are not here, you will have staff here to hear the next panel, who will probably bring up some other concerns.

Mr. LAPPIN. Thank you.

Mr. SCOTT. Thank you.

The first witness on our third panel is Dr. Reginald A. Wilkinson, who is currently the president and CEO of Ohio College Access Network. He is formerly director of the Ohio State Department of Rehabilitation and Corrections, and is president of the American Correctional Association.

He has a bachelor's degree in political science and master's degree in higher education administration, both from Ohio State University, and was also awarded a doctor of education from the University of Cincinnati.

Our next witness will be Philip Fornaci, who joined the D.C. Prisoners' Legal Services Project as executive director in 2003, after serving for nearly 5 years as executive director of the Maryland Disability Law Center. He is a graduate of the George Washington University School of Law, and received his undergraduate degree from Columbia University.

The third witness will be Richard Lewis, a senior manager for ICF International, a global professional services firm, that provides consulting services, technology solutions in defense, energy, environment, homeland security, social programs and transportation. He manages the National Responsible Fatherhood Clearinghouse and Web site, and serves as a consultant at the Urban Institute on

issues involving improving outcomes for prisoners, ex-prisoners and their families.

The fourth witness on this panel will be Stephen Sady, chief deputy Federal public defender for the District of Oregon, where he represents clients at the trial level in habeas corpus pleadings and on appeal. He graduated from Antioch College and from Lewis and Clark Law School.

And our final witness will be Phil Glover, who serves as the legislative coordinator for the Council of Prison Locals for the American Federation of Government Employees for the AFL-CIO. He is currently a correctional officer at the Federal Correctional Institute in Loretto, Pennsylvania.

Each of the witnesses' written statements will be entered into the record in its entirety.

I would ask for the witnesses to summarize your testimony in 5 minutes or less. And to help you stay within that time, there is a timing device at your table where the light switches from green to yellow when there is 1 minute left, and turns to red when the 5 minutes have expired.

We will begin with Dr. Wilkinson.

TESTIMONY OF REGINALD A. WILKINSON, PRESIDENT & CEO, OHIO COLLEGE ACCESS NETWORK, COLUMBUS, OH

Mr. WILKINSON. Mr. Chairman—— [Off mike.]

Mr. SCOTT. Wait a minute. Excuse me. Excuse me.

Mr. Wilkinson?

Mr. WILKINSON. Thank you.

Chairman Scott and Members of the House Judiciary Committee on Crime, Terrorism, and Homeland Security, I appreciate the opportunity to provide testimony before you today regarding the key role that Federal and State industries play in the overall mission and success of our country's correctional institutions, based on my decades of work as a corrections professional.

I would especially like to thank Chairmen Conyers and Scott for inviting me to speak regarding the importance of prison industries, and for their own ongoing support for the development of quality industry programs in our Nation's prisons and jails.

You have heard my bio, and I am currently head of a non-profit agency, but I am still very much involved in the corrections profession.

I would like to provide you with my views based on my lengthy experience as a corrections administrator as to the importance of prison industries in Federal and State facilities, as well as give you a thumbnail sketch of what I experienced with Ohio's approach to prison employment.

I hope my input will prove helpful as you examine legislative solutions available to you and to resolve the very serious challenges facing the country's correctional facilities.

Let me first address the issue of why I believe it is vital to maintain an effective and viable Federal and State prison industries program. In my view, there are at least six reasons. I am only going to give you about four of them.

Federal and State prison industries jobs are a management tool to keep prisoners productively busy, as we all know. When pris-

oners are idle, tension and violence increases in correctional facilities.

Prison industry programs keep thousands of inmates productively involved in day-to-day, structured operations of our Nation's correctional facilities, thereby increasing the safety of correction officers, who are on the front lines, as we all know, as well as citizens, inmates and the communities surrounding the facilities.

Federal and State prison industries' job training programs reduce crime. Inmates who participate in meaningful job training demonstrate a significant statistical reduction in recidivism. A Washington State Institute for Public Policy study showed that for every $1 spent on prison industry programs, as much as $6.23 is saved in future criminal justice costs.

In addition, a previous study conducted by my former department, the Ohio Department of Rehabilitation and Correction, showed that the Ohio prison industries reduced the return rate of prisoners released from prison to about 20 percent. Participation in high-skilled prison industry jobs resulted in a 50 percent reduction in recidivism.

Similarly, studies also show that Federal Prison Industry inmates are 24 percent less likely to recidivate than those in non-prison industry jobs.

Federal and State prison industry contracts with private sector businesses boost economic development, and in particular, minority-owned small companies. In an attempt to expand prison industries and create more real-world, high-skilled jobs, prison industries have placed an emphasis in recent years on partnering with the private sector.

These partnerships benefit both Federal and State departments of corrections and companies they contract with. Thousands of private sector businesses from around the country benefit from purchases made by both State and Federal prison industries.

In 2007 alone, the Federal Prison Industries purchased about $538 million in goods and services and raw materials from the private sector. So, in other words, we not only keep prisoners meaningfully employed, we help persons who are not even affiliated formally with the corrections system employed, as well.

Prison industries offset the costs of incarceration. Federal Prison Industries, for example, and other State correctional industry programs are self-supporting entities that do not require financial assistance from the various general revenue funds.

And finally, Federal and State prison industries imbue inmates with a work ethic and a sense of self-responsibility. Many inmates have never held a job for any length of time, nor have they learned to take instruction or feel the satisfaction of a job well done. That is not the case with prison industry programs around the country.

I would like to briefly address some issues, specific points of legislation discussion. At this juncture, due to the serious challenges FPI has just announced it faces, I would urge you to work toward legislative and administrative solutions that lift these onerous restrictions on FPI's mandatory source authority relating to Federal agencies' purchases from FPI.

It appears at this point that these constraints remain in effect, that FPI would further incur loss of inmate jobs and training op-

portunities, along with many civilian industry staff. Additionally, the private sector companies who supply raw materials will be adversely impacted, as well.

In conclusion, as I have stated above, prison industries provide many positive benefits to Federal and State correctional agencies by keeping inmates meaningfully engage by providing them with marketable skills that may reduce the likelihood of future recidivism. They also provide positive economic benefits to taxpayers by reducing reliance on Federal and State revenue sources, creating demand for raw materials, for raw products and supplies purchased from the private sector and increasing the skilled labor.

Based on the concerns that I and other corrections professionals have articulated, I urge you to work toward legislation that enhances prison industries and lifts the legislation and administrative constraints that are clearly impeding their mission and their ability to succeed.

Mr. Chairman and Committee Members, thank you for the opportunity to provide testimony. I will be happy to answer any questions.

And I must say that, at some point real soon, I am going to have to catch a plane, so I appreciate the opportunity to provide this testimony.

[The prepared statement of Mr. Wilkinson follows:]

PREPARED STATEMENT OF REGINALD A. WILKINSON

INTRODUCTION

Chairman Scott and Members of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, I appreciate the opportunity to provide testimony before you today regarding the key role federal and state prison industries play in the overall mission and success of our countries' correctional institutions based on my decades of work as a correctional professional. I would especially like to thank Chairmen Conyers and Scott for inviting me to speak regarding the importance of prison industries and for their on-going support for the development of quality industry programs in our nation's prisons and jails.

I am currently the President & CEO of the Ohio College Access Network but until a few years ago, I spent thirty four years as a correctional administrator in Ohio. A more detailed biography is provided at the end of my testimony for the record.

I would like to provide you with my views based on my lengthy experience as a correctional administrator as to the importance of prison industries in federal and state correctional facilities, as well as a thumbnail sketch of what I experienced with Ohio's approach to prisoner employment. I hope my input will prove helpful as you examine legislative solutions available to you to resolve the very serious challenges facing the country's correctional facilities. And, specifically, the mounting obstacles that Federal Prison Industries (FPI) is encountering on the heels of the announcement that they are being forced to close eight factories, downsize an additional twelve more and eliminate seventeen hundred inmate jobs and one hundred plus staff jobs all associated with the downsizing of these operations. These are sobering statistics in combination with the fact that the number of eligible inmates employed in the FPI program has already fallen precipitously over recent years by thousands and specifically from 25% to 18%. I understand that this is due to limitations imposed on FPI by Congress and the FPI Board on FPI's mandatory source authority relating to federal agencies purchases' from FPI.

THE IMPORTANCE OF PRISON INDUSTRIES

Let me first address the issue of why I believe that it is vital to maintain an effective and viable federal and state prison industries programs. In my view, there are at least six primary rationales:

First: Federal and State prison industries' jobs are a management tool to keep prisoners productively busy. When prisoners are idle, tension and violence increases in correctional facilities. Prison industry programs keep thousands of in-

mates productively involved in the day-to-day, structured operation of our nation's correctional facilities, thereby increasing the safety of the correctional officers who are on the front lines, as well as for civilians, inmates, and the communities surrounding the facilities.

Second: Federal and State prison industries' job training reduces crime. Inmates who participate in meaningful job training demonstrate a significant statistical reduction in recidivism. A Washington State Institute for Public Policy study showed that for every $1 spent on prison industry programs, as much as $6.23 is saved in future criminal justice costs (arrest, conviction, incarceration, post release supervision and crime victimization). In addition, a previous study conducted by the Ohio Department of Rehabilitation and Corrections showed that participation in Ohio Penal Industries jobs reduced the return rate of offenders released from prison by 20 percent. Participation in high-skilled Ohio Penal Industries jobs resulted in a 50 percent reduction in recidivism. Similarly, studies also show that FPI inmates are 24 percent less likely to recidivate than those inmates in non-FPI jobs.

Third: Meaningful job training contributes to the successful reentry of offenders and increases their chances of finding and keeping jobs after release. Now, more so than ever, with our country's tough economy, one can imagine, former prisoners attempting to find jobs are at a natural disadvantage. Like FPI, Ohio's mission is to teach them skills so that they can compete in the job market after they have served their prison sentences. For example, Ohio has one hundred plus vocational education programs ranging from building maintenance to welding, from brick laying to auto mechanics. And, their industries program works with areas in the Ohio Department of Corrections, as well as with other state agencies to enhance the skill-sets obtained by offenders.

Fourth: Federal and State prison industries' contracts with private sector businesses boost economic development and in particular minority-owned and small companies. In an attempt to expand prison industries and create more real-world and high-skilled jobs, prison industries have placed an emphasis in recent years on partnering with the private sector. These partnerships benefit both federal and state Departments of Correction and the companies they contract with. Thousands of private sector businesses from around the country benefit from purchases made by both federal and state prison industries. In 2007, FPI alone purchased $538 million in goods, services, and raw materials from the private sector OR in other words, 77.4 Percent of FPI's Revenues. Of this 77.4 Percent, nearly two-thirds of these purchase contracts are with small businesses, many of them female and minority-owned or disadvantaged. Estimates indicate that roughly 5,000 jobs in the private sector are the result of goods purchased by FPI alone, not including state industries purchases. This is one of the best examples I have seen of the public/private partnership model working to benefit all parties, the federal and state governments, private businesses across our nation and our country's overall correctional programs.

Fifth: Prison industries offsets the cost of incarceration. FPI and most other state correctional industry programs are self-supporting entities that do not require financial assistance from the general revenue fund thereby creating cost savings to taxpayers, an all too critical goal for both federal and state governments in light of our country's current tough economic climate.

Finally, federal and state prison industries imbue inmates with a work ethic and a sense of self-responsibility. Many inmates have never held a job for any length of time, nor have they learned to take instruction or feel the satisfaction of a job well done. In FPI, Ohio, and other jurisdictions, prison industries work standards mirror the normal work environment as closely as possible so that when offenders are released to the community they are as ready as possible to join the work force with real world job skills so they can be as successful as possible at making a productive contribution.

OHIO'S INMATE EMPLOYMENT AND REENTRY EFFORTS

Ohio has worked very hard to increase the employability of ex-inmates through initiatives such as the Offender Job Linkage Program, where local business leaders are invited to interview skilled inmates close to release at job fairs in the prisons. As a prerequisite to participation in the job fairs, inmates must be within 90 days of release and are required to produce a current resume and participate in classroom training to develop interview skills. To date, thousands of inmates and hundreds of potential employers have participated in over 300 plus job fairs across the state.

One of Ohio's most important employment initiatives is the community service program. Ohio has expanded the numbers of inmates and hours devoted to this area

from over 75,000 hours in 1991 to millions of hours in 2007. This program has provided Ohio communities with over 40 plus million hours of volunteer inmate service since the inception of the program.

Finally, it is important to note that offender employment is just one component of a broad systems approach to managing offenders returning to the community following a period of incarceration. In Ohio, and many other jurisdictions, innovative "reentry initiatives" are underway that emphasize a continuum of services, programming, support, and offender accountability from the time of sentencing to well beyond an offender's release to the community. I previously testified before Congress in support of the landmark legislation, The Second Chance Act, as I believe efforts such as those embodied in this legislation further enhance public safety and ensure that many more offenders return home as tax paying and productive citizens.

RECOMMENDATIONS TO ADDRESS THE CURRENT STATE OF FPI AND STATE PROGRAMS

I would like to briefly address some specific points of legislative discussion. At this juncture, due to the serious challenges FPI has just announced it faces, I would urge you to work towards legislative and administrative solutions that lift these onerous restrictions on FPI's mandatory source authority relating to federal agencies purchases' from FPI. It appears at this point that if these constraints remain in effect that FPI would incur further loss of inmate jobs and training opportunities, along with the loss of many civilian industry jobs. Additionally, the private companies who supply raw materials and partner with correctional industries would be placed at further risk to lose their jobs should these types of legislative constraints remain on the books. Certainly a less than desirable outcome on all levels.

CONCLUSION

As I have stated above, prison industries provide many positive benefits to federal and state correctional agencies by keeping inmates meaningfully engaged and by providing them with marketable job skills that may reduce the likelihood of future recidivism. They also provide positive economic benefits to taxpayers by reducing reliance on federal and state general revenue fund sources, creating demand for raw products and supplies purchased from the private sector, and by increasing skilled labor. Communities and families benefit by offenders being returned to society with a greater likelihood for employment, a chance to become productive, law-abiding, and drug free citizens.

Based on the concerns that I and other corrections professionals have articulated, I urge you to work towards legislation that enhances prison industries and lifts the legislative and administrative constraints that clearly are impeding their mission and ability to succeed.

Mr. Chairman and Committee members, thank you for the opportunity to offer my testimony. I would be pleased to address any questions that you may have.

Mr. SCOTT. Thank you.

Mr. Fornaci?

TESTIMONY OF PHILIP FORNACI, DIRECTOR, DC PRISONERS' PROJECT, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS & URBAN AFFAIRS, WASHINGTON, DC

Mr. FORNACI. Good morning.

Thank you for this opportunity to provide testimony. I would particularly like to thank Chairman Scott for his leadership on these issues.

My name is Philip Fornaci. I am the director of the D.C. Prisoners' Project of the Washington Lawyers' Committee. We advocate on behalf of D.C. prisoners. As this Committee is aware, our organization was created about 20 years ago, and focused on the needs of D.C. prisoners, primarily held in our so-called State prison system.

With the D.C. Revitalization Act in 1997, and the closing of that prison, D.C. prisoners were moved into the Federal Bureau of Prisons. As a result, our organization has focused on the Federal Bu-

reau of Prisons, perhaps uniquely in the country. We have unique perspective on viewing the Bureau of Prison systems, because it is, in fact, our State prison system.

You have my written testimony. I just wanted to give you some of the highlights. And I wanted to focus in particular, a couple of issues related to medical care and some other issues in the Bureau of Prisons.

I wanted to first say that the Federal Bureau of Prisons provide in many facilities very high levels of medical care, in particular at Butner Federal Medical Center, at Rochester. These are places that provide a very high level of care that is certainly similar to care that is available in the community.

However, many other facilities in the BOP do not provide not only that level, but not a very high level of care. In particular, I wanted to focus on the private prison system, and in particular, the private prison known as the Rivers Correctional Institution in North Carolina, the facility with which we are very familiar. That facility was opened, in fact, to house D.C. prisoners with the closing of the Lorton facility here in the D.C. area. So, it was essentially opened to make a profit on the D.C. prisoners.

Since the moment of its opening in 2002, we have been inundated with complaints about medical care. This is a facility with 1,300 people. It has one doctor not working 40 hours a week to provide medical care to these individuals.

In contrast, most BOP facilities have at least two physicians and provide weekend coverage. Rivers does not provide that coverage.

In 2006, the Washington Lawyers' Committee—2007, I am sorry—the committee filed a class action litigation to improve medical care in that facility. So, we are very familiar with it. We visit it every 6 weeks. We interview people constantly there.

And I wanted to raise that we are not discussing here things like elective surgery. We are talking about instances of medical malpractice that lead in serious disfigurement and death.

We are talking about an outdoor pill line, where people with serious disabilities need to stand outside in stormy weather to pick up medications two or three times a day.

BOP has sent people with critical medical needs, post-surgical people, folks even who are suffering from ALS, Lou Gehrig's disease, have been in Rivers, and at facilities that cannot simply take care of them.

And during the course of our litigation, and as I have detailed in my testimony, the Bureau of Prisons has asserted that, in fact, it engages in only limited monitoring of this facility. Limited would be an overstatement, I should say. They have left this for-profit facility with a situation of a fixed price contract—that is, they get a fixed amount of money every year—provides very little monitoring.

And the result, of course, is very obvious what will happen. They receive poor medical care, ultimately serious injury, and death will occur, and it has.

In addition to Rivers, we visit many other facilities in the Bureau of Prisons, responding to complaints from D.C. prisoners in those facilities. D.C. folks are held in about 70 different prisons.

We often get information about medical care. We have developed ways of kind of siphoning out information. And we have attempted

to bring that information to the attention of the Bureau of Prisons. We have offered to have quarterly meetings with medical staff to say, "Look. We visited this facility. These are the kinds of problems we have had."

I have attached to my testimony, also, a letter, a correspondence from the general counsel of the Bureau of Prisons we received in 2008 from Kathleen Kenney, who not only refused our request to have some regular meetings, but, in fact, threatened our access to the Bureau of Prisons.

We were quite startled with this, because we felt that this was, in fact, a free way for the bureau to get feedback about its facilities. And on top of that, giving us a threat that our work was, in fact, somehow inappropriate, was quite disturbing to say the least.

Third, Director Lappin referred to the grievance system as a possible way to get information about medical problems in the Bureau of Prisons, which is possible, except that the grievance system takes approximately 3 months to fully exhaust. Obviously, that is not the best way to get attention to one's medical needs.

In our experience—and we have reviewed hundreds of grievances—we have rarely seen an instance where the Bureau of Prisons has gone back and said, "Yes, you are right. You are not getting very good care, and we are going to get that for you."

Now, generally speaking, the bureau, when the grievance reaches the level of BOP headquarters, they will generally affirm the decisions of the local medical providers. Again, we are not talking about elective surgery here. We are talking about basic medical care.

I just wanted, in my remaining 12 seconds or so, I want to raise a couple of other non-medical issues that are detailed. And I just hope that you will take a look at my testimony on this.

One is the perennial problem of snitches in the Bureau of Prisons. That is, not people snitching, but people not being protected. People are giving State's evidence who are very heavily pressured to provide evidence in cases. We are representing a person who provided evidence for the FBI in a case involving corruption by a Federal prisons official.

He was not only not protected, but his life has been threatened for the last 4 years. And we brought litigation to no effect on this. This man's life is in danger as we speak now, yet there have been no steps. Mr. Lappin has been named personally in that lawsuit, but to no avail.

The other issue is the use of restraints as punishment in the Bureau of Prisons, which is fairly common. That complaint is detailed in my testimony.

And finally, I just wanted to mention that the issues around D.C. prisoners are complicated, and they are certainly—the D.C. folks are about 3 to 4 percent of the overall population. It is very hard for us to get a hearing on these issues, and we really very much appreciate this opportunity to bring some of these matters to your attention.

But we have some ongoing issues. It has been 8 years of D.C. prisoners in the Bureau of Prisons. We have a lot of issues.

We would like to bring them closer to home. We would like to help in terms of their re-entry into the community by keeping them closer to D.C., bringing services to them and in other ways.

And I would encourage this Committee to consider having regular testimony or a hearing very soon on the specific issues of D.C. prisoners in the Bureau of Prisons.

Thank you.

[The prepared statement of Mr. Fornaci follows:]

PREPARED STATEMENT OF PHILIP FORNACI

Federal Bureau of Prisons Oversight Hearing
Subcommittee on Crime, Terrorism, and Homeland Security
House of Representatives, Committee on the Judiciary
July 21, 2009

Testimony of
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Thank you for this opportunity to provide testimony for this hearing on oversight of the Federal Bureau of Prisons. In particular, I would like to thank Congressman Scott for his leadership on important issues affecting incarcerated and formerly incarcerated people.

My name is Philip Fornaci. I serve as Director of the D.C. Prisoners' Project, a section of the Washington Lawyers' Committee for Civil Rights & Urban Affairs. Our organization advocates for D.C. prisoners held both locally in D.C. jail facilities as well as those held in the federal Bureau of Prisons (BOP), where those convicted of felonies in D.C. are sent. We advocate for appropriate medical care, protection from violence, and access to basic constitutional rights. We also provide representation to DC prisoners at parole grant hearings.

Our organization was created in 1989, focused on the needs of DC prisoners held locally in the Lorton Prison Complex in Lorton, Virginia. With the enactment of the DC Revitalization Act in 1997, and the subsequent (2001) closing of Lorton and transfer of sentenced DC prisoners to the custody of the federal BOP, the focus of our work shifted to the BOP. Although D.C. prisoners are a relatively small percentage of the overall BOP population (approximately six percent), nearly 8,000 D.C. prisoners are spread throughout 90 separate BOP institutions. Our organization receives calls and correspondence from individuals living in as many as 70 different facilities every year. Our vantage point for assessing the performance of the BOP is unique among advocates nationally, a result of the closure of the District of Columbia's "state" prison facility and the federalizing of DC Code offenders. In advocating for DC's "state" prison population, by extension we also become involved with the needs of people held in the BOP not from DC. No other private or public organization is as closely involved with addressing problems with conditions of incarceration for BOP prisoners.

My testimony today will focus primarily on medical care issues in the BOP, as well as certain other issues about the BOP of general concern to this Subcommittee. In addition, I have included comments about problems specific to DC prisoners in the BOP and have included with my testimony a document prepared by our office, *DC Prisoners: Issues for the Obama* Administration, a series of policy recommendations for the current Administration. (See attachment 1.) My testimony places this information in the context

of our work with the BOP, both in litigation and, more commonly, in non-litigation advocacy with various BOP institutions and with the BOP's central office.

Medical Care in the Bureau of Prisons: A Study in Contrasts

In April 2009, the *American Journal of Public Health* published the first national survey of the prevalence of chronic health conditions and analysis of access for health care for US prisoners.[1] The authors noted that, although prisoners have a constitutional right to health care, prisoners' access to health care is often deficient[2], due at least in part to the political unpopularity of treating this population. As the report notes: "Indeed, former Surgeon General Richard Carmona stated that he Bush Administration had blocked the release of the Surgeon General's report, *Call to Action on Corrections in Community Health*, for fear that the report would increase government spending on inmates."[3]

And there is clearly a need for addressing problems in health care delivery for the federally incarcerated population, but the problems are not simply related to funding shortfalls (although increased spending on prisoner health services would be welcomed). Even with additional funding, there are significant problems with health care delivery in the BOP that require broader changes. For example, in our experience, we have found that certain BOP facilities provide extremely high levels of medical care, while others – primarily (but not exclusively) private contract facilities – provide abysmal care. We have worked with clients at three Federal Medical Centers (FMCs), FMC Rochester, FMC Butner, and FMC Carswell, who have received excellent medical care, sometimes for extremely complex medical needs. These facilities are clearly the "gold standard" in terms of what BOP facilities can achieve in providing medical care, but each is a specialized medical facility. We would certainly not expect this high level of quality to be matched by any BOP facility that is not a Federal Medical Center, but the drop-off in quality of care from the FMCs is significant.

At the other extreme, we have had extensive experience with certain privately-owned prisons, particularly the Rivers Correctional Institution in Winton, North Carolina, a prison owned and operated by the GEO Group under contract to the BOP. This facility holds approximately 800-900 DC prisoners, as well as 400-500 foreign nationals serving federal prison sentences. In contrast to treatment provided at FMCs, or even at comparably-sized BOP-run prisons, medical care at Rivers is abysmal.

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[1] Wilper, Andrew, MD, MPH, Boyd, Wesley J., MD, PhD, Lasser, Karen E., MD, MPH, McCormick, Danny, MD, MPH, Bor, David H, MD, and Himmelstein, David U, MD, "The Health and Health Care of US Prisoners: Results of a Nationwide Survey," *American Journal of Public Health*, Vol. 99, No. 4, April 2009.

[2] Some important findings of the *American Journal of Public Health* article are (1) that 13.9% of federal prisoners with a "persistent medical problem" had received no medical examination since incarceration (in contrast to 20% of state inmates) and (2) nearly eight percent of federal prisoners received no medical care after a serious injury. Ibid at 669.

[3] Ibid, p. 671.

Rivers opened in early 2002, immediately after the closing of the Lorton Prison Complex, and began housing primarily DC prisoners at that time. From the moment of its opening, our organization has received a steady stream of complaints from prisoners housed there, from the failure to provide basic primary medical care to an unwillingness to send prisoners off-site for specialty care to abrupt changes in medication regimens in the interests of saving money. Rivers employs a single physician (working fewer than 40 hours/week) for its 1300+ prisoners, in contrast to similarly-sized BOP facilities that tend to employ at least two full time physicians and provide for an on-site physician on weekends. (Rivers does not provide such coverage.)

In 2006, the Washington Lawyers' Committee (in collaboration with the law firm of Covington & Burling), filed a class action lawsuit aimed at improving medical care at Rivers (*Collins et al. v. GEO Group et al,* Civ. No. 08-CV-00021-H, ED North Carolina). I have attached excerpts from this complaint with my testimony, which details some of the horrible injuries and mistreatment suffered by prisoners at Rivers, and the failures of the BOP to provide effective oversight. (See Attachment 2.) The complaint notes: "[t]he deficiencies and deprivations ...detailed in this Complaint are the result both of Defendant GEO's aggressive efforts to cut costs and boost profits and of Defendant BOP's persistent failure to ensure that GEO fulfills the federal duty it has undertaken to provide."

It is important to note that, in its motions to dismiss our complaint, the GEO Group has argued that, as a private contractor, it is bound only to deliver on its contract to the BOP. If the BOP has problems with its performance of its contract, the BOP must raise them, according to GEO. Conversely, the BOP claims that any problems with medical care at Rivers are the responsibility of its contractor, GEO, and not the BOP. Both defendants argue that the other is responsible. As the BOP noted in its Motion to Dismiss our complaint:

> In any case, plaintiffs' implicit suggestion that GEO Group is somehow not an independent contractor because the BOP allegedly exerts "supervision and control" over Rivers operations is insupportable. A review of the BOP-GEO contract is sufficient to demonstrate that, while the BOP reserves the right to engage in limited monitoring of GEO decisions, and requires that GEO hire only those who pass drug and background checks unless the BOP approves a waiver, the BOP does not exercise control over day-to-day operations at Rivers.

Although arguing against the federal government's liability in this case (which seeks only injunctive relief, not monetary damages), it is striking that the BOP asserts that the BOP exerts "limited monitoring" authority over Rivers operations. It is not the responsibility of the Federal Bureau of Prisons to ensure that prisoners assigned to its care receive constitutionally adequate medical treatment because it has contracted out

those responsibilities. Although the Court has not ruled on the BOP's argument, as a matter of public policy it is simply reprehensible. So long as GEO hires people who pass drug and background checks (unless BOP issues a waiver), the BOP – and by extension the Department of Justice and the Executive branch itself -- absolves itself of all other responsibility. The outright refusal of the BOP to effectively monitor its own contractors has led to untold suffering, illness, disability, and early death for hundreds of prisoners. Rather than resolve the issues in *Collins*, the BOP and GEO have aggressively fought the case for two years and have refused to make any significant improvements in medical services at this facility.

Assessing Medical Care in the BOP

The *Collins* case is the most significant litigation involving the BOP and delivery of medical care with which our organization is involved, but it is not the only one. We have been involved with extended litigation since 2006 in another medical case, involving an action for damages suffered by a prisoner at USP Lewisburg whose surgery for an extremely painful (and obvious) gastrointestinal problem was delayed for several months due to the indifference of medical staff (*Boling v. Bussanich et al*, Civil No. 3:Cv-07-1133, M.D. PA).

In the course of discovery in *Boling*, it has become apparent that the quality of medical care at BOP facilities varies with each institution. Certain problems identified in other BOP facilities are not present in this case, while different problems may be specific to Lewisburg. For example, Lewisburg (at the time this case was filed) employed two full time physicians for approximately 1500 prisoners, a far superior physician/patient ratio than at Rivers. However, we also discovered in the course of litigation that facility staff routinely discard sick call requests (requests for medical attention), failing to keep a record of ongoing and chronic complaints. While primarily an administrative/organizational error, the failure to keep track of prisoners' medical complaints allowed staff to ignore developing problems and even to punish prisoners who complain "too often" by remaining indifferent to their medical needs.

Similarly, diagnosis and treatment of such diverse conditions as diabetes, hepatitis C, MRSA (staph) infections, and HIV varies by facility. The BOP has created a system of assigning "CARE Levels" 1 to 4 for its facilities, with FMCs rated CARE Level 4 and 16 facilities rated CARE Level 1. Those at CARE Level 1 are considered inappropriate for prisoners with chronic medical needs (e.g., HIV, hepatitis, etc.). The majority of BOP facilities are rated at CARE Level 2.

Yet even within this system of CARE Levels, significant variations exist among similarly-sized and similarly-rated facilities. However, the BOP makes designation decisions (about which facilities to place individuals) with only the most general considerations -- or knowledge of – the capacities of its facilities. This decision-making process is completely closed; judges, attorneys, and advocates cannot challenge placement of a prisoner to a particular facility, nor effectively advocate for designation to a particular prison. For example, we have encountered several seriously ill prisoners sent

to the privately-owned Rivers Correctional Institution, despite instructions from their sentencing judges that they be sent to a facility where they will receive specialized medical care. The BOP has sent prisoners in desperate need of psychiatric treatment, monitoring of life-threatening cardiac conditions, kidney disease and even amyotrophic lateral sclerosis (ALS, or "Lou Gehrig's disease") to Rivers, a facility that cannot possibly provide appropriate treatment for any of these conditions.

In recognition of this problem and in an attempt to secure meaningful information about access to medical care at BOP facilities, our organization developed a system for interviewing clients in facilities holding large numbers of DC prisoners and where we received large numbers of complaints about medical care. We developed a survey instrument to aggregate information gleaned from our interviews, pinpointing problems with delivery of medical services in these facilities. We planned to summarize the data and present it to Public Health Service staff (who oversee medical care in the BOP). We had received informal indications from the Medical Director of the BOP, Dr. Newton Kendig, that information on medical problems at specific facilities would be welcomed by the BOP.

Rather than simply sending uninvited letters to Dr. Kendig, our organization sought a series of twice annual or quarterly meetings with BOP medical staff to report on our investigations at BOP institutions. I attempted to contact Dr. Kendig directly, but was diverted to his assistant, Elizabeth Nagy. In an email to Ms. Nagy on December 12, 2007, I made the following request:

> [B]ecause DC prisoners are housed in 99 different BOP facilities, and because our organization is the only non-governmental body that monitors conditions in BOP facilities on a systemic basis, we are uniquely situated to provide feedback to the BOP. In particular, we are interested in working with BOP medical staff to improve medical and mental health care delivery. Although our organization is involved in several lawsuits with the BOP as a defendant, our goal is not to pursue litigation for its own sake but to encourage improvements in the conditions under which our clients are held.

Subsequently, Ms. Nagy and I had an extended conversation during which I described our work in some detail, including our development of a survey instrument to facilitate our discussions with the BOP. I had also requested the BOP's cooperation in our efforts to interview our clients, asking that we be permitted to arrange group meetings of clients in these facilities. Ms. Nagy listened attentively and indicated she would get back to me with some answers.

Three months later, in March 2008, I received a letter from Kathleen Kenney, Assistant Director/General Counsel for the BOP. (See Attachment 3 for the full letter.)

> This is in response to your communications with Elizabeth Nagy. You raised several issues related to health care received by D.C. Code felony offenders in Bureau facilities. In the future, please direct all such inquiries to the U.S. Attorney's Office representative handling such case(s), as you represent inmates currently in litigation with the Bureau regarding health care issues.

The BOP's response to our careful attempts to identify medical problems without litigation our efforts was a resounding rejection. BOP attorneys barred us from speaking to medical staff, instead directed to our staff to local US Attorneys, who could certainly not be expected to have any knowledge of medical issues in the BOP, and little particular interest in resolving problems. In the same letter, Ms. Kenney went on to refer me to the District's Corrections Information Council (CIC) as a more appropriate conduit for the medical information we were gathering, a volunteer entity created under the DC Revitalization Act that had *never visited a BOP facility*, has had no members since mid-2006, and which DC Mayor Fenty has now vowed to dissolve entirely. Finally, Ms. Kenney included a thinly-veiled threat that our very access to BOP facilities might be threatened if we persisted in trying to investigate our client's problems with medical care in the BOP.

This unexpectedly hostile response closed the door on our efforts to address medical care issues with medical staff at the BOP Central office, although we continue to collect information and visit our clients in BOP facilities to address medical issues. We also continue to communicate directly with medical staff in individual facilities to help resolve issues for our clients. It is apparent that the BOP is uninterested in receiving input from advocates and prefers that our concerns take the form of litigation, a wasteful and destructive approach.

Administrative Remedies and Medical Care

One point Ms. Kenney did not make in her letter is that prisoners should have a way to improve their medical care through the Administrative Remedy Request process. This is the internal grievance system of the BOP through which prisoners can file informal complaints to staff, and appeal denials or unsatisfactory responses to the Warden, Regional BOP, and BOP Central offices. This process takes a minimum of three months to fully exhaust to the national level.

The Administrative Remedy Request system is in fact the only avenue that prisoners have available to them to address deficiencies in medical care, and serves as the necessary precursor to litigation (as exhaustion of this system is required prior to filing a federal lawsuit). It is also an avenue that cannot possibly bring results. If a prisoner has a severe medical problem for which he disagrees with the facility's treatment, or if he believes they are being indifferent to his needs, he can only complain. The staff and Warden will invariably deny the problem, and the BOP Regional and Washington offices will concur with the facility. End of problem, the prisoner is simply mistaken. The obvious result is litigation, if the prisoner is clever enough or if he has an attorney.

For prisoners held in transit facilities (FTC Oklahoma City, etc.), their access to the grievance process is even more limited. They are rarely held in these facilities for more than a few weeks or sometimes months. This is not enough time for a grievance to reach the Regional or Central Office levels, even if a BOP official were inclined to act upon it. We recently had a client held in the FTC Oklahoma City for nearly two months, during which time he did not get his HIV medications nor other medications he had been receiving in a USP. The indifference displayed by staff was striking. Calls to the BOP Central Office simply resulted in calls to management of the FTC, with predictable denials of the existence of any problems. Again, there is no way to bring these issues to the attention of BOP medical officials – and secure some kind of remedies -- short of litigation.

If the prisoner is in a private contract facility, the situation is particularly difficult. In response to their grievances, the BOP Central office refers complaints from contract facilities to its Privatization Management Branch. In response to requests for medical care, staff at this office simply inform the prisoner that medical care in a contract facility is not a grievable issue, even to the BOP office set up to monitor private prisons. Further, several courts have held that prisoners in privately-owned BOP facilities have no right to bring their claims of Eighth Amendment (deliberate indifference to serious medical needs) to federal court.[4] These prisoners have no available remedy except hostile local state courts, with their complex pre-filing requirements[5] and anti-prisoner biases. Their health care – and their lives – are dependent on whatever inclinations the for-profit management company may happen to have to provide constitutionally-adequate levels of care. Obviously, profit considerations will almost always override medical needs in this context.

The BOP has effectively closed off any non-litigation avenues for people outside its own staff to identify problems and secure improvements in medical care at BOP facilities. As noted, there is no way for the BOP Central Office to get useful information about problems in the more than 130 BOP prisons (and probably thousands of contract halfway house facilities) through the grievance process. This is the only mechanism prisoners have to communicate with the BOP directly. Obviously Wardens are extremely unlikely to bring concerns about their own facility's medical services to Washington. Finally, as I have described, the BOP refuses to accept input from advocates, referring these issues to local Attorneys General, inviting only protracted litigation.

The BOP has fought all monitoring of its medical care by outsiders, and it has no effective internal mechanism for effectively addressing problems as they arise. We are asked to simply accept their assurances of adequate care, even when presented with

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[4] See *Holly v. Scott*, 434 F.3d 287 (4th. Cir. 2006), cert. denied – U.S. – 126 S.Ct. 2333 (2006). The Fourth Circuit affirmed the dismissal of a Rivers prisoner's claim that his Eighth Amendment rights were violated when he was denied medical care at a private contract facility.

[5] Most states now require that complaints for medical malpractice include an affidavit by a medical expert vouching for the validity of the claims *before it is filed*. This requirement is virtually impossible for prisoners to meet.

evidence to the contrary. Prisoners are unable to effectively raise concerns without litigation, and individual staff within facilities are unlikely to complain. This leaves only the courage of individual whistleblowers or protracted litigation to address problems that we all know exist.

Non-medical Issues at the Bureau of Prisons

Although medical care is a priority focus of our advocacy work, we have also struggled with the BOP over a myriad of other issues, which I will highlight here.

Use of Restraints

We are in litigation on behalf of a prisoner held in USP Lewisburg in 2006. He wrote to us with an incredible story of being placed in four-point restraints *while in his cell* for a period of 28 days, causing extreme psychological anguish and permanent nerve damage. This treatment can accurately be described as torture. We requested his medical records, which verified the accuracy of his story in all details. We subsequently contacted the Warden of the facility at that time, who did not deny what had happened but instead cited our client's alleged destruction of a sink in his cell and his obstinacy in accepting a cellmate. We filed *Womack v. Smith et al* (1:06-cv-2346; MD PA) in December 2006. (See Attachment 4.)

In this case, it is important to recognize that the BOP staff at this facility maintains that such treatment is consistent with BOP policy, a point we dispute. However, even if true, this would mean the BOP policy permits the use of restraints for nearly a month as a punishment, not to protect staff, other inmates, or the prisoner himself. Indeed, the brazen attempts of the Warden to justify his handling of the situation verified that he kept the man in restraints weeks beyond any necessity for controlling his behavior (if that were ever a goal) but utilized brutal restraints *as punishment*.

Unfortunately, this is not an isolated incident. The use of restraints as punishment in BOP facilities is common. We recently learned that prisoners in USP McCreary (Kentucky) held in the Special Housing (disciplinary) Unit are routinely subjected to restraint as punishment. They are strapped to the four corners of a bed, with lights on 24 hours/day, for periods of three or four days, in retaliation for breaking rules of the Special Housing Unit. There have been numerous deaths in restraints in prisons across the country, and the dangers of such practices are well-known.[6] That the BOP tolerates such practices, and arguably encourages their use, is both foolish and unconscionable.

Government informants

We have attempted to assist several individuals who have provided information to the government in criminal cases, in investigations of BOP staff, or in other matters

[6] See, for example, this award-winning 1998 newspaper series that identified 142 deaths during or shortly after restraint or seclusion in the previous decade. Weiss EM, et al. "Deadly restraint: A Hartford Courant Investigative Report," *Hartford Courant* 1998; October 11 – 15.

where prisoners have information considered useful to prosecutors or investigatory agencies. These individuals are promised various considerations for their cooperation – reduced prison sentences, better treatment while incarcerated, and protection – which rarely materialize.

The position of so-called "snitches" in the BOP, and in most prisons and jails, is precarious. Any prisoner who provides information to staff or to government officials is immediately suspect, and vulnerable to assault and even murder. Although the BOP has several mechanisms to protect these individuals, and indeed has a constitutional duty to protect their safety, it is rare when the BOP recognizes its responsibilities. The BOP has its own Witness Protection Program, it can transfer vulnerable prisoners to state facilities (where their identities may not be known), or it can place them in a different custody level. Unfortunately, these mechanisms are all too infrequently utilized.

One case with which we are involved is illustrative of this problem. We have been involved in a case for nearly four years involving a prisoner who provided information to the FBI about a corrupt BOP corrections officer, even wearing a recording device at the FBI's prompting. After the BOP employee was fired, the FBI and the BOP disavowed any knowledge of our client's role. When he filed grievances seeking protection, the content of his grievances was made available to staff and prisoners in the high security prison where he was being held, putting him at even greater risk for the multiple attacks that followed. He has been beaten on numerous occasions (including once by a co-worker of the BOP official who had been fired) and raped by a known sexual predator, in one of several incidents apparently facilitated by BOP staff. He has been moved to six different high security prisons, where he has been either threatened or assaulted after each move. Two Wardens of BOP facilities have requested his transfer to a medium security facility or to a state facility for the man's protection, but the BOP has repeatedly refused. We had repeatedly requested assistance from all levels of the BOP in an effort to avoid time-consuming litigation, but were unsuccessful. One BOP official even denied that it had a Witness Protection Program and that there was nothing that could be done.

We filed *Doe v. Wooten et al* (1:07-cv-2764; ND GA) in November 2007, naming among others Harley Lapin, Director of the BOP. (See Attachment 5.) We are seeking simple remedies: removal to a medium security facility, a state facility, or the Witness Protection Program. The BOP first vigorously denied our client's story of cooperation with the FBI. When the facts were irrefutably presented, the BOP argued that the Court had no authority to instruct it where to place inmates in its custody, an argument the Court accepted. The matter is currently in appeal.

We have also contacted the BOP Central Office of Designations to remedy the situation, again to no avail. We were told to write a letter to Director Lappin. Even during the course of litigation, our client was twice transferred to other high security facilities, where he was brutally assaulted. The BOP has again refused to take virtually any step to protect our client, despite ample knowledge of the underlying facts of his situation, the ensuing threats and assaults he has endured, and the warnings of BOP

Wardens that the man's life is in danger in these high security facilities. It is difficult to ignore that our client is being punished for cooperating with the FBI against a BOP staffer, and that personnel at all levels of the BOP have shown an unwillingness to protect the life and safety of a "snitch." Our client was recently told he has again been designated to another high security prison, where his chances for survival are grim.

"John Doe's" story is extreme, but not unusual. The pressure applied to prisoners to provide testimony can be intense, and the potential rewards tantalizing to the prisoner. Yet government officials continue to use these individuals for their purposes, then abandon them to the brutal retaliation of other prisoners. In its own way, the BOP tacitly accepts certain prevailing cultural views against "snitches" by refusing to identify and protect prisoners who provides state's evidence, in stark contrast to the promises other DOJ officials make to encourage such snitching.

DC Prisoners in the Federal Bureau of Prisons

Unlike "state" prisoners in other jurisdictions, DC Code offenders have a unique relationship with the federal government. DC prisoners are, for most purposes, treated as federal prisoners. The location and conditions of their incarceration, and the terms of their parole (or supervised release), are under the exclusive control of the federal government. Unfortunately, DC residents have no effective mechanism for influencing these decisions beyond litigation.

Our organization has prepared the attached document, *DC Prisoners: Issues for the Obama Administration*, for distribution to various federal officials and agencies, including the BOP. Issues around the handling of DC prisoners within the BOP system have not been addressed since the DC Revitalization Act in 1997. There are three areas where the BOP could improve the treatment of DC prisoners and facilitate their successful reentry into the community.

First, the BOP should house all DC prisoners in only a few BOP facilities in Maryland, Virginia, and Pennsylvania within 250 miles of the District, with concerted efforts to house DC prisoners as close as possible to DC. Except in the most extraordinary circumstances, no DC prisoner should be held more than 250 miles away from home. In these facilities housing DC prisoners, case management staff should be trained in appropriate discharge planning issues for the DC population, facilitating engagement by DC employers and social services agencies. With a more significant population of DC prisoners in these facilities, it would be worthwhile for potential employers and service providers to set up training and job placement programs to facilitate their successful reintegration into the DC community.

One of the most difficult problems facing formerly incarcerated people in DC is overcoming the loss of community ties during their absence. When they return to DC, most typically lack employment prospects, housing, and substance abuse treatment. Because they are released from dozens of different facilities, assisted by staff with no knowledge of DC, they have virtually no preparation for reintegration. An overwhelming

number of formerly incarcerated people are homeless in DC, with few opportunities for employment or housing, and a near-certain likelihood of re-arrest on a parole revocation or violation of supervised release as a result.

Second, to the extent feasible, DC prisoners should have access to halfway house placement a full year prior to their release, particularly those who have served lengthy sentences. Such placements are mandated under the Second Chance Act, but have yet to be implemented by the BOP. Further, the BOP must insure that the halfway houses with which it contracts do not discriminate on the basis of disability or other grounds.[7] Further, it must monitor its contracts with local halfway houses to insure that these halfway houses actually provide the housing, employment, and public benefits assistance they are contracted to provide. Most currently do not.

In 2008, the DC District Court issued a landmark decision in *Sellmon v. Reilly* (Civ. No. 06-01650, 2008 WL 1933759 (D.D.C. 2008)), ruling that, in many cases, the US Parole Commission has applied the wrong standards in making parole decisions for DC prisoners, resulting in inappropriately long sentences. This will result in the release of 500-1000 additional people from the BOP to DC in the coming 18 months, all of whom have been incarcerated for at least a decade. The BOP must quickly develop contractual relationships with other halfway house service providers to accommodate this jump in parolees, and maximize their halfway house time. There is no indication that the BOP is even aware of the general implications of *Sellmon*.

Third, the BOP should reconsider its use of private contract prisons, in particular the Rivers Correctional Institution that houses primarily DC prisoners. If it chooses to continue its contractual relationship with these facilities, the BOP must take responsibility for insuring that (1) it monitors and improves the provision of medical care and mental health services, (2) provides a mechanism for receiving and responding to complaints and grievances, and (3) takes seriously its role as contract monitor to protect the health, safety, and due process concerns of people held in those facilities.

I urge the Subcommittee to review the full text of the *DC Prisoners: Issues for the Obama Administration* document. We look forward to working with the Subcommittee, the BOP, and other federal agencies to improve conditions of incarceration and reentry preparation for DC prisoners and for all federal prisoners.

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[7] Our organization has filed a lawsuit against the largest halfway house in the District, Hope Village, which explicitly rejects applications from blind prisoners. We have had similar problems with BOP placing people in halfway houses that are not wheelchair accessible, despite numerous local and federal laws requiring accessibility.

ATTACHMENT 1

DC PRISONERS:
Issues for the Obama Administration

PREPARED BY THE DC PRISONER'S PROJECT - WASHINGTON LAWYERS' COMMITTEE

DC Prisoners: Issues for the Obama Administration

From its earliest days, the Washington Lawyers' Committee (WLC) has recognized that African-Americans and people of color are disproportionately involved in the criminal justice system, and suffer the brutal effects of that involvement. From the early 1970s, the WLC has addressed a broad range of prisoner reentry issues, including development of legislation permitting ex-felons to vote, removing professional licensing restrictions that hindered the ability of ex-offenders to earn a living, and successfully challenging zoning restrictions that threatened the closing of halfway houses in the District.

While paying attention to the needs of formerly incarcerated people, the WLC also focused on the conditions of confinement and the due process rights of prisoners held at the Lorton Prison Complex, DC's "state" prison. In the 1970s and 1980s, the WLC brought a series of damages actions in efforts to improve conditions at Lorton. In particular, the WLC brought wrongful death suits on behalf of families of inmates killed by deficient medical care and of inmates murdered in the unsafe and inadequately-staffed Lorton facilities. In response to the imposition of harsh disciplinary sanctions, the WLC engaged in litigation and ultimately legislative advocacy that resulted in the DC Council's 1983 adoption of disciplinary hearing procedures developed by the WLC.

Following in the footsteps of the WLC's early prisoners' rights advocacy work, the DC Prisoners' Legal Services Project, an independent organization, was founded in 1989, and took up many of the issues previously advocated by the WLC. Throughout the 1990s, the Project engaged in broad-based class action litigation, improving medical and mental health services, reducing overcrowding, and improving overall conditions at Lorton and in the DC Jail. In 1997, when the US Congress passed the DC Revitalization Act closing Lorton, the Project's mission expanded to address the needs of DC prisoners now housed in as many as 99 different Federal Bureau of Prisons (BOP) facilities across the country.

In a transition designed to better address the needs of DC prisoners, the Project merged into the Washington Lawyers' Committee for Civil Rights & Urban Affairs (WLC) in October 2006, creating the DC Prisoners' Project. The DC Prisoners' Project's work utilizes litigation, non-litigation advocacy, and public policy advocacy to achieve its goals. These goals include securing access to health care, redress for injuries resulting from violence and sexual assault while incarcerated, and protection of basic human rights for prisoners.

The 1997 DC Revitalization Act, in addition to closing Lorton, also transformed the District's parole system, creating the Court Services and Offender Supervision Agency (CSOSA) for parole supervision and replacing the DC Board of Parole with the US Parole Commission (USPC). The Project is involved in a broad range of issues affecting DC prisoners and formerly incarcerated DC residents affected by these changes, including litigation on conditions of confinement issues, providing representation for prisoners seeking release on parole, and addressing legal needs related to reentry.

The Unique Situation of DC Prisoners: The 1997 DC Revitalization Act

Unlike "state" prisoners in other jurisdictions, DC Code offenders have a unique relationship with the federal government. DC prisoners are, for most purposes, treated as federal prisoners. The location and conditions of their incarceration, and the terms of their parole (or supervised release), are under the exclusive control of the federal government. Under the Revitalization Act, the federal government has removed the authority to perform these basic state functions of the criminal justice system from the Mayor and Council of the District of Columbia, and from the electorate of this jurisdiction.

President Clinton signed the DC Revitalization Act in 1997 at a time when the District of Columbia government was nearly bankrupt, and effectively managed by the DC Financial Control Board. The most obvious impact of the legislation was the closing of the Lorton prison complex, with the federal government taking over for the District the financial burden of incarcerating convicted DC felons. However, beyond the fiscal goals, the Revitalization Act radically transformed the DC criminal justice system, effectively putting the federal government in charge. The Revitalization Act:

- Mandated the closing of Lorton in January 2001, transferring all DC prisoners with felony convictions to the BOP and making them federal prisoners for purposes of facility designation, halfway house placement, and other rules. No DC government agency has any role in decisions about where DC prisoners are sent, nor can the DC government intervene in any situation involving alleged abuse or mistreatment of a DC prisoner.
- Created the Corrections Information Council (CIC), a three-member, voluntary body intended to provide to the BOP "advice and information regarding matters affecting the District of Columbia sentenced felon population." The CIC has never visited any BOP facility to examine conditions or to interview DC prisoners.
- The legislation required that one-half of DC prisoners be sent to privately-owned prisons within the BOP. This requirement was subsequently superseded by later legislation. However, approximately 15 percent of DC prisoners are held in privately-owned prisons within the BOP, most in one facility in North Carolina, the Rivers Correctional Institution.

- Eliminated the DC Board of Parole in 1998, with many of its functions taken over by the federal US Parole Commission (USPC). The primary function of the USPC is to make parole grant decisions for DC prisoners and to adjudicate parole revocations for DC parolees. Prior to passage of the Revitalization Act, the USPC was on the verge of elimination as the federal government had eliminated parole under federal criminal statutes more than a dozen years before. Now, DC matters occupy more than two-thirds of the USPC's workload.
- Created Court Services and Offender Supervision Agency (CSOSA), an independent federal agency with exclusive responsibility for pretrial, parole and supervised release supervision for DC offenders. These are responsibilities previously handled by the DC Board of Parole. The sole role of this new agency is supervision of formerly incarcerated DC residents, yet it is not accountable to any DC government agency nor is it subject to oversight by any federal agency.
- Barred the District government from revising any laws or regulations "regarding parole" that were in effect as of the date of the Act without the "concurrence of the Attorney General" (DC Code §24-131[c]).
- Mandated the restructuring of DC sentencing laws to match so-called "determinate" federal sentences, effectively abolishing parole for those convicted of offenses after August 2000.

Re-Thinking the DC Revitalization Act

More than a decade after the enactment of the DC Revitalization Act, we have learned a great deal about what has worked and what has been disastrous for DC prisoners and parolees, and for self-governance in the nation's capital. On the occasion of a new Presidential Administration, the DC Prisoners' Project of the Washington Lawyers' proposes that the Obama Administration, in collaboration with the private bar, advocates, and formerly incarcerated people, take a fresh look at some of the issues described below.

1 Transfer of DC Prisoners to the Federal Bureau of Prisons

By January 2001, all DC prisoners had been moved out of the Lorton Prison Complex and moved to the federal BOP. Under current law, once convicted of a felony and sentenced to a prison term, the prisoners are legally within the custody of the BOP. The BOP even pays the District to house these prisoners in DC jail facilities while they await transportation to a BOP facility. The District government retains no discretion over which federal facilities will house the prisoners and what programs will be available to them, the prisoners' security levels within the BOP, or how far from DC they will be held.

Under a 1998 Memorandum of Understanding (MOU) between the District and the BOP, the latter agreed to attempt to keep "most" DC prisoners within 500 miles of DC. This MOU was consistent with existing BOP policy, which attempts to keep federal prisoners within 500 miles of their home jurisdictions. The federal government has provided no further accommodation or legal commitment for this influx of DC prisoners, nearly five percent the BOP population. For 7,000 DC prisoners, the 500-mile radius is a geographic area that reaches from Indiana and Kentucky on the West, Georgia on the South and New York on the North. Despite this aspirational goal, hundreds of DC prisoners are housed beyond this range, including facilities in California, Florida, Texas, Arizona, and Colorado. Even more notably, many DC juveniles (adjudicated as adults) are held in North Dakota.

Maintaining family and other community ties is extremely difficult for DC prisoners under these circumstances. Families are unable to visit except in the rarest of circumstances. Exorbitant telephone rates and restrictive rules make even telephone communications difficult, and expensive. Criminal justice experts agree that maintaining family and community ties is essential to successful community reintegration of ex-offenders.

Further complicating the reintegration of DC prisoners after their release from BOP facilities is the inability of BOP facility staff to effectively assist DC prisoners for their return home. With DC prisoners distributed among dozens of different BOP facilities, discharge planning efforts are piecemeal and completely inadequate. BOP staff are unfamiliar with the local DC community and the challenges facing ex-offenders in DC, which is unsurprising given the circumstances. Some facilities have initiated scattered efforts to develop partnerships with potential employers and housing providers in DC after release from prison, but these are generally ineffective.

More than 2,000 people return to DC from the BOP every year. Most ex-offenders return to DC without employment or housing opportunities. Fewer than half are sent to halfway houses prior to their release, and fewer still have realistic hopes of independent housing, resulting in hundreds of ex-offenders released every year to unemployment and homelessness. Unsurprisingly, formerly incarcerated individuals represent the single largest group of homeless DC residents.

Recommendations

The BOP must recognize the specific needs of DC prisoners, in particular the unique reentry issues caused by the dispersal of this population across dozens of different BOP facilities.

A. The BOP should house all DC prisoners in only a few BOP facilities in Maryland, Virginia, and Pennsylvania within 250 miles of the District, with concerted efforts to house DC prisoners as close as possible to DC. Except in the most extraordinary circumstances, no DC prisoner should be held more than 250 miles away from home.

B. The DC government should work with the BOP to develop local options for housing juveniles held in the BOP. The current system sends these youth to remote locations thousands of miles from home (many in North Dakota) due to a stated lack of comparable programs closer to DC. Sending 16- and 17-year-olds this distance prevents any real possibility of maintaining close family ties.

C. In facilities housing DC prisoners, case management staff should be trained in appropriate discharge planning issues for the DC population, facilitating engagement by DC employers and social services agencies. With a more significant population of DC prisoners in these facilities, it would be worthwhile for potential employers and service providers to set up training and job placement programs to facilitate their successful reintegration into the DC community.

D. To the extent feasible, DC prisoners should have access to halfway house placement a full six months prior to their release, particularly those who have served lengthy sentences. BOP must insure that BOP-contracted halfway houses do not discriminate on the basis of disability or other grounds, and that these halfway houses actually provide the housing, employment, and public benefits assistance they are contracted to provide. Most currently do not.

E. Pending before the Federal Communications Commission is the case of Wright v. CCA (CC Docket No. 96-128 - Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking), an effort to address the exorbitant telephone rates charged to families of prisoners. This case has been before the FCC for more than five years, without a decision on rulemaking. The FCC must immediately rule on the Wright petition and provide appropriate relief.

2 The Corrections Information Council (CIC)

The CIC was created under the DC Revitalization Act in an effort to provide a mechanism for the District to advise the BOP about issues affecting DC prisoners as they arise. This an important, if minimal, role for the sentencing jurisdiction to maintain. Although the first CIC members were appointed in 2002, they were unable to successfully negotiate an agreement with the BOP regarding access to federal facilities, and never visited a single BOP facility. As a result, the CIC has never played the role intended by the Revitalization Act, specifically: "to report to the Director of the Bureau of Prisons with advice and information regarding matters affecting the District of Columbia sentenced felon population."

The DC Council expanded the role of the CIC within the District of Columbia Jail Improvement Amendment Act of 2003, mandating that the CIC have full access to local jail facilities (the Central Detention Facility, or "DC Jail" and the Correctional Treatment Facility), be permitted unmonitored interviews with inmates, perform inspections of all inmate-accessible areas, and receive a full range of reports from the DC Department of Corrections (DCDC). The CIC also receives an annual appropriation to support its activities.

However, since 2006, when the terms of its members expired, DC has failed to name any members to the CIC. In part, the failure to name new CIC members reflects the refusal of federal officials to allow CIC members a meaningful role in advocating for the needs of DC prisoners in the BOP.

Recommendations

A. The DC Council and the Mayor must immediately name members to the three-member CIC. It should also take appropriate steps to hire professional staff to support the important work of the volunteer CIC membership

B. With the intervention of US Attorney General, the BOP must be compelled to initiate meaningful negotiations with representatives of the DC government and the CIC to facilitate full access to BOP facilities and to DC prisoners held in those facilities.

C. The CIC should have access to all investigative reports and receive prompt notification when DC prisoners are seriously injured, murdered, or die of medical causes while housed in BOP facilities. The CIC should serve as a resource for family members of prisoners to gain information about any incidents involving their loved ones.

3 DC prisoners sent to privately-owned prisons within the BOP

The Revitalization Act's mandate that 50 percent of DC prisoners be housed in privately-owned prisons (since repealed) led to the opening of the Rivers Correctional Institution in Winton, North Carolina by the Wackenhut Corporation (now The GEO Group) in 2001. That facility houses 1300 federal prisoners, including nearly 900 DC prisoners.

Since the first months after the facility was opened, the DC Prisoners' Project has received an onslaught of complaints about inadequate medical care and security issues. Medical treatment for this population of 1300 men is provided by one doctor, along with a small nursing staff. As is the case in other private prisons and in public prisons with privately-run medical services, complaints about medical care – and litigation – are rampant. A class action suit filed on behalf of all prisoners at Rivers was filed in June 2007.

Recommendations

A. The BOP must ensure that all privately-owned prisons, in particular the Rivers Correctional Institution, meet the same standards as required of other federal prisons, including adequate medical and mental health care, a full range of programming opportunities, and expanded discharge planning resources for DC prisoners.

B. Private prisons under contract to the BOP must comply with the same Freedom of Information Act rules governing the release of medical and institutional records.

C. Private prisons under contract to the BOP must have have comparable internal grievance procedures as BOP facilities, including the ability to appeal adverse decisions to the BOP.

D. The BOP should take steps to immediately investigate and resolve the issues raised in the Collins v. GEO Group litigation, and improve and expand medical services provided there.

4 Eliminated the DC Board of Parole in 1998, its functions taken over by the federal US Parole Commission (USPC), and created the Court Services and Offender Supervision Agency (CSOSA).

In addition to federalizing DC prisoners generally, the legislation also federalized life after prison for DC offenders. The Revitalization Act dismantled the DC Board of Parole which, until that time, had responsibility for making parole grant decisions and supervising individuals released on parole. The Parole Board also had the authority to revoke parole and send a parolee back to prison.

In 1998, the functions of the DC Board of Parole were split, with the US Parole Commission (USPC, part of the Justice Department) taking responsibility for parole grant and parole revocation decisions. This federal agency had lost most of its responsibilities with the elimination of federal parole in 1986, but was reinvigorated with the addition of more than 5,000 DC prisoners with parole-eligible sentences and thousands more on parole and subject to parole revocation by the USPC. In 2008, in response to a challenge by seven DC prisoners denied parole by the USPC, a federal court ruled that the USPC had been using the wrong standards in assessing parole eligibility. Thousands of DC prisoners had likely been illegally denied parole by USPC, and most remain incarcerated.

Congress delegated responsibility for parole supervision, including day-to-day community monitoring of parolees, to the Court Services and Offender Supervision Agency (CSOSA), an independent federal agency. CSOSA is subject to virtually no federal oversight beyond an annual appropriation hearing. It is not required to report to any DC agency, nor to the DC Council or Mayor. It has authority, in collaboration with the USPC, to sanction parolees (and those on supervised release) with ever-more restrictive supervision requirements (additional meetings with parole officers and urine testing, GPS monitoring, etc.) and can recommend parole revocation for violations of its rules. There are no due process protections within the sanctions scheme, except when revocation is pending.

CSOSA is the largest agency in DC addressing the needs of formerly incarcerated individuals, yet its polices and procedures, its sanctioning practices, and its public policy decisions are all beyond the reach of local government. CSOSA can secure the arrest and long-term incarceration of ex-offenders, for example, without any legal basis rooted in DC law.

Recommendations

A. CSOSA should be made subject to appropriate DC government oversight, with itsrules and polices based on DC law and subject to court review. Although federally-funded, CSOSA must base its supervision policies and practices on DC law.

B. CSOSA must develop and implement meaningful due process protections for individuals under its supervision who are subjected to myriad restrictions on their liberty beyond those articulated in parole documents.

C. The USPC must immediately revise its polices and regulations regarding parole grant decisions for DC prisoners that are consistent with the 2008 Sellmon *v.* Reilly decision. All parole grant decisions affecting parole-eligible prisoners should be adjudicated according to DC Board of Parole rules and guidelines in place at the time of their convictions.

D. The USPC must strengthen due process protections in parole revocation procedures, including provisions for judicial review of parole revocation decisions resulting in imprisonment.

E. In consultation with DC government officials and advocates, the responsibilities of the USPC over DC prisoners should be transitioned to local authorities rather than a federal agency.

5 Barred the District government from revising any laws or regulations regarding parole that were in effect as of the date of the Act without the "concurrence of the Attorney General" (DC Code §24-131(c)).

When the Revitalization Act was passed in 1997, the US Congress directly passed into the DC Code the statute cited here, requiring the "concurrence" of the US Justice Department for any changes in local law affecting parole. This statute is arguably unconstitutional, and certainly violates the concept of home rule. The DC government should have the ability to alter an amend its own parole laws to suit the needs of the people of DC. The federal government should have no direct role in these local decisions.

Recommendation

A. The Justice Department should support the DC Council's repeal of DC Code §24-131(c).

The DC Prisoners' Project of the Washington Lawyers' Committee for Civil Rights & Urban Affairs advocates for the humane treatment and dignity of all persons convicted or charged with a criminal offense under DC law housed in prisons, jails, or in the community; to assist their family members with prison-related issues; and to promote progressive criminal justice reform. Since 2008, the Project has also taken on responsibility for protecting the rights of DC prisoners to fair parole hearings.

The Project is the only legal organization with a mission of advocating for the interests of over 8,000 DC prisoners currently held in 99 different federal Bureau of Prisons (BOP) facilities across the country, in addition to more than 3,500 held in the DC Jail and the Correctional Treatment Facility, and as many as 10,000 on parole and supervised release.

To contact the DC Prisoners' Project:

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WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

ATTACHMENT 2:

Collins et al. v. GEO Group et al, Civ. No. 08-CV-00021-H, ED North Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MICHAEL COLLINS, currently incarcerated at Rivers Correctional Institution 145 Parker's Fishery Road Winton, NC 27986 LOUIS CALLAND, currently incarcerated at Rivers Correctional Institution 145 Parker's Fishery Road Winton, NC 27986, and JOHN ROE, currently incarcerated at Rivers Correctional Institution 145 Parker's Fishery Road Winton, NC 27986 Each individually and on behalf of all others similarly situated, *Plaintiffs,* v. THE GEO GROUP, INC., a Florida for-profit corporation c/o Corporate Creations Network Inc. 15720 John J. Delaney Drive #300 Charlotte, NC 28277 UNITED STATES OF AMERICA, through its department, the FEDERAL BUREAU OF PRISONS, 320 First Street, N.W. Washington, DC 20534 and HARLEY LAPPIN, in his official capacity as Director of the United States Bureau of Prisons, 320 First Street, N.W. Washington, DC 20534, *Defendants.*	Civ. No. 08-CV-00021-H **FIRST AMENDED COMPLAINT** **JURY TRIAL DEMANDED**

**FIRST AMENDED CLASS ACTION COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. The Plaintiffs bring this class action lawsuit to remedy the dangerous, grossly inadequate, and inhumane level of medical care at the Rivers Correctional Institution ("Rivers"), where the Plaintiffs are serving sentences. The system of delivering health care at Rivers has placed men at Rivers at substantial and ongoing risk of serious injury or premature death, and has caused permanent physical damage and profound mental and physical pain to Plaintiffs and other persons incarcerated there.

2. Rivers is a private, for-profit correctional facility. It is owned and operated by Defendant THE GEO GROUP, INC. ("GEO"), a publicly-traded corporation. GEO houses prisoners at Rivers pursuant to a contract with Defendant the UNITED STATES OF AMERICA, through its department, the FEDERAL BUREAU OF PRISONS ("BOP").

3. The health care system at the Rivers facility is broken. Medical professional staffing levels at Rivers are grossly inadequate. Defendants routinely refuse to provide prisoners at Rivers with treatment for their serious chronic medical conditions. When men arrive at Rivers, Defendants routinely and arbitrarily switch and discontinue drug regimens that were carefully developed and calibrated by private medical professionals and by medical professionals at other correctional institutions, without consultation with the affected patients and without regard to the negative therapeutic consequences. When prisoners' medications are not arbitrarily discontinued, Defendants' dysfunctional system for distributing medicine forces sick and disabled men to stand outside for hours in all weather, and sometimes requires them to choose between

receiving their drugs and eating their meals. The Rivers facility has a policy of confiscating prescribed medical devices, such as braces and orthopedic shoes, for no penological reason, even when such devices have been prescribed and provided by other correctional institutions. Defendants then fail to replace these devices, causing previously ambulatory persons to rely on wheelchairs for mobility. Rivers provides no physical therapy; its personnel simply disregard explicit instructions in prisoners' sentencing reports and medical records to provide this treatment. Serious mental health needs are ignored even when they are specifically identified in sentencing documents or other medical records. The consequences of this conduct are exacerbated because the prisoners at Rivers are older and sicker on average than the United States prison population as a whole.

4. By allowing this broken medical system to continue as detailed in this First Amended Complaint, Defendants have permanently harmed men at Rivers; have precipitated numerous and otherwise avoidable acute medical crises; have caused men at Rivers to experience chronic and debilitating pain and suffering; and have contributed to the needless disfigurement, increased morbidity, and serious physical injury of numerous men.

5. Men incarcerated at Rivers depend upon their custodians, both federal and private, to provide Constitutionally adequate care. GEO has also specifically agreed in its contract with Defendant BOP that it will provide Plaintiffs with medical services that are commensurate with community standards. Defendants' generally applicable policies, guidelines, and practices have all contributed to GEO's failure to respond adequately to prisoners' serious medical needs. Through these unlawful policies and practices,

Defendants have manifested a pervasive and deliberate indifference to the health needs of their charges. As a result, Defendants have knowingly and willfully denied Plaintiffs of their rights to adequate medical care in violation of the U.S. Constitution, federal law, state law, and contract.

6. Prisoners with disabilities at Rivers suffer doubly at the hands of Defendants because in addition to being denied adequate health care, they are also subject to discrimination: they are excluded from and denied access to the programs, services, facilities, and activities at Rivers, because Defendants refuse to make reasonable accommodations. Defendants' discriminatory acts against prisoners with disabilities include their refusal to add ramps or disabled accessible bathrooms to common areas; their failure to install internal doors, which prisoners must use to move from one part of the facility to another, that can be opened by persons with disabilities; and their failure to provide adequate mental health services and treatments that are required by prisoners with disabilities.

7. Upon information and belief, the deficiencies and deprivations described above and detailed in this Complaint are the result both of Defendant GEO's aggressive efforts to cut costs and boost profits and of Defendant BOP's persistent failure to ensure that GEO fulfills the federal duty it has undertaken to provide. Because the harms caused by Defendants' policies and practices will continue without the aid of the Court, Plaintiffs seek declaratory and injunctive relief.

PARTIES

A. Plaintiffs

8. Plaintiffs represent and are members of a class of persons including current and future prisoners at Rivers who, during their incarceration at Rivers, are wholly dependent upon the organizations, systems, policies, practices, and institutional conditions of Defendants for their receipt of medical, dental, and mental health care.

9. Plaintiffs Calland and Roe represent and are members of a sub-class of the Class who are "individuals with a disability," as that term is defined in Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, *et seq.* (the "Rehabilitation Act"), and the regulations promulgated under that statute, and who have been subjected to discrimination and excluded from and denied access to the programs, services, facilities, and activities at Rivers due to their disabilities, in violation of Section 504 of the Rehabilitation Act.

10. Plaintiff MICHAEL COLLINS: Mr. Collins is a 43-year-old man incarcerated at Rivers. He has been assigned Federal Register Number 06276-007. Mr. Collins arrived at Rivers in February 2006. Mr. Collins was diagnosed as a diabetic prior to arriving at Rivers. In March 2006, one month after his arrival, he requested diabetic shoes when he noticed he was developing a callus on his left foot from the standard issue boots. Although the request was initially approved, the treatment was excessively delayed. At this time, Rivers medical staff diagnosed Mr. Collins with Methicillin-resistant Staphylococcus aureus (commonly referred to as "MRSA"), a highly contagious, drug-resistant bacterial infection, on the same foot. When Mr. Collins also requested to see a podiatrist in March 2006, he instead was directed to meet with the general

practitioner at Rivers who "cut out" the callus, leaving a "hole" in the bottom of Mr. Collins's left foot. Defendants neither treated the MRSA infection nor adequately treated the wound created when the doctor cut out the callus. The infection on Mr. Collins's foot quickly worsened to such an extent that, two months later, when a member of the medical staff was changing the bandage, the infection "squirted out" of a new hole that had developed in the top of his foot. Mr. Collins was unable to walk. He was transported to Roanoke-Chowan Hospital, where an orthopedist removed some dead skin while Mr. Collins was under anesthesia; he remained hospitalized for several nights and was administered intravenous antibiotics. Mr. Collins's foot did not properly heal, however, and he endured constant pain for ten months while repeatedly requesting medical assistance. In January 2007, the Rivers general practitioner examined Mr. Collins's foot again and removed a piece of bone from the festering wound. Two days later Mr. Collins was rushed to an orthopedist, who told Mr. Collins that his foot had deteriorated to the point that the front half of his foot required amputation. The front portion of his left foot and all of his toes on that foot were amputated shortly thereafter. When Mr. Collins returned to Rivers, Defendants refused to pay for or supply him with prosthetic shoes, causing Mr. Collins to suffer for over seven months without the medical supplies necessary for him to walk properly. He received a prosthetic insert for his shoe only after an outside medical provider offered to give it to him at no cost to Defendants. As a consequence of Defendant's conduct, Mr. Collins endured months of intense pain and, at times, immobility. Since the amputation, Mr. Collins is unable to attend to many of the activities of daily living.

11. Plaintiff LOUIS CALLAND: Mr. Calland is a 70-year-old man incarcerated at Rivers. He has been assigned Federal Register Number 32355-007. Mr. Calland arrived at Rivers in August 2004. Mr. Calland has arthritis, degenerative bone disease, and diabetes. Since 2003, he has been reliant on a wheelchair due to the pain associated with walking. When Mr. Calland arrived at Rivers, he requested physical therapy treatment. Defendants informed him that no physical therapy services were available at the facility and that none would be provided. Mr. Calland's condition has worsened since he arrived at Rivers and he suffers extreme pain. Despite Mr. Calland's frail health, Defendants require him to maneuver outside and wait in the "pill line" to receive his medication every day, regardless of weather conditions. Mr. Calland is unable to access many of the facilities at Rivers because they are not accessible to persons with physical disabilities. Traveling from the recreation area to the main area requires Mr. Calland and other prisoners with physical disabilities to surmount a large curb. Mr. Calland cannot maneuver around this obstacle in his wheelchair without assistance. Additionally, many of the common area bathrooms are not accessible to persons with physical disabilities such as Mr. Calland. The few bathrooms accessible to Mr. Calland and other prisoners with physical disabilities are not easily accessible from most common areas at Rivers, and in some instances require them to navigate a path with curbs and other obstacles. The shower facilities do not include hand-held shower heads and adequate seating in order to accommodate a person in a wheelchair. Many doors that men must use to move from one part of the facility to another are extremely difficult to open by persons with physical disabilities. This is particularly true for a man of Mr. Calland's age and condition, which has deteriorated further because he has not been

given the opportunities to improve his strength through therapy. As a result of Defendants' failure to provide accessible facilities, Mr. Calland has been denied equal access to and receipt of the facilities, programs, services, and activities at Rivers.

12. Plaintiff JOHN ROE is a man currently incarcerated at Rivers. Before arriving at Rivers Mr. Roe had been diagnosed as suffering from depression and schizophrenia. As a result of his mental health conditions, Mr. Roe has attempted suicide on at least three occasions. When he is denied his medications, Mr. Roe's chronic depression, paranoia, and frequent hallucinations affect his ability to concentrate and to interact with other people, resulting in limitations of major life activities including thinking, reading, communicating with prison staff and others, following directions, and protecting himself from harm. Mr. Roe also suffers from a number of chronic, preexisting physical conditions. During his incarceration at Rivers, Mr. Roe repeatedly has sought medical and mental health care from Defendants. He has been permitted to see a mental health professional on only a handful of occasions, and his psychotropic medications have been either discontinued or replaced because, he was told in substance, "This is not the jail. You're not in the community. This is a business." Mr. Roe continues to be denied access to a mental health professional despite his well-documented history of mental illness. Additionally, even though non-party medical professionals had directed that Mr. Roe undergo hip replacement surgery, Rivers denied him this treatment, and instead prescribed pain medication. On several occasions during his incarceration, Mr. Roe has asked to see the prison doctor regarding his chronic physical conditions and has either been refused care or has experienced lengthy delays in receiving it due to the fact that there is only one prison doctor at Rivers. As a result of this failed system, Mr.

Roe has suffered from insomnia and hallucinations, and continued to experience heightened chronic pain from his various physical conditions.

13. As a result of Plaintiffs' incarceration at Rivers, each of them, as well as the Class and the Disability Sub-Class, were and are wholly dependent on Defendants for the delivery of care to address their health care needs. Plaintiffs are victims of the systemic failures of Defendants to provide lawfully required health care services to Rivers residents and have been injured as a result of Defendants' conduct. The Plaintiffs with disabilities and the Disability Sub-Class also have suffered and continue to suffer injuries as a result of the Defendants' discriminatory conduct in excluding them from and denying them access to the programs, services, facilities, and activities at Rivers based on their disabilities.

B. Defendants

14. Defendant GEO is a for-profit corporation formed and existing under the laws of the State of Florida and having its principal place of business in the State of Florida. GEO is in the business of building, owning, operating, and managing correctional, detention, mental health, and residential treatment facilities in the United States and around the world. GEO is a publicly-traded corporation and is listed on the New York Stock Exchange under ticker symbol "GEO." GEO reports that it manages a total of 53 correctional, detention and mental health facilities, with a capacity of over 63,000 beds. In 2007, GEO had revenues totaling over $900 million and profits of over $50 million. One of the correctional facilities built, owned, operated, and managed by GEO, pursuant to a written contract with the BOP, is Rivers. At all times relevant to this Complaint, Defendant GEO had undertaken the duty to provide Constitutionally adequate

medical care owed to Plaintiffs by Defendant UNITED STATES OF AMERICA acting through the BOP.

15. Defendant the UNITED STATES OF AMERICA, pursuant to federal law, has mandated that its department, the BOP, have the responsibility for overseeing, controlling, managing, and supervising the federal prison system, including Rivers, and those persons incarcerated therein.

16. Defendant HARLEY LAPPIN is employed by the BOP as its Director. As the Director of the BOP, Defendant LAPPIN is charged with the custody and care of each Plaintiff as well as each member of the Class and Sub-Class while incarcerated at Rivers. Defendant LAPPIN is responsible for overseeing the administration of the BOP and approving all BOP policies relating to the treatment of persons under its care, including those persons incarcerated at Rivers. At all times relevant to this Complaint, Defendant LAPPIN was acting as an employee and agent of Defendant UNITED STATES OF AMERICA.

OTHER AFFECTED PERSONS

17. Mr. Keith Mathis is a 46-year-old-man who was incarcerated at Rivers from March 2006 to March 2008. He has been assigned Federal Register Number 35973-007. Mr. Mathis sought treatment for a dental cavity shortly after he arrived at Rivers. Though the Rivers dentist concluded in March 2006 that "oral surgical procedures" were required, Mr. Mathis was not treated by the dentist until May 24, 2006, by which time the tooth had worsened. The dentist refused Mr. Mathis's request to pull the tooth and told Mr. Mathis that he would "take care of it" with a filling. The dentist applied the filling material over the tooth without first drilling and removing the diseased tooth material.

Although Mr. Mathis was unable to bite or chew normally, his request to see the dentist for a follow-up appointment was denied; he was told by a member of the medical staff that he would "just have to suffer." Shortly thereafter, Mr. Mathis began experiencing severe pain, and a knot-like growth appeared on his neck near the infected tooth. His face and neck began to swell from infection. Mr. Mathis sought medical treatment by going directly to the infirmary, but a nurse refused him treatment and sent him back to his cell. The next day the swelling was visibly worse and began to spread up his face toward his eye. Mr. Mathis made repeated attempts to seek medical treatment from Defendants and was repeatedly denied care for another week. By July 2006, he was in constant pain and could not fully open his mouth or chew properly. During this period an open sore had also formed on the inside of Mr. Mathis' mouth and had started oozing "green slime." Mr. Mathis began feeling faint and was shaking and sweating. A guard took Mr. Mathis to the Rivers infirmary, where, for the first time in months of repeated pleas for medical care, Mr. Mathis was treated with antibiotics and pain medication. On July 19, 2006, Mr. Mathis was in such severe pain that he twice sought medical attention from Defendants, who had done nothing to address the swelling and abscess that they noted in their medical records. Sweating and feverish, with his face and neck swollen from an infected sore oozing green slime, and weakened from hunger, Mr. Mathis was finally transported to a local hospital later that same evening. A few hours after arriving at the hospital the swollen side of Mr. Mathis's face "burst open." Mr. Mathis underwent emergency surgery and spent three days in the hospital. He was told that his condition was so serious that the doctors had been forced to cut open his face to remove a raging infection. As a direct result of Defendants' inaction and indifference, Mr. Mathis

suffered excruciating pain for several months, has lost feeling on the affected side of his face, cannot fully open his mouth, cannot bite or chew properly, drools uncontrollably, and bears a permanent scar down one side of his face.

18. Mr. Reon Holloway is a 26-year-old man who was incarcerated at Rivers from December 2005 to August 2007. He has been assigned Federal Register Number 36620-007. Mr. Holloway is immobilized from the waist down, experiences frequent seizures, and suffers from severe twitching and intense pain in his legs. Before arriving at Rivers, Mr. Holloway had received physical therapy for his conditions and had progressed to the point that he was able to walk with the help of a walker, leg braces, and orthopedic shoes that integrate with those braces. Mr. Holloway had also been prescribed medication for pain management and bone loss by doctors at the National Rehabilitation Hospital ("NRH"). Defendants informed Mr. Holloway upon his arrival at Rivers that no physical therapy is available at the facility, explaining that although "it would be good" for him to get therapy, "we just don't have it here." Defendants told Mr. Holloway that his orthopedic shoes were the wrong color (gray) and confiscated them for 18 months. Without orthopedic shoes, Mr. Holloway was unable to use his leg braces and walker. Defendants returned Mr. Holloway's orthopedic shoes shortly after Mr. Holloway met with attorneys investigating the medical conditions at Rivers; however, by that point, his inability to walk for 18 months, coupled with the absence of physical therapy, had weakened his legs to the point that he was no longer able to use the orthopedic devices. Newly reliant on a wheelchair, Mr. Holloway was unable to access many of the facilities at Rivers because they are not accessible to persons with disabilities. There were no ramps at Rivers for Mr. Holloway to use. Traveling from the recreation area to the main

area required Mr. Holloway and other prisoners with physical disabilities to surmount a large curb. Mr. Holloway could not maneuver around this obstacle in his wheelchair without assistance. Additionally, many of the common area bathrooms were not accessible to persons with physical disabilities such as Mr. Holloway. The few bathrooms accessible to Mr. Holloway and other prisoners with physical disabilities were not easily accessible from most common areas at Rivers, and in some instances required them to navigate a path with curbs and other obstacles that impede their trips such that they often cannot reach an accessible bathroom in time to use it. The shower facilities did not include hand-held shower heads and adequate seating in order to accommodate a person in a wheelchair. The tables in the dining hall and classroom were not designed to accommodate persons with physical disabilities; the gym lacked equipment usable by persons with physical disabilities; and many doors that men must use to move from one part of the facility to another could not be opened by persons with physical disabilities. As a result of Defendants' failure to provide truly accessible facilities, Mr. Holloway was denied equal access to and receipt of the facilities, programs, services, and activities at Rivers. In addition, Defendants refused to continue Mr. Holloway's medication regimen for bone deterioration prescribed by the NRH; they offered to replace his bone loss medication with an antacid. Defendants also confiscated the sophisticated regime of prescription pain medication that had been prescribed for Mr. Holloway's chronic leg pain at a D.C. correctional facility, offering to replace it with ibuprofen. As a consequence of Defendants' conduct, Mr. Holloway's physical condition deteriorated severely. Mr. Holloway was needlessly forced to rely on a wheelchair, lost the range of

mobility he had developed in his legs, suffered considerable pain, and was prevented from utilizing the facilities, programs, services, and activities at Rivers.

19. Mr. David Rogers is a 45-year-old man who was incarcerated at Rivers from April 2006 to June 2008. He has been assigned Federal Register Number 12648-007. A car accident in 2000 left Mr. Rogers paralyzed from the neck down, but following extensive physical therapy, he eventually regained the ability to walk with the assistance of a walker. His sentencing order states that he should have been housed in a medical facility that can accommodate his physical rehabilitation. Mr. Rogers's former doctor at Kernan Orthopedics and Rehabilitation Hospital of the University of Maryland warned Defendants that without continued physical therapy and treatment, Mr. Rogers might lose his hard-won mobility, because his legs would spasm and contract into a seated position. Nonetheless, when he arrived at Rivers, Mr. Rogers was told that no physical therapy services were available at the facility, and that none would be provided. In response to his request for physical therapy, medical staff suggested that he locate and tie a water jug to his leg and, without medical supervision or instruction, do exercises. Upon information and belief, the Rivers staff also refused to continue Mr. Rogers's medication regime, which had been developed by NRH doctors. Without physical therapy or necessary medications, Mr. Rogers' condition severely deteriorated. As a consequence, he became unable to walk or to straighten his legs past a 90-degree angle – precisely the outcome that his doctor warned of – and now must rely on a wheelchair for ambulation. He was unable to access many of the facilities at Rivers because they were not accessible to persons with physical disabilities. There were no ramps at Rivers for Mr. Rogers to use. Traveling from the recreation area to the main area required

Mr. Rogers and other prisoners with physical disabilities to surmount a large curb. Mr. Rogers could not maneuver around this obstacle in his wheelchair without assistance. Additionally, many of the common area bathrooms were not accessible to persons with physical disabilities such as Mr. Rogers. The few bathrooms accessible to Mr. Rogers and other prisoners with physical disabilities were not easily accessible from most common areas at Rivers, and in some instances required them to navigate a path with curbs and other obstacles that impeded their trips such that they often could not reach an accessible bathroom in time to use it. The shower facilities did not include hand-held shower heads and adequate seating in order to accommodate a person in a wheelchair. The tables in the dining hall and classroom were not designed to accommodate persons with physical disabilities; the gym lacked equipment usable by persons with physical disabilities; and many doors that men must use to move from one part of the facility to another could not be opened by persons with physical disabilities. As a result of Defendants' failure to provide truly accessible facilities, Mr. Rogers was denied equal access to and receipt of the facilities, programs, services, and activities at Rivers.

20. Mr. Benjamin Hamilton is a 48-year-old man who was incarcerated at Rivers from March 2003 to September 2008. He has been assigned Federal Register Number 32071-007. Mr. Hamilton arrived at Rivers in March 2003. In December 2004, Mr. Hamilton discovered a boil on his leg, and, within three days, his entire leg was swollen. A nurse told him to put a hot compress on his leg; he received no medication or other treatment. Several more boils began to appear on his leg, and by January 2005, both of his legs were covered in boils. The nursing staff told Mr. Hamilton to continue using hot compresses, but, again, he received no medication or other treatment.

In February 2005, another prisoner told Mr. Hamilton that it looked like Mr. Hamilton had MRSA. The other prisoner advised Mr. Hamilton that many other men at Rivers were suffering from the same symptoms and that Mr. Hamilton should get the boils cultured in accordance with standard medical protocols. Despite numerous large, painful boils on his body and repeated requests to Defendants for medical treatment, Mr. Hamilton was not allowed to see a doctor until February 2005 -- two months after he first sought medical treatment. He was not diagnosed with MRSA until April 2005 -- four months after he first sought treatment. While Mr. Hamilton was initially put on antibiotics, which temporarily halted the symptoms, Defendants discontinued the antibiotics after five days, causing the boils to return twice more in Spring 2005 on his legs and again in Spring 2006 on his penis. When he reported the outbreak to a nurse, she responded, without examining him, that this was just a part of aging and a normal problem for older men. By Fall 2006, Mr. Hamilton had begun to develop a boil on his face. He received no treatment for any of these conditions. The boils caused great pain and permanent scarring. Mr. Hamilton has also sought medical treatment for severe and continuing pain in one knee. Without conducting any physical examination or tests, a doctor at Rivers told Mr. Hamilton that it was arthritis and suggested that he purchase some ibuprofen from Defendant GEO at the facility commissary. On another occasion Mr. Hamilton asked for an eye examination to update the prescription for his glasses, which had last been updated at the D.C. Jail prior to his arrival at Rivers. An ophthalmologist has previously diagnosed Mr. Hamilton with a type of refractive error known as presbyopia, which renders him unable to focus on objects. Mr. Hamilton has worn glasses for many years and cannot function normally without them. Without

examining Mr. Hamilton, a Rivers nurse told him that his eyesight was fine and that he did not need glasses.

21. Mr. Harold Robinson is a 51-year-old man incarcerated at Rivers from September 2006 to August 2007. He has been assigned Federal Register Number 03180-000. Mr. Robinson suffered a serious back injury in an automobile accident in 2006. Following the accident Mr. Robinson received extensive physical therapy at a local hospital, and he continued to see a physical therapist at a D.C. jail facility. This therapy helped relieve the severe pain from his back injury. When he arrived at Rivers, however, his physical therapy was halted because Rivers does not offer physical therapy, regardless of need or prescribed treatment. Mr. Robinson repeatedly requested physical therapy and was repeatedly denied any such therapy by medical staff. As a result of the discontinuation of physical therapy, he experienced a loss of mobility and severe and steadily worsening pain, for which the medical staff suggested that he take ibuprofen. A few days before Mr. Robinson was scheduled to meet with attorneys investigating the medical conditions at Rivers in January 2007, he was called to the infirmary and given Vicodin®, a strong painkiller; this medication was halted shortly after the attorneys left the facility. Despite Mr. Robinson's disability, Defendants denied Mr. Robinson's request for a chair with back support to replace his standard-issue stool; a member of the medical staff told him that he had "a snowball's chance in hell" of ever getting such a chair from the facility.

22. Mr. Charles Lewis is a 59-year-old man who was incarcerated at Rivers until March 2006. He has been assigned Federal Register Number 035334-007. Prior to being incarcerated at Rivers, Mr. Lewis had been diagnosed as suffering from Bell's

Palsy and had suffered three heart attacks and two strokes. As result of these conditions, his left side was substantially weakened and the left side of his face drooped, which altered his speech. While incarcerated in D.C. jail facilities prior to his arrival at Rivers, Mr. Lewis was evaluated by a specialist and sent to a local hospital for physical and speech therapy three times per week; was under the care of cardiology and neurology specialists; and was on a carefully calibrated, extensive medication regime. Mr. Lewis also used a physician-prescribed back brace and a knee brace. As a result of his medical care, his weakened left side became progressively stronger. As part of his sentencing, the D.C. courts took note of Mr. Lewis's medical conditions and recommended treatment. Upon his arrival at Rivers, Mr. Lewis was placed in disciplinary segregation for possessing the nitroglycerine pills prescribed to him by the D.C. Jail for his heart condition and chest pains. His physician-prescribed back brace and knee brace were confiscated and never returned or replaced. Despite the fact that Mr. Lewis arrived with refillable prescriptions for his medications, Defendants refused to provide Mr. Lewis with some of his medications, and dramatically changed others, causing Mr. Lewis to experience dizziness and disorientation. When Mr. Lewis reported these side effects, the Rivers doctor provided no medical assessment or treatment. In December 2005, the dizziness became so severe that Mr. Lewis fell and injured his head while trying to sit on a bench. When he sought medical attention for his injuries he was offered ibuprofen by a nurse. Mr. Lewis advised the doctor at Rivers that the D.C. courts had recommended special medical treatment as part of his sentencing, and that he had been provided with physical therapy while at the D.C. Jail. In response, the Rivers doctor stated that physical therapy services were not provided at Rivers. During his incarceration at Rivers, Mr.

Lewis never saw a neurologist, cardiologist, or physical therapist as he had regularly done before arriving at Rivers. As a result of the medical care that he received at Rivers, the strength that Mr. Lewis developed in his left side before he arrived at Rivers was lost. He also frequently had to skip meals and wait outdoors in a "pill line," in all weather, in order to get his medications three times per day. Despite his multiple chronic and severe medical conditions, and despite seeking medical care on numerous occasions, Mr. Lewis was never treated by a medical specialist for his conditions while at Rivers.

23. Mr. Doe is a D.C. resident who was incarcerated at Rivers until 2008. At the time of his arrival at Rivers, Mr. Doe had previously been diagnosed as HIV positive, diabetic, hypertensive, and suffering from Hepatitis C, and had suffered from a stroke. As a result of his conditions, at the time of his arrival at Rivers Mr. Doe was being treated with a carefully calibrated medication regime prescribed by doctors at the Federal Medical Center in Rochester, Minnesota (a facility affiliated with the Mayo Clinic) and maintained by the D.C. jail facilities, including at least eight prescription medications and a special diet. Mr. Doe arrived at Rivers with a complete 30-day supply of all his medications. Defendants promptly confiscated those medications and denied Mr. Doe all medication for the first week of his incarceration at Rivers. Despite Mr. Doe's frail health, Defendants required Mr. Doe to stand outside in the "pill line" multiple times a day to receive his medications. As a result of Defendants' faulty system, Mr. Doe was forced on a routine basis to miss his special dietary meal so that he could obtain his medications. As a consequence, Mr. Doe lost over 15 percent of his body weight at Rivers, and suffered from such severe weakness that he was unable to participate in outdoor activities or walk normally.

24. Mr. Fowler is a 52-year-old man who was incarcerated at Rivers from November 2005 until May 2007, when he was transferred to the Federal Correctional Institution in Petersburg, Virginia. He has been assigned Federal Register Number 00472-000 and is not scheduled to be released from federal custody, at the earliest, until July 2009. At the time of his arrival at Rivers, Mr. Fowler had previously been diagnosed with and was being treated for both diabetes and high blood pressure. As a result of these conditions, Mr. Fowler was required to conduct multiple "finger prick" tests each day to monitor his blood sugar levels, take insulin pills throughout each day, and take medication daily for his high blood pressure. When he arrived at Rivers, Mr. Fowler's diabetes and high blood pressure medications were confiscated and not returned. For several weeks, Mr. Fowler was forced to obtain insulin pills from other diabetic prisoners at Rivers to avoid hypoglycemic shock. Neither Mr. Fowler nor the prisoners who shared their insulin received proper medication. Despite repeated requests by Mr. Fowler, Defendants continue to refuse to allow daily monitoring of Mr. Fowler's blood sugar levels, requiring him instead to submit sick call requests for the following day each time he wanted to be monitored. Defendants advised Mr. Fowler that the blood pressure medication that he had been prescribed was "too expensive." They replaced it with an alternate medication that caused Mr. Fowler severe headaches, dizziness and swelling in his extremities. The actions of Defendants described here caused Mr. Fowler substantial pain and suffering, and increased his risk of serious and potentially life-threatening complications from his chronic conditions.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, § 1343 and § 1367.

26. This Court has personal jurisdiction over each of the Defendants.

27. Venue of this action lies in the Eastern District of North Carolina pursuant to 28 U.S.C. §§ 1391 (b), (c) and (e).

STATEMENT OF FACTS

A. GEO Wins a Contract to House BOP Prisoners at Rivers

28. Pursuant to federal law, the BOP generally has the authority to designate the place of incarceration for prisoners in federal custody. The BOP uses both BOP-operated correctional facilities as well as privately-owned and -operated facilities to house prisoners in federal custody. Ostensibly, by housing a portion of its prison population at private prisons such as Rivers, the federal government is able to reduce its expenditures for those prisoners, meet budget constraints imposed by Congress, and thereby benefit financially from contracting out services to the lowest bidder.

29. GEO is the second largest private prison operator in the United States. Approximately one-third of its business is with agencies of the U.S. government, including the BOP, U.S. Marshals Service, and U.S. Immigration and Customs Enforcement. In its corporate documents, GEO highlights the company's "long-term customer relationships" with these federal agencies, and states that GEO "intend[s] to capitalize on our long-term relationships with governmental agencies to continue to grow our correctional, detention and mental health facilities management services and to become a preferred provider of complementary government-out-sourced services."

Through its commercial sales and marketing efforts, GEO has successfully competed for more than a dozen federal contracts from federal agencies.

30. In 1998, the BOP issued an RFP seeking a private contractor to house a portion of the 50 percent of D.C. Code felony offenders who by law must be incarcerated in private prisons. On information and belief, GEO, by its predecessor Wackenhut Corrections Corporation, submitted a response to that RFP and negotiated with the BOP over the commercial and other terms of such an agreement, including GEO's obligations with respect to the provision of medical, dental, and mental health care. GEO's offer was accepted, and a contract between GEO and BOP to house prisoners at Rivers (the "Rivers Contract") was formed. A copy of the Rivers Contract is attached as Exhibit A to this Complaint in the form that it was received from federal officials, and is incorporated by reference.

31. Pursuant to the Rivers Contract, GEO has agreed, under BOP supervision and control, to house low-security, male offenders at GEO's Rivers facility. Rivers is a private, for-profit correctional facility owned and operated by GEO. It is located at 145 Parker's Fishery Road, Winton, N.C. 27986. The BOP has sent thousands of men to Rivers since the facility opened in 2001. Rivers currently houses approximately 1,300 persons.

B. GEO's Obligation to Provide Medical, Dental, and Mental Health Care under the Supervision and Control of the BOP

32. Individuals incarcerated at Rivers are wholly dependent on GEO and the BOP for their medical, dental, and mental health care and related services. By entering into the Rivers Contract, GEO, under BOP supervision and control, assumed

responsibility for the medical treatment of persons incarcerated at the Rivers facility, and voluntarily submitted to long-term regulation and oversight by the BOP.

33. The Rivers Contract spells out in great detail the services that GEO is required to provide to and for the benefit of Rivers prisoners under the direct daily supervision and control of the BOP. The Rivers Contract requires GEO to provide "all essential health services" and to adhere to "the U.S. Constitution," and "all applicable Federal, state and local laws and regulations governing the delivery of health services". GEO also undertook to "establish the necessary quality controls to ensure all policies and procedures are designed and implemented in a manner to promote orderly and efficient delivery and management of health services to the inmate population." Among other things, the Rivers Contract also requires GEO to provide a broad range of health services, maintain adequate staffing levels, and comply with accessibility standards. The BOP, in turn, is charged with monitoring and overseeing GEO's compliance with those contract obligations, and provides for on-site BOP monitors at the Rivers facility.

34. The BOP's Privatization Management Branch of its Correctional Programs Division has specific responsibility for oversight and monitoring GEO's activities at Rivers, and the BOP exercises control over GEO's personnel decisions, policies, and procedures.

35. The Rivers Contract is a fixed price contract providing for a set payment to GEO per time period, irrespective of GEO's costs of providing the services, including health care services, required by the BOP. Thus, to the extent that GEO is able to reduce the costs of the medical, dental, and mental health services offered at Rivers, GEO's profits are increased.

C. Defendants' Unconstitutional and Illegal Organizations, Systems, Patterns and Practices at Rivers

36. It is well known to Defendants that the population of persons incarcerated in federal prisons suffer from the full spectrum of routine medical problems found in the general population. Those problems include acute conditions such as fractures and infections, as well as chronic diseases such as epilepsy, diabetes, tuberculosis, and HIV. It is also well known to Defendants that prisoners suffer from a higher rate of serious medical, dental, and mental health problems and conditions than does the American population as a whole. Defendants are also aware that the population at Rivers is older than typical prison populations, and suffers from a correspondingly higher incidence of health problems than the general prison population in the United States.

37. Defendants are deliberately indifferent to Plaintiffs' serious medical needs. Defendants' indifference has produced and perpetuated a health care delivery system at Rivers that is so grossly inadequate as to violate the legal rights of the Plaintiffs, the Class, and the Sub-Class. The systemic failure of the Rivers health care delivery system is illustrated by the following:

a. Grossly Inadequate Access to Health Care—Defendants routinely and knowingly fail to provide prisoners with access to essential health care. Prisoners suffering from serious and even acute conditions are habitually and indiscriminately denied treatment. Prisoners have been denied care for complex, multi-symptom ailments on the arbitrary ground that the doctor will not treat more than one condition per appointment. There is a substantial backlog of requests for routine and emergency medical and dental care, resulting in frequent and dangerously lengthy delays in accessing care. Rivers medical staff routinely

refuse to refer prisoners to outside health care providers, or unreasonably delay referring prisoners to outside health care providers, even in situations where the prisoner's medical, dental, or mental health conditions far exceed the therapeutic capabilities of Defendants or their facilities, and where treatment would be a necessary component of Defendants' obligation to provide legally mandated care. Mental health care services are wholly inadequate. Physical therapy services are not offered. Defendants fail to provide lawfully adequate chronic care. On information and belief, necessary health care has in some cases been denied based solely on a prisoner's expected release date, even when this date is over one year away, in an effort to avoid incurring the cost of such care.

b. Grossly Insufficient Staffing, Training and Supervision—The number of qualified health care staff at Rivers is wholly inadequate to provide care to Rivers' 1,300 residents. On information and belief, there is one medical doctor who treats and supervises the care of all the prisoners at Rivers. On information and belief, this position has been filled by three different doctors in the past year, at least two of whom were not full time staff members at Rivers. There is only one part-time dentist on staff, who sees patients only irregularly. There is no physical therapist on staff or available on a contract basis for prisoners. The lone part-time psychologist attends to prisoners at Rivers on an irregular basis. The number of medical staff is grossly inadequate to meet the significant and documented medical, dental, and mental health needs of the men at Rivers. This grossly inadequate staffing is due, in part, to the fact that Defendants: (i) do not actively attempt to recruit and hire sufficient, competent

medical staff; (ii) fail to train and supervise medical personnel; and (iii) are unable to retain those medical staff members who are hired. On information and belief, as a consequence of the severe staffing shortage, corrections officers with little or no health care training may serve as the gatekeepers for Plaintiffs' access to routine and even emergency medical care, leading to acute medical crises.

c. Failure to Provide Proper Access to Medications—Arriving prisoners' prescription medications are routinely confiscated without regard to the impact on the prisoner's health. Prisoners often have to wait a week or more before receiving substitute medications at Rivers. Determinations regarding medication regimens, and the composition of those regimens, are made based on the cost of the medications to GEO rather than the best interests of the patient. Prisoners' medications are arbitrarily changed to less expensive medications without proper follow up to assess the efficacy and side effects of the new medications. Upon information and belief, many prisoners have been denied necessary medication altogether as a cost-saving measure for the facility. Prisoners at Rivers may only obtain certain medications by standing in the "pill line." The pill line forms outside a window from which a nurse dispenses most medication available at the prison. The pill line window opens to an outside walkway that is open to the elements, except for a partial roof covering the walkway. Because the pill line moves very slowly, sick, disabled, and elderly prisoners must wait outdoors up to 60 to 90 minutes and sometimes longer for each dose of their needed medicines; for a person receiving three doses a day, this can add up to several hours a day waiting in the pill line to receive medication.

Because of the extreme delays in distributing medication, prisoners are sometimes forced to choose between remaining in the pill line to receive their medication, or leaving the pill line to obtain food. Men who leave the pill line to obtain food have been punished for failing to take their medication. Men who have helped sick or elderly persons or persons with disabilities go to the front of the pill line have also been punished by Defendants. The pill line is a failed system for providing necessary medical care that has directly contributed to the poor health and declining condition of many prisoners at Rivers, particularly the sick and elderly.

d. Failure to Contain or Treat Infectious Diseases—Rivers has failed to respond reasonably or appropriately to outbreaks of MRSA, a highly contagious bacterial infection that is often found in prisons and other institutional settings. Defendants' failure to respond properly to MRSA risks serious injury to all persons at Rivers, and to the communities where Rivers personnel live and into which Rivers prisoners are released or transferred. Because MRSA is resistant to standard antibiotic treatments, health care professionals are customarily instructed to take a sample of a potential infection site and "culture" it to determine which bacterial organism caused the infection and which antibiotic treatment will be most effective. On information and belief, such cultures are seldom if ever taken at Rivers. Prisoner complaints of possible MRSA boils are often disregarded, and some prisoners have been instructed to apply hot compresses or "shower with Dial soap" to rid themselves of such boils. When antibiotics are provided, they are generally prescribed for only brief periods and without benefit of any kind of

laboratory test. As a result, many prisoners have experienced chronic and persistent MRSA infections, leaving them scarred and potentially exposed to life-threatening illnesses.

38. Despite Defendants' actual and constructive knowledge of these and other significant failures and deficiencies in the organizations, systems, policies and practices for the delivery of medical, dental, and mental health services at Rivers, Defendants have refused or consciously ignored the need to take immediate actions to protect Plaintiffs, the Class, and the Sub-Class from ongoing and future harm. Defendant GEO also has failed to meet the basic requirements of its contract with the BOP -- including adherence to the U.S. Constitution and all applicable Federal, state, and local laws -- while Defendant BOP has failed to provide lawfully adequate oversight or supervision of GEO's conduct. Because GEO is able to retain any funds not expended for necessary medical care that is required under this fixed price contract, the failure of Defendant BOP to effectively monitor GEO's performance, and impose sanctions when appropriate, rewards GEO's failure to provide lawfully-required levels of medical care.

CLASS ACTION ALLEGATIONS

A. The Class

39. Plaintiffs bring this action on their own behalf and, pursuant to Rules 23(a) and 23(b)(1)-(3) of the Federal Rules of Civil Procedure, on behalf of a class of persons comprised of current and future prisoners of Rivers who, during their incarceration at Rivers, are dependent upon the organizations, systems, policies, practices, and institutional conditions of Defendants for their receipt of medical, dental, and mental health care ("the Class").

40. As a result of their confinement at Rivers, members of the Class, including Plaintiffs, have been and will be subjected to violations of their legal rights as described in this Complaint. Each Plaintiff has been injured by the unlawful and grossly inhumane level of medical care at Rivers that has resulted from Defendants' dysfunctional organizations, systems, policies, practices, and institutional conditions. Plaintiffs represent the Class seeking primarily declaratory and injunctive relief to correct or eliminate the organizations, systems, policies, practices, and institutional conditions that deprive them of their rights.

41. The proposed Class is so numerous and fluid that joinder of all members is impracticable. There are currently more than 1,300 men at Rivers, each of whom depends upon Defendants to receive needed medical, dental, and mental health care while incarcerated. All members of the Class are at risk of developing serious medical conditions while at Rivers due to the grossly inadequate care provided. The size and membership of the Class exhibits an inherent instability of composition as a consequence of prisoner transfers and releases and the incarceration of new prisoners.

42. All Class members are equally subject to the conditions described in this Complaint, and common questions of law and fact exist as to all Class members. These common questions include, but are not limited to: (a) whether Defendants provide systemically inadequate medical, mental health, and dental care to the Class members; (b) whether Defendants have been deliberately indifferent to the serious medical, mental health, and dental needs of the Class members; (c) whether Defendants have placed Class members at unreasonable risk of developing serious medical, mental health, and dental problems; (d) whether Defendants have violated Class members' rights to be free of cruel and unusual punishment under the Eighth Amendment; (e) whether Defendants provide medical, mental health, and dental care that is comparable or substantially equivalent to the care provided to other federal prisoners and the community at large; and (f) whether the inadequacies in the provision of medical, mental health, and dental care at Rivers arise from Defendants' efforts to reduce costs and to boost profits of GEO, at the expense of providing Constitutionally adequate care.

43. The organizations, systems, policies, practices, and institutional conditions that form the basis of this Complaint as to the Class are common to all members of the Class, and the relief sought will apply to all of them. Each member of the Class has a common interest in preventing the recurrence of the wrongful conduct described herein.

44. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and the Class they represent have been directly injured by Defendants' prison-wide unconstitutional and unlawful organizations, systems, policies, practices, and institutional conditions with respect to health care at Rivers, as demonstrated by the detailed accounts provided by Plaintiffs and other prisoners provided above. Plaintiffs advance legal and

factual theories similar to those offered by other Class members, including the description of the grossly inadequate access to health care, grossly insufficient medical staffing, lack of proper access to medication, and lack of protocols to contain or treat infectious diseases, which affects all Class members similarly and results in unconstitutional and negligent medical care and a breach of the Rivers Contract, claims that are common to Plaintiffs and Class members.

45. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs have no interests separate from the Class, and seek no relief in this action other than the relief sought on behalf of the Class. Plaintiffs' counsel are experienced in the protection and enforcement of the legal rights of prisoners.

46. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications that would establish incompatible standards of conduct for the Defendants.

47. The prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members that would, as a practical matter, substantially impair the ability of other members to protect their interests.

48. Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate injunctive and declaratory relief with respect to the Class as a whole. Moreover, Defendants' actions described herein may be viewed as part of a consistent pattern of activity that has been established under a regulatory scheme that is common to all members of the Class.

49. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to any other available method for the fair and efficient adjudication of the controversy presented here.

B. The Disability Sub-Class

50. Plaintiffs Calland and Roe ("the Sub-Class Plaintiffs") bring claims under Section 504 of the Rehabilitation Act on behalf of themselves and, pursuant to Rules 23(a) and 23(b)(1)-(3) of the Federal Rules of Civil Procedure, on behalf of all prisoners who have been denied access to the programs, services, facilities, and activities at Rivers because of Defendants' failures to diagnose, monitor, treat and/or accommodate their serious medical conditions, in violation of Section 504 of the Rehabilitation Act ("the Sub-Class"). As a result of their confinement at Rivers, members of the Sub-Class, including Sub-Class Plaintiffs, have been, are, and will be subjected to violations of their legal rights as described in this Complaint. Sub-Class Plaintiffs represent a class of qualified persons seeking declaratory and injunctive relief to correct or eliminate Defendants' organizations, systems, policies, practices, and institutional conditions that deprive them of their rights under Section 504 of the Rehabilitation Act.

51. Sub-Class Plaintiffs meet the requirements for certification as a sub-class pursuant to Fed. R. Civ. P. 23(c)(4).

52. Upon information and belief, a substantial percentage of the men at Rivers suffer from severe impairments that substantially limit one or more major life activities. Each of these persons is a "qualified individual with a disability" under Section 504 of the Rehabilitation Act, as amended, and is represented by the proposed Sub-Class

Plaintiffs. Like the Class, the proposed Sub-Class is so numerous and fluid that joinder of all members is impracticable.

53. All Sub-Class members are equally subject to the conditions described in this Complaint, and common questions of law and fact exist as to all Sub-Class members. These common questions include, but are not limited to: (a) whether Defendants systemically exclude Sub-Class members from access to, participation in, and the benefits of, any program, service, facility, or activity at Rivers solely by reason of their disabilities; (b) whether Defendants systematically deny access to, participation in, and the benefits of, any part of Rivers or its programs, services, facilities, or activities to Sub-Class members solely by reason of their disabilities; (c) whether Defendants have subjected Sub-Class members to discrimination solely by reason of their disabilities; and (d) whether Defendants have violated Section 504 of the Rehabilitation Act.

54. The organizations, systems, policies, practices, and institutional conditions that form the factual basis of the Rehabilitation Act claim are common to all members of the Sub-Class, and the relief sought will apply to all of them. Each member of the Sub-Class has a common interest in preventing the recurrence of the wrongful conduct described herein.

55. Sub-Class Plaintiffs' claims are typical of the claims of the Sub-Class. Sub-Class Plaintiffs are persons suffering from serious mental and/or physical impairments typical of the Sub-Class as a whole. Sub-Class Plaintiffs and the Sub-Class they represent have been directly and similarly injured by Defendants' prison-wide unlawful organizations, systems, policies, practices, and institutional conditions with

respect to health care at Rivers, as demonstrated by the detailed accounts provided by Sub-Class Plaintiffs and the detailed accounts of other prisoners provided above.

56. Sub-Class Plaintiffs will fairly and adequately represent the interests of the Sub-Class. Sub-Class Plaintiffs have no interests separate from the Sub-Class, and seek no relief in this action other than the relief sought on behalf of the Sub-Class and the Class. Sub-Class Plaintiffs' counsel are experienced in the protection and enforcement of the legal rights of prisoners.

57. The prosecution of separate actions by individual members of the Sub-Class would create a risk of inconsistent and varying adjudications that would establish incompatible standards of conduct for the Defendants.

58. The prosecution of separate actions by individual members of the Sub-Class would create a risk of adjudications with respect to individual members that would, as a practical matter, substantially impair the ability of other members to protect their interests.

59. Defendants have acted or refused to act on grounds generally applicable to the Sub-Class, making appropriate injunctive and declaratory relief with respect to the Sub-Class as a whole. Moreover, Defendants' actions described herein may be viewed as part of a consistent pattern of activity that has been established under a regulatory scheme that is common to all members of the Sub-Class.

60. The questions of law and fact common to the members of the Sub-Class predominate over any questions affecting only individual members, and a class action is superior to any other available method for the fair and efficient adjudication of the controversy presented here.

CLAIMS FOR RELIEF

First Claim for Relief

(Constitutional Violations—All Defendants)

61. Plaintiffs reallege and incorporate by reference all facts set forth in the previous paragraphs of this Complaint.

62. Defendants' deliberate indifference to Plaintiffs' serious medical, dental, and mental health needs has caused and continues to cause avoidable pain, mental suffering, and deterioration of Plaintiffs' health. In some instances, Defendants conduct has resulted in serious physical injury, and, upon information and belief, premature death.

63. Defendants' organizations, systems, policies, procedures, practices, acts, and omissions all evidence and constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

64. Defendants' organizations, systems, policies, procedures, practices, acts, and omissions place Plaintiffs and Class and Sub-Class members at unreasonable, continuing, and foreseeable risk of developing or exacerbating serious medical, dental, and mental health problems, and of suffering needless pain, injury, and premature death.

65. As a proximate result of Defendants' organizations, systems, policies, procedures, practices, acts, and omissions, Plaintiffs, the Class and the Sub-Class have suffered and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury, and the risk of premature death.

66. Because they have undertaken the government's Constitutional duty to provide adequate medical care to prisoners in their custody, Defendants GEO and BOP

were and continue to be government actors with respect to all of the actions and omissions complained of herein.

67. By virtue of his employment by the United States government, Defendant LAPPIN was and continues to be a government actor acting in his official capacity with respect to all his actions and omissions complained of herein.

68. Because Defendants know that Plaintiffs and all other prisoners at Rivers live under conditions creating an unreasonable risk of future harm, but have not responded reasonably to this situation, Plaintiffs seek a preliminary and permanent injunction compelling Defendants to implement organizations, systems, policies, procedures, and practices for the delivery of constitutionally adequate medical, dental, and mental health care.

Second Claim for Relief

(Violations of the Rehabilitation Act—Defendants BOP and GEO)

69. Plaintiffs reallege and incorporate by reference all facts set forth in the previous paragraphs of this Complaint.

70. Sub-Class Plaintiffs Calland and Roe, and each member of the Sub-Class, are all "qualified individual[s] with a disability" under Section 504 of the Rehabilitation Act, as amended.

71. The Rehabilitation Act, as amended, and its regulations, prohibit recipients of federal funding and any program or activity conducted by any executive agency of the United States from discriminating against people with disabilities. The Rehabilitation Act, 29 U.S.C. § 794(a), provides, in pertinent part: "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the

participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency . . . ."

72. Defendant GEO operates a "program or activity conducted by an Executive Agency," as the BOP is an executive agency of the United States government that procured Defendant GEO to perform prison services on its behalf at Rivers.

73. Defendants BOP and GEO make the Sub-Class Plaintiffs' and the Sub-Class' access to, equal participation in, and receipt of the benefits of, the programs and activities identified above unduly burdensome solely by reason of their disabilities, in violation of the Rehabilitation Act, as amended, and its regulations.

74. Defendants BOP and GEO subject Sub-Class Plaintiffs and the Sub-Class to discrimination solely by reason of their disabilities.

75. As a result of Defendants BOP's and GEO's organizations, systems, policies, practices, and institutional conditions, Sub-Class Plaintiffs and all members of the Sub-Class have been and continue to be excluded from a variety of programs, services, facilities, and activities at Rivers, including but not limited to, substance abuse programs, educational programs, vocational programs, recreation activities, dining hall and other meals, yard time, visitation, discipline, telephone, emergency procedures and other programs and activities for which they are otherwise qualified. Defendants BOP and GEO provide these programs, services, facilities, and activities to individuals without disabilities under their custody and control, thereby subjecting Sub-Class Plaintiffs and the Sub-Class to discrimination in violation of the Rehabilitation Act, as amended, and its regulations.

76. By engaging in the conduct described above, Defendants BOP and GEO have been either intentionally discriminating against Sub-Class Plaintiffs and the Sub-Class, or have been deliberately indifferent to the strong likelihood that their organizations, systems, policies, procedures, and practices would result in violations of federally protected rights.

77. These violations of the Rehabilitation Act by Defendants establish a claim for declaratory and injunctive relief against Defendants BOP and GEO pursuant to Section 505 of the Rehabilitation Act.

Third Claim For Relief

(Negligence—Defendant GEO)

78. Plaintiffs reallege and incorporate by reference all facts set forth in the previous paragraphs of this Complaint.

79. Because of the custodial relationship between GEO and the Rivers prisoners, persons incarcerated at Rivers were and are entirely dependent on GEO for medical care. As a consequence of the custodial relationship, and by virtue of GEO's explicit contractual duty to provide medical care to inmates that is commensurate with the well-established standards of care in the community, within the broader correctional industry, and under federal law, GEO has a duty to provide reasonable medical care and treatment to the men at Rivers.

80. Through its organizations, systems, policies, practices, institutional conditions, acts, and omissions, GEO has systematically deprived the men at Rivers of adequate medical, dental and mental health care, all in breach of its duty of care to those persons. GEO's acts and omissions constitute a breach of the standard of care owed by a

reasonably prudent person in similar circumstances. Defendants GEO's breaches include (a) the failure to provide access to health care services; (b) the failure to hire, train, supervise and maintain an adequate level of qualified health care staff at Rivers; (c) the failure to establish an adequate and reasonable method for distributing medication; and (d) the failure to contain or treat infectious diseases.

81. As a proximate result of Defendant GEO's acts and omissions in breach of GEO's duty of care, Plaintiffs and the Class have suffered and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury, and heightened risk of premature death. GEO's negligent conduct has been and will continue to be a substantial factor in bringing about such harms, and a person of ordinary prudence could have reasonably foreseen that such harms would result.

Fourth Claim for Relief

(Third-party beneficiary—Defendant GEO)

82. Plaintiffs reallege and incorporate by reference all facts set forth in the previous paragraphs of this Complaint.

83. GEO and the BOP entered into the Rivers Contract with the intention of conferring a direct benefit on the Plaintiffs, the Class, and the Sub-Class, namely, the provision of adequate medical, dental, and mental health care.

84. GEO has breached and continues to breach its express and implied contractual obligations to the Plaintiffs, Class, and Sub-Class by failing to provide adequate health care.

85. As a direct result of GEO's material breaches, the Plaintiffs, Class, and Sub-Class, as the intended beneficiaries of the Rivers Contract, have suffered and continue to suffer physical and mental pain and injury.

86. The Plaintiffs, Class, and Sub-Class have performed any and all conditions precedent to the bringing of this action, or such conditions have been waived or excused by action of GEO.

87. Because GEO's breach is continuing in nature, and because the harm caused by this breach is irreparable, Plaintiffs, the Class, and the Sub-Class are entitled to injunctive relief requiring GEO to perform its obligations to provide adequate health care under the Rivers Contract.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, the Class and the Sub-Class request that this Court grant them the following relief:

a. Declare that this suit is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a), and 23(b)(1) – (3) as to the Class and the Sub-Class;

b. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;

c. Adjudge and declare that the organizations, systems, policies, practices, and conditions described above violate the rights of Plaintiffs, the Class, and the Sub-Class under the Eighth Amendment to the United States Constitution;

d. Adjudge and declare that the organizations, systems, policies, practices, and conditions described above violate the rights of the Sub-Class

Plaintiffs and the Sub-Class, under Section 504 of the Rehabilitation Act, as amended;

e. Adjudge and declare that the organizations, systems, policies, practices, and conditions constitute actionable negligence;

f. Adjudge and declare that the organizations, systems, policies, practices, and conditions breach a contractual duty owed to Plaintiffs, the Class and the Sub-Class;

g. Preliminarily and permanently enjoin Defendants, their agents, employees and all persons acting in concert with them, from subjecting the Plaintiffs and any member of the Class or Sub-Class to the organizations, systems, policies, practices, and institutional conditions that have caused and continue to cause the delivery of constitutionally inadequate and unlawful medical, dental, and mental health services at Rivers;

h. Award Plaintiffs the costs of this suit, including reasonable attorneys' fees incurred herein;

i. Retain jurisdiction of this matter until Defendants demonstrate that they have fully complied with the orders of this Court, and that there is a reasonable assurance that Defendants will continue to comply in the future absent continuing jurisdiction; and

j. Award such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury.

Respectfully Submitted,

/s/ Neil A. Riemann
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CERTIFICATE OF SERVICE

I certify that today I filed the foregoing paper via CM/ECF, which will effect service by emailing a Notice of Electronic Filing to:

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October 24, 2008

/s/ Neil A. Riemann

ATTACHMENT 3:

Letter from Kathleen Kenney, Assistant Director/General Counsel for the BOP

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

MAR 12 2008

Philip Fornaci, Director
D.C. Prisoners' Project
Washington Lawyers' Committee
for Civil Rights and Urban Affairs
11 Dupont Circle, N.W.
Washington D.C. 20036

Dear Mr. Fornaci:

This is in response to your communications with Elizabeth Nagy. You raised several issues related to health care received by D.C. Code felony offenders in Bureau facilities. In the future, please direct all such inquiries to the U.S. Attorney's Office representative handling such case(s), as you represent inmates currently in litigation with the Bureau regarding health care issues.

While we appreciate your concerns and your offer to be an intermediary, there is a mechanism already in place. Specific concerns for the welfare of D.C. Code felony offenders in Bureau facilities can be brought to the attention of the Corrections Information Council (CIC). This body was created by the D.C. Government for that purpose, and enjoys broad access to Bureau facilities and information. See D.C. Code, §24-101(h). In addition, all Bureau facilities, including health care units, are accredited by the American Correctional Association, and many Bureau facilities are accredited by the Joint Commission on the Accreditation of Healthcare Organizations.

I understand that you are currently using the interview instrument you provided to Ms. Nagy in your interviews with BOP inmates. Apparently you are collecting such information under 28 C.F.R. §543.13, Visits by attorneys, which authorizes attorney interviews of an inmate as a witness. While attorney visits to interview witnesses may be authorized, your desire to have the BOP facilitate your interviews by calling group meetings will not be granted.

If, however, you desire to conduct such interviews for research purposes, please be aware that survey research of Bureau inmates outside active litigation discovery may only be conducted through approved means, meeting specific statutory and policy requirements. Bureau Program Statement 1070.07, Research, and 28 C.F.R. §§512.10, et seq., require that all research projects be submitted to the Bureau's Chief, Office of Research and Evaluation, for review and ultimate approval of the Director.

The allegations you raised with Ms. Nagy concerning medical care at a contract facility, have been referred to the appropriate Bureau of Prisons oversight staff.

Thank you for bringing these matters to our attention. I hope you find this information useful.

Sincerely,

Kathleen M. Kenney
Assistant Director/General Counsel

ATTACHMENT 4:

***Womack v. Smith et al* (1:06-cv-2346; MD PA)**

Summons issued

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID LEE WOMACK Plaintiff, v. JOSEPH V. SMITH, KENNETH GABRIELSON, D. SCOTT DODRILL, HARRELL WATTS, AND HARLEY G. LAPPIN Defendants.	1:CV-06-2348 Civil Action No. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

Nature of the Action

1. David Lee Womack, a District of Columbia code offender, was convicted in the District of Columbia of violating the D.C. Code. For a period of

time after his conviction, Mr. Womack was incarcerated in the United States Penitentiary in Lewisburg, Pennsylvania ("USP Lewisburg"). Mr. Womack brings this action to vindicate his right to be free from cruel and unusual punishment under the Eighth Amendment of the Constitution of the United States. At USP Lewisburg, the Defendants kept Mr. Womack shackled and bound in full restraints in a secured holding cell for a period of twenty-six consecutive days. Defendants held Mr. Womack, without break or relief, in steel wrist and ankle cuffs bound by short chains to a waist chain. While restrained, Defendants denied Mr. Womack access to basic personal hygiene needs, exercise, and adequate medical supervision. This treatment constitutes cruel and unusual treatment in violation of the Eighth Amendment of the Constitution of the United States, international standards as codified in the United Nations Standard Minimum Rules for the Treatment of Prisoners, and tenets of basic human decency.

Parties

2. David Lee Womack is a native of the District of Columbia. While now housed in the New Jersey Department of Corrections and assigned Inmate Number 537-775, Mr. Womack was at all times relevant to the allegations herein a District of Columbia prisoner incarcerated in USP Lewisburg. For identification purposes, the Federal Bureau of Prisons has assigned Mr. Womack Registration Number 08497-007.

3. Joseph V. Smith was at all times relevant to the allegations herein the warden of USP Lewisburg. Defendant Smith is now retired. Defendant Smith is sued in his personal and official capacities.

4. Kenneth Gabrielson was at all times relevant to the allegations herein a correctional officer at USP Lewisburg. Defendant Smith is sued in his personal and official capacities.

5. D. Scott Dodrill was at all times relevant to the allegations herein the Regional Director of the Northeast Region of the Federal Bureau of Prisons. Defendant Dodrill is sued in his personal and official capacities.

6. Harrell Watts was at all times relevant to the allegations herein the Administrator of National Inmate Appeals of the Federal Bureau of Prisons. Defendant Watts is sued in his personal and official capacities.

7. Harley Lappin was at all times relevant to the allegations herein the Director of the Federal Bureau of Prisons. Defendant Lappin is responsible for overseeing administration of the Federal Bureau of Prisons and approving all Bureau of Prisons policies relating to the use of ambulatory restraints. Defendant Lappin is sued in his personal and official capacities.

Jurisdiction and Venue

8. This action is authorized by *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619

(1971), and by 28 U.S.C. §§ 2201 and 2202, to redress deprivations of rights secured by the Eighth Amendment of the United States Constitution. Original jurisdiction is conferred on this Court by 28 U.S.C. § 1331.

9. The Middle District of Pennsylvania is a proper venue under 28 U.S.C. § 1391(b).

Material Facts

10. Mr. Womack is incarcerated by order of the D.C. Superior Court for offenses under the D.C. Code. In 2001, by order of Congress, the D.C. prison complex in Lorton, Virginia was closed and all inmates were transferred to the authority of the Federal Bureau of Prisons, which is authorized to house D.C. Code offenders in any facility in the country. The Bureau of Prisons placed Mr. Womack in USP Lewisburg, where the actions giving rise to this complaint occurred.

11. On the evening of December 8, 2004, Mr. Womack's USP Lewisburg cell flooded with water due to broken pipes, a condition beyond Mr. Womack's control. While cleaning up the water in his cell, Mr. Womack accidentally slipped and fell, causing him to hit his head and fall unconscious. Later that evening, Mr. Womack regained consciousness in the Health Service Unit, where he had received treatment from medical professionals.

12. The next day, Defendant Gabrielson escorted Mr. Womack back to the damaged cell. Mr. Womack protested the decision to place him in the damaged

cell. Mr. Womack asserted that the cell's condition was not safe because of the broken pipe, and he did not want to risk endangering his safety. When Defendant Gabrielson attempted to place Mr. Womack in the damaged cell, Mr. Womack physically resisted. After a brief struggle, Defendant Gabrielson, with Defendant Smith's acquiescence, punished Mr. Womack by shackling him in full restraints. Mr. Womack was then placed in a secured holding cell.

13. The restraints used on Mr. Womack were more restrictive than what Bureau of Prisons regulations call "ambulatory restraints."

14. The Bureau of Prisons defines ambulatory restraints as "approved soft and hard restraint equipment which allow the inmate to eat, drink, and take care of basic human needs without staff intervention."

15. The restraints into which Defendant Gabrielson placed Mr. Womack consisted of handcuffs, which were tightly chained to the front of a waist chain, which was in turn tightly chained to ankle cuffs.

16. Mr. Womack's wrist and ankle shackles were so restrictive that they caused his hands and feet to immediately and excessively swell. The chains connecting Mr. Womack's wrist and ankle shackles to his waist chain were so short that Mr. Womack could not fully straighten his body when he lay down. The painful configuration imposed on Mr. Womack by these restraints required Mr. Womack to sleep while propped up against the walls in a corner of his cell or in

other contorted positions. The wrist shackles were so confining that Mr. Womack could not even properly clean himself after using the toilet.

17. For the following twenty-six consecutive days, Defendants Smith and Gabrielson unjustifiably punished Mr. Womack by keeping him chained in full restraints, despite Mr. Womack's confinement in a secured holding cell.

18. Mr. Womack, to this day, continues to suffer pain and injury caused by this unjustified, cruel, and sadistic punishment.

19. Mr. Womack sustained numerous injuries resulting from his treatment, including, but not limited to, multiple open wounds around his wrists and ankles from the constant abrasion of his shackles. Mr. Womack's wrist wounds required medical treatment.

20. After Mr. Womack complained about his cruel treatment and retained counsel, the Bureau of Prisons transferred Mr. Womack to the New Jersey Department of Corrections, which now houses Mr. Womack pursuant to a contract with the Bureau of Prisons.

21. Defendants Smith and Gabrielson further unjustifiably punished Mr. Womack by denying him access to basic personal hygiene needs and exercise for the twenty-six days that he was shackled and in the secured holding cell. Additionally, medical professionals at USP Lewisburg failed to monitor Mr. Womack during at least two five-day periods during his punishment.

22. Defendant Dodrill had then-current knowledge of Mr. Womack's shackling from periodic notifications made by Defendant Smith to the Northeast Region of the Bureau of Prisons. Defendant Dodrill acquiesced in Mr. Womack's punishment.

23. Defendants Smith, Dodrill, and Watts denied Mr. Womack's grievances and appeals, affirming their acquiescence in Mr. Womack's punishment.

24. On information and belief, people housed at USP Lewisburg have been and are regularly placed in full restraints as a means of punishment.

25. On information and belief, the widespread nature of the use of full restraints at USP Lewisburg amounts to a policy of regularly allowing and endorsing this cruel and unjustifiable treatment.

26. All Defendants who engaged in the conduct described herein were acting under color of federal law. Defendants' conduct deprived Mr. Womack of his right to be free from cruel and unusual punishment under the Eighth Amendment of the United States Constitution. On information and belief, all Defendants had knowledge of, participated in, or acquiesced in the deprivation of Mr. Womack's right to be free from cruel and unusual punishment.

Eighth Amendment Violations

27. Shackling Mr. Womack in full restraints in his cell and depriving him of access to personal hygiene needs, exercise, and sufficient medical supervision over a twenty-six-day period constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

28. Defendants, by binding Mr. Womack in full restraints in his cell for twenty-six consecutive days, participated in, had knowledge of, or acquiesced in the infliction of cruel and unusual punishment of Mr. Womack in violation of the Eighth Amendment of the United States Constitution.

29. Defendants, by depriving Mr. Womack of access to basic personal hygiene needs during the twenty-six-day period, participated in, had knowledge of, or acquiesced in the infliction of cruel and unusual punishment of Mr. Womack in violation of the Eighth Amendment of the United States Constitution.

30. Defendants, by depriving Mr. Womack of access to sufficient medical supervision during the twenty-six-day period, participated in, had knowledge of, or acquiesced in the infliction of cruel and unusual punishment of Mr. Womack in violation of the Eighth Amendment of the United States Constitution.

31. Defendants, by depriving Mr. Womack of any exercise during the twenty-six-day period, participated in, had knowledge of, or acquiesced in the

infliction of cruel and unusual punishment of Mr. Womack in violation of the Eighth Amendment of the United States Constitution.

32. Defendants' conduct was at all time willful, wanton, malicious, and oppressive. Their actions were motivated by evil intent and show a callous disregard for Mr. Womack's right to be free from cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

WHEREFORE, Plaintiff prays for judgment against Defendants and for the following relief:

A. A declaration that Defendants have violated the Eighth Amendment in the ways described above;

B. Permanent injunctive relief that enjoins Defendants from continuing their unconstitutional conduct and policy, and requires them to take affirmative steps to dissipate the effects of their prior violations;

C. A judgment for compensatory and punitive damages, as determined by a jury;

D. The costs of this suit, including reasonable attorneys' fees; and

E. Such other and further relief as the Court deems just and proper.

Jury Demand

Plaintiff demands a trial by jury of all issues so triable.

Dated: December 7, 2006

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Court Name: Pennsylvania Middle
Division: 1
Receipt Number: 111000243
Cashier ID: chatcher
Transaction Date: 12/07/2006
Payer Name: MORGAN LEWIS BOCKIUS

CIVIL FILING FEE
For: MORGAN LEWIS BOCKIUS
Case/Party: D-PAM-1-06-CV-002348-000
Amount: $350.00

CHECK
Check/Money Order Num: 04262
Amt Tendered: $350.00

Total Due: $350.00
Total Tendered: $350.00
Change Amt: $0.00

Only when bank clears the check or verifies credit of funds is the fee or debt officially paid or discharged. A fee of $45.00 will be charged for returned checks.

ATTACHMENT 5:

***Doe v. Wooten et al* (1:07-cv-2764; ND GA)**

ORIGINAL

FILED IN CLERK'S OFFICE
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NOV 07 2007
JAMES N. HATTEN, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN DOE, Plaintiff, v. OFFICER WOOTEN, in his individual capacity, WARDEN R. WILEY, in his individual and official capacities, RICK STOVER, in his individual and official capacities, and FEDERAL BUREAU OF PRISONS DIRECTOR HARLEY LAPPIN, in his official capacity, Defendant.	Civil Action No.:_____ 1:07-CV-2764 JEC

VERIFIED COMPLAINT

Plaintiff John Doe, through his attorneys, alleges and states as follows:

INTRODUCTION

1. The Plaintiff, a prisoner incarcerated in the custody of the United States Federal Bureau of Prisons ("BOP"), brings this action seeking legal, equitable, and declaratory remedies for past and ongoing violations of his rights under the Eighth Amendment to the United States Constitution. As set forth herein,

the Plaintiff's constitutional rights have been and continue to be violated by the Defendants' deliberate indifference to his safety and health – that is, to known risks of serious injury to the Plaintiff – and a failure to protect him from that risk that already has resulted in repeated attacks on the Plaintiff at the hands of both fellow inmates and prison staff.

THE PARTIES

2. Plaintiff John Doe is a citizen of the District of Columbia. In a motion filed contemporaneously with this Verified Complaint, Mr. Doe has requested leave of this Court to be designated in all proceedings in this action by a pseudonym to protect his identity from public disclosure because of his reasonable fears that his safety would be further endangered if the facts set forth herein were more widely known to relate to him. Subject to appropriate protections requested in that motion, his identity will be known to the Court and the Defendants. At all relevant times, Mr. Doe has been a prisoner, convicted in the District of Columbia of violations of the D.C. Code, incarcerated in prisons administered by the BOP.

3. Defendant Officer Wooten was at all relevant times a prison guard at United States Penitentiary Atlanta ("USP Atlanta"). Defendant Wooten is sued in his individual capacity for legal relief.

4. Defendant Warden R. Wiley was at all relevant times the warden of USP Atlanta. Defendant Wiley is sued in his individual and official capacities for legal and equitable relief.

5. Defendant Rick Stover was at all relevant times a BOP Senior Designator. Defendant Stover was responsible for deciding where Mr. Doe would be transferred the last time he was sent to USP Atlanta. Defendant Stover is sued in his individual and official capacities for legal, equitable, and declaratory relief.

6. Defendant Harley Lappin was at all relevant times the Director of the BOP. Defendant Lappin is responsible for overseeing administration of the BOP and approving all BOP policies relating to the housing and safety of inmates. Defendant Lappin was notified of Mr. Doe's situation and the threat of imminent physical harm created thereby, and on information and belief he refused to take action to prevent Mr. Doe's return to USP Atlanta or otherwise to ensure the taking of adequate measures to protect Mr. Doe. Defendant Lappin is sued in his official capacity for equitable and declaratory relief.

JURISDICTION AND VENUE

7. Mr. Doe brings this action for money damages, declaratory relief, and injunctive relief pursuant to 28 U.S.C. §§ 1331, 1361, and 2201 and the doctrines recognized in *Bivens v. Six Unknown Federal Agents*, 403 U.S. 388 (1971), and

Bell v. Hood, 327 U.S. 678 (1946), seeking redress for Defendants' violation of his right under the Eighth Amendment to the United States Constitution to be free from cruel and unusual punishment.

8. The Court has subject matter jurisdiction over this action pursuant to the statutes and constitutional doctrines identified in the preceding paragraph because the claims asserted arise out of the Constitution of the United States.

9. The Court has personal jurisdiction over all Defendants because they are all amenable to service of process. As alleged herein, each of the Defendants resides in the State of Georgia, committed a tortious act or omission within the State of Georgia, or committed tortious injury within the State of Georgia, making them amenable to service of process under Rules 4(e) and 4(i) of the Federal Rules of Civil Procedure and Georgia Code Section 9-10-91.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1391(e).

FACTS RELEVANT TO ALL COUNTS

11. In 2001, by order of the Congressional National Capital and Revitalization and Self-Government Improvement Act of 1997, 111 Stat. 712 ("D.C. Revitalization Act"), the D.C. prison complex in Lorton, Virginia, was closed and all people convicted of felony violations of the D.C. Code were

transferred to the custody of the BOP, which is authorized to house D.C. prisoners in any facility in the United States.

12. Mr. Doe has been incarcerated by order of the District of Columbia Superior Court for offenses under the District of Columbia Code. Pursuant to that order, and the D.C. Revitalization Act, Mr. Doe was placed in the custody of the BOP, which imprisoned him at USP Atlanta.

13. USP Atlanta is a high security BOP facility. Like other high security BOP facilities, USP Atlanta's population includes a very substantial number of inmates convicted of violent offenses or otherwise possessing criminal or disciplinary records of violence.

14. When Mr. Doe was incarcerated in USP Atlanta, BOP officer Willie Fisher coerced Mr. Doe into sexual relations. Officer Fisher threatened Mr. Doe when he attempted to refuse Officer Fisher's demands.

15. In February 2004, a federal investigator notified Mr. Doe that Officer Fisher was being investigated for engaging in sexual relations with prisoners in exchange for contraband.

16. When Mr. Doe expressed reluctance to endanger himself by cooperating with a prison investigation, the federal investigator promised Mr. Doe

that, in return for his cooperation, Mr. Doe would be kept safe and would be transferred from the high security facility (USP Atlanta) to a lower security prison.

17. Mr. Doe then cooperated with the federal investigation. He wore a concealed recording device (a "wire") and, following the instructions of the federal investigators, tried to engage Officer Fisher in a discussion of their prior sexual interactions. Later that same day, the federal investigators confronted Officer Fisher about his conduct and he was allowed to resign from the BOP.

18. Shortly thereafter, the BOP transferred Mr. Doe to Federal Correctional Institution Talladega ("FCI Talladega"), a lower security BOP facility in Alabama, where he remained for approximately two to three months.

19. In May 2004, however, Mr. Doe was removed from FCI Talladega and transported to the Federal Transfer Center in Oklahoma City ("FTC Oklahoma City"). There, Mr. Doe was held for a two month transitory period before eventual transfer to USP Coleman, a high security facility in Florida.

20. When Mr. Doe arrived at USP Coleman in July 2004, he immediately filed a confidential grievance detailing his situation and challenging on that basis his transfer to a high security facility. This grievance was denied in or about December 2004. The BOP sent this response through the standard prison mail system, not the confidential channels typically used for such correspondence. As a

result, staff at USP Coleman were allowed to read both Mr. Doe's grievance and the BOP's response, which detailed Mr. Doe's involvement as an informant at USP Atlanta against Officer Fisher.

21. Within hours after the arrival of this letter, guards at USP Coleman moved Mr. Doe into a cell with two known sexual predators who severely beat and sexually assaulted him, necessitating his hospitalization. After this assault, Mr. Doe was placed in the so-called special housing unit at USP Coleman for the next 12 months.

22. A federal special housing unit is a severely restricted housing placement commonly known as "the hole." Prisoners in such units cannot participate in programming or general religious services. They spend up to 23 1/2 hours per day in their cells.

23. In December 2005, the BOP sent Mr. Doe back to USP Atlanta, en route to FTC Oklahoma City. He was held in USP Atlanta for 15 hours until an officer there, recognizing the danger Mr. Doe faced, obtained authorization to send Mr. Doe to FCI Talladega until he could be sent on to the transit center at FTC Oklahoma City.

24. In January 2006, the BOP transferred Mr. Doe to another high security facility, USP Florence in Colorado. On his first day in the general prison

population at USP Florence, Mr. Doe was called to the Lieutenant's office. The Lieutenant told Mr. Doe that he would be placed in the special housing unit immediately for his own protection because word had gotten out in that BOP facility about "what you did in Atlanta." Mr. Doe was held in the special housing unit for his entire stay at USP Florence.

25. In May 2006, the BOP transferred Mr. Doe to another high security facility, USP Victorville in California. Within a few hours of his arrival at USP Victorville, Mr. Doe requested protective custody in the special housing unit after a group of prisoners at this BOP prison told him he would not be safe because he had "worn a wire."

26. Inmate culture condemns anyone who cooperates with authorities in an investigation, even against officers, as a "snitch." Snitches are targeted for assault and even murder at the hands of other inmates.

27. In July 2006, while still incarcerated in USP Victorville, Mr. Doe filed another Request for Administrative Remedy requesting transfer to a low- or medium-security BOP facility based on his cooperation with federal investigators at USP Atlanta and the numerous threats to his life. Warden Norwood of USP Victorville granted Mr. Doe's grievance. Warden Norwood confirmed that, after reviewing Mr. Doe's BOP file, he was able to verify Mr. Doe's claims and

recommended that Mr. Doe be housed in a lower security facility. Warden Norwood informed Mr. Doe that officials at USP Victorville would request that the BOP transfer him to a lower security prison.

28. All BOP transfer decisions and housing assignments are made by the employees of the Designations and Sentence Computation Center, located in Grand Prairie, Texas ("DSCC"). BOP personnel at the DSCC have proven to have no regard for Mr. Doe's safety when making his housing assignments and his transfer arrangements.

29. After Mr. Doe received Warden Norwood's response to his grievance, his attorney contacted Defendant Richard Stover, BOP Senior Designator at the DSCC. Mr. Doe's attorney reiterated to Mr. Stover that Mr. Doe should not be transferred to or through Atlanta under any circumstances and that he needed to be moved from incarceration in high security USP facilities to a lower security, safer facility. Mr. Stover responded that he had all the information he needed in Mr. Doe's file and was aware of the situation that places Mr. Doe specifically at risk.

30. Staff at both USP Florence and USP Victorville told Mr. Doe that his BOP file contained explicit instructions that he should not be transferred through Atlanta.

31. The BOP did not, however, transfer Mr. Doe to a lower security prison. Instead, in November 2006, the BOP moved him first to FTC Oklahoma City and from there back to USP Atlanta, despite the well-known dangers he faced there. Mr. Doe did not learn of his destination until he was on the plane en route to Atlanta. He immediately protested to the U.S. Marshals on board that he must not be sent to USP Atlanta because of the serious risk of harm he faced there as a result of his cooperation with federal investigators. The Marshals responded that "Atlanta will deal with that when we get there."

32. On information and belief, the Warden and various officers of USP Atlanta receive daily lists of the inmates being sent from FTC Oklahoma City and elsewhere to USP Atlanta.

33. Mr. Doe arrived at USP Atlanta on or about November 20, 2006, where he was met by Officer Poole and Defendant Officer Wooten. Mr. Doe was shackled by the arms and legs. Officer Poole indicated that Mr. Doe should be placed in a holding cell with another inmate. Officer Wooten, however, instructed Officer Poole to take that other inmate to another cell while Wooten dealt with Mr. Doe.

34. After Officer Poole had left, Officer Wooten forced Mr. Doe against a wall and said, "I don't like what you did to my friend Willie Fisher" and proceeded

to beat him, push his elbow into Mr. Doe's throat, and choke him. Officer Wooten attempted to penetrate Mr. Doe's rectum with his finger, telling Mr. Doe "this is the fuck you gave my friend Willie Fisher." Officer Wooten then began stomping on the shackle chains restraining Mr. Doe while he continued to beat him and choke him.

35. Mr. Doe yelled for help, and eventually Officer Poole returned to the cell and pulled Officer Wooten off Mr. Doe and restrained him. Officer Wooten turned to Mr. Doe and said, "What you did was fucked up. I hope you die."

36. After this assault, Mr. Doe was taken to a nurse at USP Atlanta and then to the emergency room of South Fulton Medical Center for treatment.

37. Upon returning from the hospital, Mr. Doe was placed briefly in the special housing unit of USP Atlanta in protective custody. Later that day, the BOP placed Mr. Doe on a bus to another high security facility, USP Big Sandy in Kentucky, where he has remained since November 2006.

38. On or about September 6, 2007, while Mr. Doe was attending to his work assignment at USP Big Sandy, he was again the victim of an attack and attempted sexual assault by a fellow inmate. Before intervention stopped the assault, the attacker referred to "what you did in Atlanta" and told Mr. Doe not to

expect to be protected because "the guards hate you" for cooperating with the investigation of Officer Fisher.

39. Because of the evidently widespread reputation he has received in BOP's high security facilities as a result of his cooperation with federal investigators and the frequent transfers of inmates between those high security prisons, Mr. Doe reasonably fears that he will be assaulted or killed while housed in any BOP high security facility. Moreover, BOP officials and staff repeatedly have placed him in circumstances they knew could result in serious injury to Mr. Doe and possibly his death.

40. Through his attorneys, Mr. Doe has directed information to Defendant Lappin, the Director of the BOP, to inform him of the circumstances that have caused Mr. Doe to suffer serious injuries in assaults by fellow inmates and prison staff, and that continue to place Mr. Doe at extreme risk of serious injury or death from such assaults.

41. Mr. Doe also fears that he will again be sent to USP Atlanta, either as his destination or as a transit point en route to another BOP facility, and that he will be unprotected there and again assaulted, or even killed, by staff or inmates.

Count I: Violation of the Eighth Amendment (Excessive Force)

(Against Defendant Wooten)

42. Mr. Doe incorporates and realleges the allegations of Paragraphs 1 through 41 as if set forth herein in their entirety.

43. On or about November 20, 2006, Defendant Officer Wooten, a guard employed by BOP, assaulted Mr. Doe at USP Atlanta, causing serious injury that required medical treatment. Defendant Officer Wooten assaulted Mr. Doe maliciously and sadistically to cause harm.

44. Defendant Officer Wooten's assault of Mr. Doe was unprovoked and served no legitimate purpose to maintain or restore discipline, but rather was expressly undertaken in retribution for Mr. Doe's cooperation in the federal investigation of former Officer Fisher.

45. Defendant Officer Wooten's assault of Mr. Doe constituted excessive force in violation of the Eighth Amendment.

46. Defendant Officer Wooten's assault of Mr. Doe caused serious physical injury, for which Mr. Doe is entitled to compensatory monetary relief.

47. Defendant Officer Wooten's assault of Mr. Doe was malicious. Punitive damages against Defendant Officer Wooten should be awarded to Mr. Doe.

Count II: Violation of the Eighth Amendment (Failure to Protect)

(Against Defendants Wiley, Stover, and Lappin)

48. Mr. Doe incorporates and realleges the allegations of Paragraphs 1 through 41 as if set forth herein in their entirety.

49. Since cooperating with the federal investigation of Officer Fisher in February 2004, Mr. Doe has been assaulted by fellow inmates by USP Coleman and USP Big Sandy and by a guard at USP Atlanta. The most recent assault occurred on or about September 6, 2007. Defendants have failed to take adequate measures to protect Mr. Doe from the specific risk to him of serious injury arising from knowledge among inmates and staff of high security BOP facilities that he cooperated with a prison investigation and has been deemed, in prison jargon, a "snitch."

50. Defendants' failure to take adequate measures to protect Mr. Doe stems from their deliberate indifference to Mr. Doe's safety and health. Defendants have disregarded a specific risk to Mr. Doe of which they were subjectively aware.

51. Mr. Doe, through his attorneys, has provided information to Defendants Stover and Lappin to ensure their awareness of the danger specifically to Mr. Doe arising from his cooperation with the federal investigation of Officer

Fisher at USP Atlanta and the evidently widespread knowledge of that cooperation among inmates and staff in high security BOP facilities.

52. On information and belief, Defendant Wiley knew of a substantial risk of serious physical harm to Mr. Doe at USP Atlanta because of Mr. Doe's cooperation in the investigation of Officer Fisher, and disregarded that risk when he knowingly permitted Mr. Doe to be transferred to USP Atlanta in November 2006 and when he failed to take steps to protect Mr. Doe upon his arrival there.

53. The deliberate indifference of Defendant Wiley to Mr. Doe's substantial risk of serious physical harm violated his rights under the Eighth Amendment.

54. On information and belief, Defendants Stover and Lappin knew by February 2004 that Mr. Doe faced a substantial risk of serious physical harm in USP Atlanta because of his cooperation in the investigation of Officer Fisher and disregarded this substantial risk of serious harm when they caused Mr. Doe to be transported to USP Atlanta in December 2005 and in November 2006.

55. On information and belief, Defendants Stover and Lappin knew that Mr. Doe had been promised transfer to a lower security prison by federal investigators, and knew that as long as he remained in a high security BOP facility he faced a substantial risk of serious physical harm from other inmates aware of his

cooperation in the federal investigation of Officer Fisher. Notwithstanding this knowledge, Defendants have disregarded this substantial risk of serious harm to Mr. Doe by repeatedly transferring Mr. Doe to various high security BOP facilities.

56. The deliberate indifference of Defendants Stover and Lappin to Mr. Doe's substantial risk of serious physical harm has violated, and continues to violate, his rights under the Eighth Amendment to the United States Constitution.

57. On information and belief, the BOP, under the direction of Defendants Lappin and Stover, has maintained a policy or custom of using USP Atlanta as a hub for transporting prisoners to or between prisons in the eastern United States. This policy or custom has already resulted in injury to Mr. Doe and poses a substantial risk of causing him future injury.

58. On information and belief, the BOP, under the direction of Defendant Lappin, has a custom of failing to take reasonable steps to prevent harm to inmates who cooperate in investigations of unlawful conduct by prison guards.

59. Through his pursuit of BOP grievance procedures, Mr. Doe has exhausted all avenues to obtain administrative remedies for the injuries he has incurred and for the ongoing violation of his Eighth Amendment rights.

60. Mr. Doe has been damaged by Defendants' unconstitutional actions, including the suffering of serious physical injuries, and he is entitled to

compensatory monetary relief for the individual Defendants' violation of his clearly established constitutional rights.

61. The unconstitutional conduct of Defendants Stover and Lappin will continue unless enjoined by this Court.

Request for Preliminary Injunctive Relief

62. Mr. Doe incorporates and realleges the allegations of Paragraphs 1 through 61 as if set forth herein in their entirety.

63. Mr. Doe remains at substantial risk of serious injury and even death unless Defendants take adequate measures to protect his safety. Mr. Doe has been assaulted as recently as September 2007 by a prisoner evidently aware of his cooperation in the investigation of Officer Fisher.

64. On the basis of the facts alleged herein, Mr. Doe is entitled to preliminary injunctive relief to require Defendants to prevent irreparable harm pending final resolution of this action and entry of permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff John Doe seeks the following relief:

A. Preliminary injunctive relief to require Defendants to take adequate measures to prevent further assaults on Mr. Doe pending resolution of this action, including the enjoining of his transport to or through USP Atlanta and requiring his

immediate transfer to an appropriate and safe housing placement such as a medium or low security BOP facility or a state correctional facility;

B. A judgment against Defendants Wooten, Wiley, and Stover awarding Mr. Doe compensatory damages;

C. A judgment awarding punitive damages against Defendants Wooten and Stover;

D. A judgment declaring that Defendants Wiley, Stover, and Lappin have a duty under the Eighth Amendment to take adequate measures to protect Mr. Doe from further assaults by fellow inmates and prison guards;

E. A judgment permanently enjoining Defendants from transporting Mr. Doe to or through any BOP facility in Atlanta;

F. A judgment enjoining Defendants from incarcerating Mr. Doe in a high security BOP facility and requiring the transfer of Mr. Doe to an appropriate and safe housing placement such as a medium or low security BOP facility or a state correctional facility;

G. A judgment awarding Mr. Doe his costs and reasonable attorneys' fees; and

H. Such other and further relief as the Court determines to be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff John Doe hereby demands a jury trial on all issues so triable raised in this Complaint.

Dated: November 7, 2007

Respectfully submitted,

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, the plaintiff referred to in this Verified Complaint as "John Doe" and whose identity will be made known to the Court, declare under penalty of perjury that the factual averments set forth in the foregoing Verified Complaint are true and correct.

Subscribed to by the Plaintiff on this 15 day of October, 2007.

John Doe
Plaintiff

Mr. SCOTT. Thank you.
Mr. Lewis?

TESTIMONY OF RICHARD A. LEWIS, SENIOR MANAGER, ICF INTERNATIONAL, FAIRFAX, VA

Mr. LEWIS. Good morning, Mr. Chairman and distinguished Members of the Committee.

I would like to thank Judge Gohmert for the invitation to be here today.

On behalf of ICF International, we appreciate the opportunity to discuss the efficacy of faith-based programming in prison. Faith-based programs are essential to improving outcomes for prisoners, for ex-prisoners and their families.

For more than 20 years, I have been managing programs and conducting criminal justice research, and work for a company called ICF International. And I have had the opportunity to also serve as director of research for Prison Fellowship, and also as a social science analyst with the U.S. Department of Justice, Master's Justice.

As you all are aware, American prisons are indeed in crisis. Today, I think the major challenges are an overburdened prison system, which we talked about earlier today, and record numbers of prisoners returning home.

Today, there is about 2.3 million prisoners—another 5.1 million adults on probation or parole, bringing the total number to a new high of 7.3 million persons. And that was at the close of 2007.

Many of these folks who are preparing to return home—I should mention that prisoner re-entry starts on the day of your first day of incarceration. But many of these folks who are returning home are returning home with inadequate preparation for their successful reintegration back into society.

As you all know, they have multiple barriers to success upon returning home, have difficulty reconnecting with families, difficulty getting affordable housing, difficulties finding a livable-wage job. And in addition, many do not have job skills to be able to gain employment, which is why the previous testimony was so very important.

In addition, many folks returning home have substance abuse issues, substance abuse challenges, mental health challenges and health challenges, as we talked about a little bit earlier. Moreover, folks returning home from prison, the majority of which are returning home to poor neighborhoods, which are largely infested with drugs, gangs and violence.

So, the stakes are high, and all of this is happening in an economic climate of increasing demand for services and declining resources.

The question is, what do we do about these formidable challenges to folks who are impacted by incarceration?

The community of faith is an untapped resource, a resource that the Bureau of Prisons at the Federal level, and State prisons, and certainly local jails, should rely upon as potential partners in problem-solving. This has taken root over the past 30 years. But as you all know, religion has been around in corrections for more than 100 years.

And the church is uniquely positioned, with the volunteers that are really unlimited, to assist and to augment the social services and spiritual services that are provided folks while in prison and upon returning home.

Over the past 30 years, there has really been a resurgence of religion in corrections, and increased diversity among faiths that are

happening in prison settings, and a real opportunity, I think, to reach out to folks and to effect some positive change.

So, the historical of the church, combined with this potential for volunteers, uniquely position the faith community to help with the successful reintegration of returning offenders.

A little empirical evidence. There is a growing body of empirical evidence out there that supports the claim that religious beliefs are inversely related to a variety of crime problems, all the way from juvenile delinquency, all the way through the adult continuum.

There are two studies' findings which I would like to share with you, because I had an opportunity to manage these. But one was the InnerChange Freedom Initiative study that happened in the State of Texas.

As director of research for Prison Fellowship, we had an opportunity to do a 2-year study of the InnerChange Freedom Initiative. And the results of the study show that graduates of this program, which is largely religious and Bible-based and run by Prison Fellowship, 60 percent—folks who graduated from the program were 60 percent less likely to be reincarcerated, 50 percent less likely to be rearrested.

We need more studies like the InnerChange Freedom Initiative and more programs like IFI.

I also had the opportunity to conduct an evaluation of Horizon Prison Ministries in Tomoka Prison in Florida. Once again, we had some very promising findings from Horizon, similar to the ones that we found at IFI. Not only does religious programming promote public safety in terms of reducing recidivism, but it also promotes prison safety.

At Horizon, it promoted a safe correctional environment. Folks who were participating in our programs had fewer discipline reports, fewer segregation stays and were less likely to be arrested upon release from prison. Specifically, one-third, 30 percent of our folks who graduated from the program were rearrested during the 2-year follow-up period.

The bottom line is that we need to think strategically about prisons and think more broadly about the prisons being in crisis, and try and find more ways for the faith community to work in partnership with folks who are in corrections to help solve the many problems that I mentioned early on.

The bottom line is that faith matters. It matters in changing folks' lives. It matters in improving outcomes for prisoners, ex-prisoners and their families.

Thank you for your time, and I would be happy to answer any questions that you have.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF RICHARD A. LEWIS

Statement of Richard A. Lewis
Senior Manager, ICF International
Before the House Judiciary Committee
Subcommittee on Crime
U.S. House of Representatives
July 21, 2009

Introduction

Good Morning Mr. Chairman and the Members of the Committee. On behalf of ICF International, thank you for the opportunity to appear before you today to discuss the *Efficacy of Faith-Based Programs: Improving Outcomes for Prisoners, Ex-Prisoners, and their Families and Communities.* For more than 20 years, I have managed programs and conducted research in criminal justice. Currently, I serve as a senior manager for ICF International. ICF, a global professional services firm, partners with government and commercial clients to deliver consulting services and technology solutions in energy, climate change, environment, transportation, social programs, health, defense, and emergency management. Prior to joining ICF, I served as the director of research for Prison Fellowship and as a social science analyst for the U.S. Department of Justice, National Institute of Justice.

Overview

American prisons at the beginning of the twenty-first century are in crisis. Perhaps the most pervasive problem challenging modern corrections is the ominous nexus of overburdened prison systems and record numbers of prisoners returning to communities each year. Today, the burgeoning correctional population includes more than 2.3 million prisoners and 5.1 million adults on probation or parole.[1] At year end 2007, the total Federal, State, and local adult correctional population, including those incarcerated and those being supervised in the community reached a new high of 7.3 million.[2] The driving force behind the nations incarceration binge is more than two decades of "get-tough" sentencing reforms including mandatory minimums, truth-in-sentencing, and the abolition of parole.[3] While credited with reversing the tide of unprecedented crime rates, these reforms have resulted in exponential increases in incarceration that present formidable challenges for corrections planners and policymakers.[4] Among these challenges are record numbers of prisoners (over 600,000 ex-prisoners each year) returning to communities each year having spent longer terms behind bars with inadequate assistance in their reintegration.[5,6,7] There are also public safety concerns—due to rising rates of recidivism among the majority of released prisoners.[8] Still other challenges involve a lack of self-sufficiency—most returning prisoners have difficulties re-connecting with families, affordable housing, and livable wage jobs—and many remain plagued by substance abuse and health problems.[9,10,11] In addition, many released prisoners are faced with the challenge of reentering poor, urban communities plagued by the deadly nexus of drugs, gangs, and guns.[12,13] Finally,

challenges include escalating confinement and community corrections costs in an economic climate of increasing demand for services and declining resources.[14] While formidable, the aforementioned challenges provide an opportunity to think more broadly about prospective partners in navigating the prison and reentry landscape. The following discusses the historical role of religion in corrections, reentry, and current research. This brief points out that the faith community is a promising partner in prisoner reentry—promoting public safety via the provision of services to support the successful reintegration of returning prisoners.

Religion and Corrections: The Role of the Church

Since the beginning of prisons and jails, religion has influenced philosophies of punishment and rehabilitation. Whether motivated by a religious beliefs or a sense of civic duty, "the church" has helped direct the course of modern corrections. For more than a century, the church has been relied upon to provide spiritual guidance and support to prisoners. The church has also provided, and continues to provide, a wide-range of secular services to prisoners, ex-prisoners, and their families. Traditionally, these services include the provision of food, shelter and clothing. Other social services involve education, employment, and housing assistance. Still other services include crime prevention, substance abuse counseling and treatment, and victim assistance in communities across the nation. Today, the social services provided via the church are vital to increasing public safety. In many instances, local churches provide the aforementioned services in poor, urban environs that are disproportionately impacted by incarceration.

Over the past 30 years, there has been a resurgence of religion in corrections. As a result, increasingly diverse faith practices have entered prison settings, and the number of religious services and activities has increased. Today, a variety of faiths are practiced in correctional facilities and there is wide variance among types of religious program services. While fiscal constraints have reduced religious programming in some instances, nearly every state and federal correctional institution provides support for the four "traditional" denominations—Catholicism, Protestantism, Islamism, and Judaism.[15] The revival of religion in corrections settings is partly attributed to exponential growth in church membership among "non-denominational" Protestants.[16] Recent trends in church membership suggest both continuity and change among Christians, and an increase in the number of Jews, Muslims, and Agnostics. These data also suggest that church members are potential neighborhood partners in prisoner reentry—particularly in urban communities.

Consistently, the historic role of the church combined with its potential for volunteer resources uniquely position the faith community to support the successful reintegration of returning prisoners. While the church has historically been in the business of enhancing social services, relatively few faith-based organizations have developed formal partnerships aimed at

reducing crime problems. In recent years, however, the faith community has gained prominence in the provision of a variety of criminal justice program services (e.g., life skills development). As a result, federal and state funding for promising faith-based programs and neighborhood partnerships to continue their "good works" in collaboration with criminal justice agencies is expected to increase.[17]

Religiosity and Research: Delinquency, Crime and Recidivism

The extant body of research literature is consistent with criminological theories supporting the claim that religious beliefs are inversely related to crime and recidivism.[18] [19] Johnson, De Li, Larson and McCullough (2000) conducted a systematic review of the religiosity and delinquency literature. Results show that the literature is not disparate or contradictory, as previous studies have suggested. Religious measures were generally inversely related to juvenile delinquency in the 13 studies that used reliability testing of religious measures. These findings also show that religiosity had a negative effect on deviance in the most methodologically rigorous studies. While many of the studies did not use random sampling, multiple indicators to control measurement errors, or reliability testing of their measures, the higher-quality studies generally found a negative relationship between religiosity and delinquency.[20]

There is also a growing body of empirical evidence indicating that religious beliefs reduce crime and recidivism among adult prisoners. Johnson and Larson (2003) conducted a preliminary evaluation of the *InnerChange Freedom Initiative*, a faith-based prisoner reform program. Results show that program graduates were 50 percent less likely to be rearrested and 60 percent less likely to be re-incarcerated during a two-year follow-up period.[21] Similarly, Johnson, Larson, and Pitts (1997) estimated the impact of religious programs on institutional adjustment and recidivism rates in two matched groups of inmates from four adult male prisons in New York State. One group had participated in programs sponsored by Prison Fellowship (PF) and the other had no involvement with PF. Results show that PF and non-PF inmates are similar on measures of institutional adjustment (measured by both general and serious prison infractions) and recidivism (measured by arrests during a one-year follow-up period). However, after controlling for level of involvement in PF-sponsored programs, inmates who were most active in Bible studies were significantly less likely to be rearrested during the follow-up period.[22]

In addition, Johnson and Larson (1996) in a study of the relevance of religion in facilitating inmate rehabilitation find that prison culture and the cost of quality treatment programs are among the primary obstacles to prisoner rehabilitation. The authors suggest that religious programs may mollify these barriers. Utilizing a comprehensive research approach, this study provides at least partial support for a framework that helps explain how religious programming may be uniquely suited to

both facilitate and augment the ongoing process of prisoner reentry. Results show that religious programs combat the negative effects of prison culture and that religious volunteers are a largely untapped resource pool available to administer educational, vocational, and treatment services at little or no cost.[23]

The aforementioned findings suggest that faith is the forgotten factor in reducing crime problems and religious program research may hold a valuable key to developing criminal justice system solutions.[24] While these and other prior research findings are promising, the prisoner reentry crisis combined with the resurgence of religion in prisons reveal the need for further research. Rigorous research combined with strong methodology is required to determine the relevance of religion in facilitating prisoner reentry and reintegration. Additional research is also essential to examine the efficacy of religious programs and their ability to foster pro-social attitudes among prisoners, ex-prisoners, and their families. In addition, further research is necessary to provide information regarding the therapeutic integrity of religious programs as compared to secular alternatives.

Compassion Capital Fund Research: Horizon Program Evaluation

The Compassion Capital Fund (CCF) supported four separate research projects, one of which was awarded to ICF International (formerly Caliber Associates) to evaluate the Horizon Program in Tomoka Prison in Daytona Beach, Florida. The Horizon program is an outgrowth of Kairos Prison Ministry begun in 1976, which has over 20,000 active volunteers in 270 prisons in the U.S. and abroad. Horizon Communities, a faith-based residential rehabilitation program for prisoners and their families, seek to address the whole person, by offering mental, spiritual, and emotional support. Begun in 1999, the goals of the yearlong program are to increase personal responsibility, family responsibility and employability. These goals are achieved through volunteer-led programs including informal mentoring, anger and stress management, family relations and fatherhood, financial management, addiction recovery and education. Prisoners in the program also participate in daily devotionals and their choice of religious services. The program at Tomoka Correctional Institution in Daytona Beach (FL) was implemented in 1999, and is the main focus of the ongoing evaluation. The following are results of the study.

- The Horizon program participation promotes a safer correctional environment, particularly during and immediately following program participation.
- Horizon program participants had significantly lower rates of discipline reports and segregation stays—compared to both the matched and waiting list comparison samples.
- Horizon program participation appears to promote public safety—less than one-third (32.7%) of participants were rearrested during the follow-up period and program participants had fewer total charges across all arrests.

- Among Horizon program participants less than a fifth (19.2%) were rearrested during the first six months after release and less than a third (30.4 %) were rearrested in the first year following release.
- Horizon program participation generally delayed the onset of rearrest—participants had significantly longer periods of time to first rearrest compared to the matched comparison sample (3.5 months and 1.4 months, respectively).
- Horizon program participation potentially improves outcomes for children and families—program graduates are more likely to fulfill their child support obligations.

Summary

American prisons are in crisis. Overcrowded prison systems, record numbers of prisoners returning home, and escalating confinement costs have profound implications for corrections and communities. The faith community, however, is a promising partner in prisoner reentry, and is uniquely positioned to provide a variety of services to support the successful reintegration of returning prisoners. Religious programs and evidence-based research hold a valuable key to developing criminal justice system solutions. While research findings are promising, further research is required to determine whether and under what circumstances faith-based programs continue to reduce crime and recidivism.

Conclusion

Mr. Chairman, this concludes my formal statement. I am pleased to answer any questions you or other Members of the Subcommittee may have.

Endnotes

[1] West, H., and Sabol, W. 2008. *Prisoners in 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. NCJ 224280

[2] Glaze, L., and Bonczar 2008. *Probation and Parole in the United States, 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. NCJ 224707

[3] Austin, J. 2001. Prisoner reentry: Current trends, practices, and issues. *Crime & Delinquency* 47(3): 314-334. NCJ 188915.

[4] Travis, J. 2000. *But They All Come Back: Rethinking Prisoners Reentry*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. NCJ 181413.

[5] Travis, J., Solomon, A.L., and Waul, M. 2001. *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*. Washington, DC: The Urban Institute. NCJ 190429.

[6] Lynch, J.P., and Sabol, W.J. 2001. *Prisoner Reentry in Perspective*. Washington, DC: The Urban Institute. NCJ 191685.

[7] Bureau of Justice Statistics. 2003. *Reentry Trends in the United States*. Online document. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

[8] U.S. Department of Justice, Bureau of Justice Statistics. *Recidivism of Prisoners Released in 1994*, 2002.

[8] U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. *When Prisoners Return to the Community: Political, Economic, and Social Consequences, 2000.*

[9] Travis, J., Waul, M., and Solomon, A.L. 2002. *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities.* Conference papers. Washington, DC: The Urban Institute.

[10] Petersilia, J. 2000. Parole and Prisoner Reentry in the United States. *Perspectives* 24(3): 32-46. NCJ 184143.

[11] Petersilia, J. 2000. *When Prisoners Return to the Community: Political, Economic, and Social Consequences.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. NCJ 184253.

[12] Petersilia, J. 2003. *When Prisoners Come Home: Parole and Prisoner Reentry.* New York, NY: Oxford University Press.

[13] U.S. Department of Justice, Bureau of Justice Statistics. *Direct Expenditure on Criminal Justice by Level of Government, 1982-97,* 2001. Washington, DC.

[14] American Correctional Association. *Religion in Corrections,* 2000.

[15] Princeton Religion Research Center, Princeton, NJ, *Religion in America,* annual. Based on surveys conducted by the Gallup Organization, Inc.

[16] White House Office of Faith-Based and Community Initiatives.

[17] Hirschi, Travis. *Causes of Delinquency.* Berkeley: University of California Press, 1969.

[18] Gottfredson, Michael R., and Travis Hirschi. *A General Theory of Crime.* Stanford: Stanford University Press, 1990.

[19] Johnson, Byron R., Spencer De Li, David B. Larson, and Mike McCullough. *A Systematic Review of the Religiosity and Delinquency Literature: A Research Note,* Journal of Contemporary Criminal Justice, Vol. 16 No.1, February, 2000: 32-52, Sage Publications, Incorporated.

[20] Johnson, Byron R., and David B. Larson. *The InnerChange Freedom Initiative: A Preliminary Evaluation of America's First Faith Based Prison.* University of Pennsylvania, CRRUCS (June, 2003).

[21] Johnson, Byron R., David B. Larson, and Timothy C. Pitts. *Religious Programs, Institutional Adjustment, and Recidivism among Former Inmates in Prison Fellowship Programs.* Justice Quarterly, Vol. 14 No. 1, (March, 1997). Note: A long-term follow-up study is forthcoming.

[22] Johnson, Byron R., and David B. Larson. *The Relevance of Religion in Facilitating Inmate Rehabilitation: A Research Note,* 1996.

[23] Johnson, Byron R., and David B. Larson. *Proposing a Full Range of Intermediate Sanctions: The Potential Benefit of the Faith Factor,* The IARCA Journal on Community Corrections (June, 1995).

Mr. SCOTT. Thank you.
Mr. Sady?

TESTIMONY OF STEPHEN R. SADY, CHIEF DEPUTY FEDERAL PUBLIC DEFENDER, PORTLAND, OR

Mr. SADY. Thank you, Chairman Scott and Ranking Member Gohmert, for the opportunity to address Bureau of Prison rules that limit statutory opportunities for prisoners to achieve earlier and more successful transitions back to the community at the end of their sentences.

Over-incarceration wastes millions in taxpayer dollars, exacerbates prison overcrowding that is dangerous to both correctional officers and inmates alike, and separates prisoners, longer than is necessary to accomplish any legitimate goal of sentencing, from families and from their communities. With no change in statutes, the Bureau of Prisons could address what Director Lappin this morning called "growth outpacing staffing."

Well, there is a way of limiting the growth without having any change in any current statutes: by enforcing the statutes that would save millions and ease overcrowding in six areas: the Second Chance Act, the Second Look statute, good time credit, residential substance abuse, boot camp and sentence computation.

Starting with the Second Chance Act on April 9, 2008, President Bush signed the Second Chance Act with strong bipartisan support. In section 251 of the SCA, Congress doubled the period for required consideration of community corrections from 6 months to 12 months. Instead, at this moment, the rule that is in effect effectively limits the time in community corrections to 6 months—exactly the same situation we had pre-SCA.

Now, by starting half-way house earlier, at 12 months, that would also allow earlier transition to home detention, which is an eighth of the expense. The cost of supervising home detention is at $3,743 a year instead of the $25,894 for general incarceration expenses.

Each prisoner is supposed to receive individual consideration, but overcrowding could be substantially addressed simply by enforcing the existing law and starting out with the statutory assumption that up to 12 months should be a norm. It virtually never happens. Nothing has changed.

On the Second Look statute, under 18 USC, section 3582(c), a prisoner who has extraordinary or compelling circumstances can be brought to the attention of the sentencing judge to, once again, reassess whether the sentence that was imposed is more than is necessary to accomplish the goals of sentencing.

The Bureau of Prisons is the gatekeeper. But the Sentencing Commission was assigned by Congress the job of deciding what those standards are, what constitutes extraordinary and compelling circumstances.

And what has happened is, we have a huge gap between the very broad potential for a judge to get another chance to take a look at a case—a second look—and the BOP standard that is only for people who are on death's door. We call it the death rattle rule, because in 25 percent of the applications, the handful of applications, the prisoner died before the judge even had a chance to consider.

So, a way for expensive and unnecessary incarceration to be stopped is not being taken advantage. As a result, we are having unnecessary incarceration.

The good time credit that Congress was anticipating, 85 percent is the minimum of what everybody has to serve. The Bureau of Prisons requires even the best behaved prisoner to serve 87.2 percent of his sentence. That is 2.2 percent at 7 days a year.

If you do the math, it is 7 days—not that much. You multiply it out by the 95 percent of the prisoners eligible, it comes out to 36,000 years of over-incarceration that you could save $981 million on. That is almost $1 billion of prison savings that could be used to make sure that the staffing is safe for correctional officers and prisoners alike.

Residential treatment. The authorization is up to a year of reduced sentence. That number has been going down. Six months ago it was 8.2, 7.8. Now it is 7.4.

Well, if the program was administered in a sensible way, so that people were determined their eligibility soon enough, and you did not have this glut at the end of the period of time, and people were getting that 4.4 extra time, you multiply it by the 4,800 prisoners who were receiving the sentence reduction and you have $44 million in savings—just by administering the program in a way that sensibly allows the people who are already eligible to receive the full amount.

And you would even have more savings, if you made the people who are statutorily eligible but are being categorically excluded for being an alien, or for being a non-violent possessor of a firearm, or for being somebody who has a prior conviction of a certain type.

We also lost the boot camp, a program that was providing first-time offenders who were non-violent a way of avoiding large parts of the over-incarceration that was resulting. Instead, they were able to get more time in community corrections, and a 6-month sentence reduction. That program was terminated—no notice, no discussion. It was gone.

The sentencing computations are done in a way that is creating unnecessary consecutive sentences, depriving good time on concurrent sentences, depriving people of time for credit in immigration custody, which we have heard is very big chunk of the prison population.

These are unnecessary expenses, unnecessary incarceration, that without any new legislation could make the ratios of prisoner to guard much safer and save public resources.

Redirection of the BOP policy toward full implementation of these ameliorative statutes would bring both justice and rationality to a system that is now spurring unnecessary growth that is creating—that is outpacing staffing and creating dangerous conditions and unnecessary expenditures.

Thank you.

[The prepared statement of Mr. Sady follows:]

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United States House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

FEDERAL BUREAU OF PRISONS OVERSIGHT HEARING: THE BUREAU OF PRISONS' SHOULD FULLY IMPLEMENT AMELIORATIVE STATUTES TO PREVENT WASTED RESOURCES, DANGEROUS OVERCROWDING, AND NEEDLESS OVER-INCARCERATION

Prepared Statement of

Stephen R. Sady
Chief Deputy Federal Public Defender
for the District of Oregon

July 21, 2009

United States House of Representatives Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Federal Bureau of Prisons Oversight Hearing

Prepared Statement of

Stephen R. Sady
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July 21, 2009

The Bureau of Prisons' Should Fully Implement Ameliorative Statutes To Prevent Wasted Resources, Dangerous Overcrowding, And Needless Over-Incarceration

Good morning Chairman Conyers, Chairman Scott, and Members of the Subcommittee:

Thank you for the opportunity to address some of the issues that directly affect the freedom and safety of prisoners that I, as a federal public defender, have represented over the years. The issues do not involve the fact of their convictions or length of their sentences, but rather the Bureau of Prisons' (BOP) rules that deny to them the opportunities Congress has deemed important in helping prisoners avoid unnecessary incarceration and achieve successful transitions into the community.

Over-incarceration of federal prisoners takes a huge societal toll: the hundreds of millions of taxpayer dollars wasted; the human costs of individual freedom lost and families broken; and the redefinition of our society as one willing to incarcerate more than is necessary to accomplish legitimate goals of sentencing. The overarching philosophy of the Sentencing Reform Act – "a sentence sufficient but not greater than necessary" to accomplish the goals of sentencing – should apply to the imposition *and execution* of the sentence. The sooner a prisoner begins community corrections, then supervised release, the sooner community-based rehabilitative programs, with their lesser costs, employment, and family reunification, go into effect. Congress has given the BOP authority to ensure that prisoners are not serving more time of actual incarceration than is necessary. But, the BOP has failed to fully implement available statutory mechanisms to ameliorate sentences.

There are six areas where the BOP has failed to follow the law or use available programs: the Second Chance Act (SCA), the second look statute, good time credit, the residential drug treatment program (RDAP), the boot camp program, and the sentence calculation statutes. The problem lies not with the BOP's statutory authority, but rather with its failure to administer the law as intended. These Congressionally approved mechanisms do not present generalized community safety concerns because the BOP has the discretion – indeed the obligation – to ensure the public's

safety on a case-by-case basis. However, categorical failures to fully implement ameliorative programs deprive thousands of prisoners the benefits that would spare the public millions of dollars and alleviate overcrowding that is dangerous to inmates and correctional officers alike.

The Second Chance Act

In Section 251 of the SCA, Congress doubled the BOP's required consideration of prerelease custody in the community from a maximum of six months to twelve months.[1] Congress also instructed the BOP to promulgate regulations within 90 days to ensure 1) consideration of the five factors listed in 18 U.S.C. § 3621(b), 2) individualized rather than categorical assessment, and 3) placement in the community for a "sufficient duration to provide the greatest likelihood of successful reintegration into the community."[2] Implementation of the SCA's plain language should normally lead to transfer to a halfway house starting at twelve months from the projected release date, with up to the final six months in home detention, unless less time in the community was justified by individual factors that overrode the greater opportunities for work in the community, for family reunification, and for other community-based programming to ease reentry from prison to home.

In response to the SCA, the BOP repeatedly violated the statute's plain intent by clinging to the former rules that effectively limited community corrections to six months, absent undefined extraordinary and compelling circumstances.[3] The Director of the BOP claimed that research supported the six-month limitation.[4] Despite this claim and the SCA's emphasis on evidence-based approaches, discovery obtained in litigation established that no such research exists. Thus, a key aspect of the SCA has become a dead letter. With no empirical support, the BOP failed to adopt the common sense position of Congress that, in general, more time in community transition programs increases the fiscal and individual benefits of employment, family reunification, and less stringent custody.

The BOP's six-month presumption violates the relevant statutes. Their plain text as well as their context belies the BOP's rule that – in effect – retains the pre-SCA six-month standard. Despite

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[1] Second Chance Act, Pub.L. 110-199, § 251, 122 Stat. 657 (Apr. 9, 2008); 18 U.S.C. §3624(c)(2008).

[2] 18 U.S.C. §3624(c)(6)(2008).

[3] *Pre-Release Residential Re-Entry Center Placements Following The Second Chance Act of 2007,* Memorandum From Joyce Conley and Kathleen Kennedy to Chief Executive Officers (Apr. 14, 2008).

[4] United States Sentencing Commission, *Symposium on Alternatives to Incarceration* at 267 (July 14-15, 2008) (statement of Harley Lappin, Director, Federal Bureau of Prisons).

the SCA's express call for "enhance[d]" and "improve[d]" use of community corrections,[5] the SCA rules result in transfer decisions that are virtually identical in length to those prior to the SCA. The BOP's policy of re-instituting the pre-SCA presumption of no more than six months of community corrections violates the plain meaning of the SCA and undermines Congressional intent. As a District Court in New Jersey held, "[o]bviously, an underlying premise of these amendments is that the more time an inmate spends in a CCC before he or she is released from BOP custody, the more likely that his or her community reintegration will be successful."[6] The BOP has flagrantly ignored Congress' clear directive by adopting an incorrect standard requiring "extraordinary" or "compelling" circumstances for community corrections beyond six months.[7] The practice has been to routinely deny requests for exceptions under standards that are either incomprehensible – such as, the prisoner is either too ready to live in the community or not ready enough – or illegal – such as, the prisoner has a halfway house condition of supervised release. Moreover, the BOP has failed to define what constitutes extraordinary or compelling circumstances.

Despite a clear directive from Congress and the opportunity to substantially increase the utilization of community corrections under the SCA, the BOP has hunkered down into its old pattern of providing the same minimal access to community programming as in its pre-SCA policies and practices. The BOP's failure to respond to the opportunities provided is paralleled by the failure to follow clear directives of Congress: despite the instruction to promulgate rules in 90 days, the BOP waited 195 days to issue rules with no notice-and-comment that failed to address the change in access to community corrections. Congress directed a statistical accounting of SCA implementation in one year; the BOP still has not complied. Most importantly, despite the doubling of available time for mandatory consideration of community corrections, the BOP has by rule stuck to its pre-SCA standard of limiting community corrections to six months. And the BOP has not used home detention to accelerate participation in community corrections by beginning the transfer to the halfway house earlier followed by up to six months of home detention. So far, on the amendment to § 3624(c), Congress has spoken, but the agency has not listened – leaving federal prisoners in the same position as if the SCA had never been enacted.

Extraordinary And Compelling Circumstances Warranting Second-Look Resentencing

In 18 U.S.C. § 3582(c), Congress provided for second look resentencing by giving discretion to the sentencing judge to reduce a sentence if the court finds that "extraordinary and compelling reasons warrant such a reduction." Congress realized that a wide variety of circumstances could fit into the description of "extraordinary and compelling" circumstances, and delegated to the

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[5] SCA at §231(c).

[6] *Strong v. Schultz*, 599 F.Supp.2d 556, 562 (D.N.J. 2009).

[7] *Pre-Release Residential Re-Entry Center Placements Floowing The Second Chance Act of 2007,* Memorandum From Joyce Conley and Kathleen Kennedy to Chief Executive Officers (Apr. 14, 2008); Bureau of Prisons Program Statement 7310.04 at 8 (Dec. 16, 1998).

Sentencing Commission the task of setting criteria and providing examples.[8] The statute contemplates that the BOP would perform a gatekeeper function: sentencing discretion is to be exercised by the sentencing judge, but the sentencing judge does not receive notice of the case until the BOP files a motion. This is where practice has broken down.

Despite the explicit direction to the Sentencing Commission, this delegation resulted in no action for the first 20 years of the Guidelines. In this power vacuum, the BOP adopted a rule that, despite the absence of a statutory basis for such a restriction, only permits the filing of a motion based on imminent proximity to death – known as the "death rattle rule." The result of the policy is brutal: with almost 200,000 federal prisoners, the BOP approved an average of only 21.3 motions each year between 2000 and 2008 and, in about 24% of the motions that were approved by the BOP, the prisoner died before the motion was ruled on, so a federal judge never had the opportunity to even make a decision.[9]

Last year, the Sentencing Commission adopted a rule that, consistent with the statutory language, contains no limit on what can constitute "extraordinary and compelling" circumstances, and sets out examples beyond imminent death.[10] Although this Guideline became effective on November 1, 2007, we do not believe a single motion has been filed pursuant to the new U.S.S.G. § 1B1.13. The old BOP rule remains on the books, and the BOP, in an interim rule, has not changed a syllable of the basic standard. The BOP explicitly stated in the interim rule that the Sentencing Commission's proposed factors, which had been circulated since May 2006, would not be considered: "It is important to note we do not intend this regulation to change the number of . . . cases recommended by the Bureau to sentencing courts. It is merely a clarification that we will only consider inmates with extraordinary and compelling medical conditions for [reduction in sentence], and not inmates in other, non-medical situations which may be characterized as "hardships," such as a family member's medical problems, economic difficulties, or the inmate's claim of an unjust sentence."[11] The BOP to this day is instructing Wardens by rule to deprive sentencing judges of the opportunity to exercise their discretion and is, in effect, assuring that the range of discretion contemplated by the statute and the Sentencing Commission is never exercised.

Under basic separation of powers principles, the BOP should be operating as no more than the conduit for potential claims to come before the sentencing judge. Otherwise, the BOP effectively becomes the sole adjudicator of second looks – a function already provided to the Executive Branch in the powers of pardon and commutation.

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[8] 28 U.S.C. § 994(t) (2000).

[9] Judi Garret, Dep'ty. Dir., Office of Information, Policy, & Public Affairs, Federal Bureau of Prisons (May 2008), http://or.fd.org/ReferenceFiles/3582cStats.pdf.

[10] U.S.S.G. § 1B1.13, comment. (n.1).

[11] 71 Fed. Reg. 76619-01 (Dec. 21, 2006).

The result of the BOP's obstruction of § 3582(c)'s full implementation is expensive. The deserving prisoners described by the Commission in U.S.S.G. § 1B1.13 are real and numerous. Many of the potential beneficiaries are medically needy and, therefore, expensive to house. Given the number of federal districts, even one motion a year per district would double the number of § 3582(c)(1)(A)(i) motions filed per year, greatly reducing unnecessary prison expenditures. Most importantly, judges, defense counsel, and prosecutors would have a mechanism available to deal with the "extraordinary and compelling" prison tragedies that need judges to do justice.

Good Time Credits

For at least a century, federal sentencing law has calculated good time credits based on the sentence imposed to provide an incentive for good conduct in prison. Prior to 1987, when the Sentencing Reform Act (SRA) went into effect, the good time credit statute provided for graduated available credits per month depending on the length of the sentence. In the SRA, Congress purported to simplify the process by enacting 18 U.S.C. § 3624(b), which provided that prisoners serving a term of imprisonment greater than one year "may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment . . ." Because 54 is almost exactly 15% of the 365 days in a year, the congressional rule appeared to be that, for any term of imprisonment of one year and a day or greater, a prisoner could earn up to 15% of the sentence imposed in good time credits, so the minimum term that must be served on any sentence is 85%.[12]

Along with the good time statute, the SRA delegated to the Sentencing Commission the creation of the Sentencing Table, requiring "that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving

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[12] Former Senator Joseph Biden later described the methodology as follows:

> I was the coauthor of that bill. In the Federal courts, if a judge says you are going to go to prison for 10 years, you know you are going to go to prison for at least 85 percent of that time - 8.5 years, which is what the law mandates. You can get up to 1.5 years in good time credits, but that is all. And we abolished parole. So you know you'll be in prison for at least 8.5 years.

141 CONG. REC. S2348-01, at 2349 (daily ed. Feb. 9, 1995) (statement of Sen. Biden); *see also* 131 CONG. REC. E37-02 (daily ed. Jan. 3, 1985) (statement of Rep. Hamilton) ("Now sentences will be reduced only 15% for good behavior."); 131 CONG. REC. E201-04 (daily ed. Jan. 24, 1985) (statement of Rep. Mazzoli) ("[A] sentence could be shortened 15 percent for good behavior."); 131 CONG. REC. S4083-03 (daily ed Apr. 3, 1985) (statement of Sen. Kennedy) (the "sentence announced by the sentencing judge will be for almost all cases the sentence actually served by the defendant, with a 15 percent credit for 'good time.'").

sentences to terms of imprisonment, the length of such terms actually served."[13] In calibrating the Sentencing Table, the Sentencing Commission's staff collected large samples of sentences for various crimes and determined the actual time served as a baseline. The Sentencing Commission then "adjusted for good time" by figuring out the longer sentence for which actual time served would be 85%:

> Prison time was increased by dividing by 0.85 good time when the term exceeded 12 months. This adjustment corrected for the good time (resulting in early release) that would be earned under the guidelines. This adjustment made sentences in the Levels Table comparable with those in the guidelines (which refer to sentences prior to the awarding of good time).[14]

The Sentencing Commission incorporated its interpretation of the good time statute in a 1990 amendment to the introduction to the Guidelines manual, stating "[h]onesty is easy to achieve: the abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior."[15]

For about a decade after the SRA became effective on November 1, 1987, prosecutors, defense attorneys, and judges generally predicted actual minimum time served by multiplying by .85 the potential term of imprisonment in months to calculate the time a defendant, receiving maximum good time, would actually serve before commencing the term of supervised release. However, the 85% calculation was not accurate: internal documents from the BOP indicate that in 1988, the BOP took the position that "good time is earned on sentences of one year and one day or more at a rate of 54 days *for each year of time served*."[16] By counting good time credits against time served, rather than the sentence imposed, the BOP disallowed seven days of potential good time credit. Following an "arithmetically complicated" formula, the BOP's methodology provides only a maximum of 47 days against the sentence imposed as maximum good time credits, or allowing no more than 12.8% of the sentence imposed as good time credit.[17] Therefore, the minimum amount of time that a well-behaved prisoner would serve, with full good time credits, equals 87.2% of the sentence imposed, not 85%.

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[13] 28 U.S.C. § 994(m) (2000).

[14] United States Sentencing Commission, *Supplementary Report on the Initial Sentencing Guidelines and Policy Statements*, 23 (1987).

[15] U.S.S.G. ch. 1, pt. A, § 3 (1990 Amendment) (2007 Guidelines Manual at 9).

[16] Bureau of Prisons Program Statement 5880.28 at 1-44 (Feb. 14, 1997) (emphasis added).

[17] *Id.* at 1- 46-47.

The BOP never made a reasoned decision to construe the statute more harshly – the BOP simply assumed the statute unambiguously required the lesser amount of good time credits. Further, there is no indication that the BOP ever took into consideration that the Sentencing Commission had previously interpreted the statute to provide the full 54 days against each year of the time imposed, or that the Sentencing Table, upon which all sentences are initially graphed, was calibrated to be 2.2% higher on the assumption that 15% good time credits on the sentence imposed would be available, not the 12.8% allowed by the BOP.

Prisoners' challenges to the BOP's formulation have as yet been unsuccessful. Although three district courts found that the statute unambiguously provided for 54 days credit based on the length of the sentence,[18] circuit courts found the statue ambiguous, thereby disagreeing with – yet deferring to – the BOP's belief that only 12.8% credit was available.[19] Justice John Paul Stevens explained, in connection with the Supreme Court's denial of certiorari in one case that the prisoners' statutory interpretation appeared to be correct and that, in the absence of a Circuit split, courts and "other Government officials" should re-examine the BOP's method of computing good time credits:

> I think it appropriate to emphasize that the Court's action does not constitute a ruling on the merits and certainly does not represent an expression of any opinion concerning the wisdom of the Government's position. As demonstrated by the thoughtful [District Court] opinion, both the test and the history of the statute strongly suggest that it was not intended to alter the pre-existing approach of calculating good-time credit based on the sentence imposed. Despite its technical character, the question has sufficient importance to merit further study, not only by judges but by other Government officials as well.[20]

No government officials appear to have reconsidered the BOP's formulation. However, prisoners have again challenged the rules as contrary to the plain language of the statute, as well as being arbitrary, capricious, an abuse of discretion, and contrary to law under §706 of the Administrative Procedure Act (APA), primarily because the BOP failed to consider the Sentencing Commission's interpretation of the statute as providing for a 15% reduction. The BOP has conceded

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[18] *Moreland v. Fed. Bureau of Prisons*, 363 F.Supp.2d 882, 894 (S.D. Tex. 2005), *rev'd*, 431 F.3d 180 (5th Cir. 2005); *Williams v. Dewalt*, 351 F.Supp.2d 412, 420 (D. Md. 2004), *vacated*, 2005 WL 4705074 (D. Md. 2005); *White v. Scibana*, 314 F.Supp.2d 834, 841 (W.D. Wis. 2004), *rev'd*, 390 F.3d 997 (7th Cir. 2004).

[19] *Sash v. Zenk*, 428 F.3d 132, 134 (2d Cir. 2005); *Mujahid v. Daniels*, 413 F.3d 991, 999 (9th Cir. 2005); *Yi v. Fed. Bureau of Prisons*, 412 F.3d 526, 532-33 (4th Cir. 2005); *O'Donald v. Johns*, 402 F.3d 172, 173-74 (3d Cir. 2005); *Perez-Olivo v. Chavez*, 394 F.3d 45, 49 (1st Cir. 2005); *White v. Scibana*, 390 F.3d 997, 1002-03 (7th Cir. 2004).

[20] *Moreland v. Federal Bureau of Prisons*, 126 S.Ct. 1906, 1907 (2006) (Stevens, J., statement respecting the denial of certiorari).

that the rules violated the APA, but the court deferred to the BOP nonetheless. [21] Petitions for writs of certiorari are pending in the Supreme Court.

The seven days per year seems small until measured against the number of persons affected and the length of sentences imposed. For all federal prisoners eligible for good time, the total time involved is over 36,000 years (195,435 prisoners[22] x 7 days a year x 9.8 average sentence[23] that is more than a year and less than life, divided by 365 days in a year equals 36,731 years). At $25,894 per year for non-capital incarceration expenditures,[24] this amounts to over $951 million in taxpayer money that Congress did not intend or authorize to expend on incarceration for current prisoners. If prisoners were awarded 54 instead of 47 days per year, the additional beds available would, with no new prison construction, mitigate dangerous overcrowding in prisons that are at 137 percent of capacity.[25] Put another way, 95% of the approximately 200,000 inmates are eligible for good time credit, so every year the over-incarceration by 7 days, at $68 per day, costs taxpayers approximately $93 million.[26] If prisoners were awarded 54 instead of 47 days per year, the additional beds available would, with no new construction, mitigate dangerous overcrowding in a system that is 37% over capacity.[27] The human costs of this over-incarceration defy quantification.

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[21] *Tablada v. Thomas*, 533 F.3d 800 (9th Cir. 2009).

[22] Federal Bureau of Prisons, *Quick Facts About the Bureau of Prisons*, http://www.bop.gov/news/quick.jsp (last visited June 16, 2009) (205, 289 total population adjusted by 4.8 percent—the percentage of prisoners serving less than one year or a life sentence).

[23] Statement of Harley G. Lappin, Director, Fed. Bureau of Prisons Before the Subcomm. on Commerce, Justice, Science and Related Agencies of the House Comm. on Appropriations, 110th Cong. (2008): Testimony on Budget Request for the Fed. Bureau of Prisons in President's Fiscal Year 2009, *available at* 2008 WL 715683.

[24] Memorandum from Matthew Rowland, Deputy Assistant Director, Admin. Office of the U.S. Courts, to Chief Prob. Officers and Chief Pretrial Services Officers (May 6, 2009).

[25] Lappin Statement, *supra* note 23, at 2.

[26] *Id.*

[27] At year end 2006, BOP capacity was 119,243, while the actual population was 190,844 prisoners, so the BOP operated 37% over capacity. U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN, PRISONERS IN 2006, at 4, 5, 20, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/p06.pdf. The BOP population is 201,489 as of June 19, 2008. *See* BOP Weekly Population Report, *available at* http://www.bop.gov/locations/weekly_report.jsp.

Residential Drug Abuse Treatment Programs

In 1990, Congress created the outlines for residential substance abuse treatment to address two leading causes of recidivism – alcoholism and drug addiction.[28] When very few prisoners volunteered for the program, Congress in 1994 enacted an incentive of a sentence reduction of up to one year for successful completion of the program.[29] Participation increased greatly. As we can attest from having spoken to hundreds of participants in what is known as RDAP or the Residential Drug and Alcohol Program, the program is excellent at giving prisoners the tools to return to their communities and to live law-abiding lives.

In its execution of the incentive, however, the BOP has failed to implement the program to cover the full range of prisoners authorized by statute to receive the sentence reduction. The statute limits eligibility for the sentence reduction to prisoners convicted of a nonviolent offense. In implementing the sentence reduction incentive, the BOP administers the program in a manner that does not permit fully the available sentence reduction. The BOP has eliminated broad categories of statutorily eligible prisoners: alien prisoners; prisoners whose offense involved mere possession of a firearm, such as felons in possession of a firearm and drug traffickers who receive a two level gun increase; and prisoners convicted of a nonviolent offense but who have prior violent convictions, regardless of how stale. The BOP should allow all statutorily eligible prisoners to participate in the incentive program, with any current and serious dangerousness addressed on an individual, rather than categorical, basis.

1. Full Availability Of RDAP Incentives

The BOP should take measures to assure that RDAP classes are open and available at a time that permits the maximum amount of sentence reduction to be available. Currently, the BOP only provides an average sentence reduction of 7.6 months for eligible prisoners, rather than the one year available under the statute.[30] For prisoners who annually receive the sentence reduction, the additional 4.4-month reduction would save 1,700 years of prison time at a cost of over $44 million dollars per year (4.4 months x 4,800 prisoners ÷ 12 = 1700 years x $25,894 = $44,019,800).

Several BOP policies result in this expensive underutilization of the RDAP program. The BOP does not make eligibility determinations early enough to be able to plan to send prisoners to

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[28] 18 U.S.C. § 3621(b) (2000).

[29] 18 U.S.C. § 3621(e) (2000). This program appears to at least partially respond to a study indicating that non-violent drug offenders were receiving greater punishment than necessary. U.S. DEPARTMENT OF JUSTICE, AN ANALYSIS OF NON-VIOLENT DRUG OFFENDERS WITH MINIMAL CRIMINAL HISTORIES (1994).

[30] 2009 Fed. Bureau of Prisons Annual Report on Substance Abuse Treatment Programs at 11 (Jan. 2009).

available programs, a practice that will be exacerbated by the BOP's new regulations requiring that RDAP determinations be made late in a prisoner's term of imprisonment. In creating waiting lists, the BOP does not follow the statutory requirement that "proximity to release" provide the priority: while using the potential for good time credits for a projected release date, the BOP does not use the potential for the RDAP sentence reduction, thereby leaving prisoners to obtain a much reduced period of the sentence reduction.[31] In other words, prisoners who are eligible for the reduction see non-eligible prisoners take their places in programs based on release dates that do not include the one-year reduction. Many eligible prisoners could get into classes earlier and receive the full 12-month reduction if the BOP used the potential full sentence reduction for successful completion of the program when calculating proximity for release.[32] Further, the BOP has promulgated inappropriate practices regarding who is an eligible prisoner, disqualifying persons who have not used substances within a year of custody when the addicted person had been complying with pretrial release conditions.[33] And lastly, the allocation of sufficient staff to address the backlog of prisoners on the RDAP waiting list would prevent the delays that inevitably reduce the amount of the sentence reduction.

This constellation of administrative impediments often leaves prisoners with a shorter sentence reduction, not because they do not deserve it, but because of the manner of administration. The most important policy approach should be to assure that the treatment programs receive sufficient funding that classes can accept all prisoners who volunteer for such treatment and that the program is administered so all eligible prisoners receive the full one year sentence reduction.

2. Alien Prisoners

Nothing in the statute ties successful completion of RDAP to participation in community corrections. In fact, as initially promulgated in 1995, the BOP's rules specifically provided for eligibility for all persons who successfully completed the residential program and then succeeded in *either* community corrections *or* transitional programming within the institution.[34] This meant that prisoners with immigration and other detainers could receive the year off, which makes good sense given that alien detainees often became substance abusers in the United States. Their successful treatment would help them live law-abiding lives in their own countries, while not saddling neighboring countries with untreated substance abusers. This sensible program tragically changed due to a classic case of unintended consequences.

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[31] 18 U.S.C. § 3621(e)(1)(C) ("with priority for such treatment accorded based on an eligible prisoner's proximity to release date").

[32] *Thurman v. Thomas,* 2009 WL 936663 (Mar. 30, 2009)(proximity to release under 18 U.S.C. §3621(e)(1)(C) includes potential sentence reduction).

[33] *See Salvador-Orta v. Daniels*, 531 F.Supp.2d 1249, 1252 (D. Or. 2008).

[34] Bureau of Prisons Program Statement 5330.10, ch. 5 at p. 2 (May 25, 1995).

In the original 1995 rules, the follow-up after the residential treatment called for only one session every month.[35] The American Psychological Association wrote the BOP a letter suggesting that more frequent treatment sessions should be included.[36] In response, the BOP promulgated a new rule in 1996 that included a requirement that, to successfully complete the program, the prisoner had to complete community corrections.[37] With no indication that any thought was given to prisoners with detainers who are ineligible for community placement, the BOP in effect eliminated all aliens, as well as United States citizen prisoners with state detainers, from the sentence reduction incentive. There is no reason why the BOP could not reinstate the requirement of successful completion of transitional programming, in lieu of community corrections, for those prisoners who, due to the existence of a detainer, are not in a position to participate in community corrections.

Prisoners initially argued that, as a matter of statutory construction, the BOP lacked authority to create a categorical disqualification based on detainers. This approach was not successful.[38] However, in June 2000, the American Psychological Association reacted with alarm when it realized for the first time that its comment had been used to justify elimination of 26.6% of the federal prison population – those with immigration detainers – from the sentence reduction incentive. The American Psychological Association provided a new comment to the BOP objecting to the misuse of the prior comment and providing strong reasons why such eligibility should continue.[39] Nonetheless, the BOP refused to modify its position.[40] In fact, the BOP has recently determined that prisoners with detainers are ineligible for both the RDAP program and the sentence reduction.[41]

By excluding all prisoners with immigration detainers from an immensely beneficial and cost-saving program based on the misinterpretation of the position of the American Psychological Association deprives the United States and the returning prisoners' home countries the benefits of lowered recidivism and drug-free lifestyles. The cost-savings of allowing over a quarter of the prison

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[35] 28 C.F.R. § 550.59(a) (1995).

[36] Drug Abuse Treatment Programs: Early Release Considerations, 61 Fed. Reg. 25, 121 (May 17, 1996).

[37] *Id.*

[38] *McLean v. Crabtree*, 173 F.3d 1176 (9th Cir. 1999).

[39] Drug Abuse Treatment and Intensive Confinement Center Programs: Early Release Consideration, 65 Fed. Reg. 80745, 80746-47 (Dec. 22, 2000).

[40] *Id.* at 80745.

[41] 28 C.F.R. § 550.53 (2.5.1)((b)(3) (Mar. 16, 2009).

population a year sentence reduction is obvious. The RDAP program should be open to all prisoners who need substance abuse treatment.[42]

3. Gun Possessors

Although the BOP concedes that prisoners whose offenses involve gun possession are statutorily eligible nonviolent offenders, the BOP disqualifies them as a matter of discretion. Originally, the BOP's rule disqualifying gun possessors from the early release incentive appears to have arisen from an initial misinterpretation of the statute. Under its 1995 rules, the BOP adopted a regulation defining nonviolent offense by reference to "crimes of violence" in 18 U.S.C. § 924(c).[43] The BOP then, in program statements, misadvised its personnel that such offenses included simple possession of a firearm by a felon and drug trafficking offenses with a two-level gun specific offense characteristic under U.S.S.G. § 2D1.1(b).[44] After prisoners who believed themselves to be nonviolent offenders filed habeas petitions, the courts generally held that the statute did not categorically disqualify the class of prisoners who merely possessed a firearm. In response, with no empirical evidence in support, and with no APA compliant notice, the BOP issued an interim rule in October 1997 and a final rule in December 2000 that purported to disqualify the same individuals as an exercise of the BOP's categorical discretion.[45] The BOP has reissued rules disqualifying gun possessors from early release consideration, again failing to provide any empirical support for the categorical exclusion.

4. Prior Convictions

Another group of statutorily eligible prisoners are those with prior convictions for listed violent offenses. A prisoner who is serving his sentence for an undoubtedly nonviolent offense is not eligible for the incentive program based on certain prior convictions, regardless of how old the priors are. The subclass of prisoners who should be most clearly eligible includes those whose prior convictions are so stale they do not count as criminal history.

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[42] For a more detailed discussion, *see* Nora V. Demleitner, *Terms of Imprisonment: Treating the Noncitizen Offender Equally,* Federal Sentencing Reporter, Vol. 21, No. 3 at 174 (Feb. 2009).

[43] Drug Abuse Treatment Programs: Early Release Consideration, 60 Fed. Reg. 27692-01 (May 25, 1995).

[44] Bureau of Prisons Program Statement 5161.02 (July 24, 1995).

[45] Drug Abuse Treatment and Intensive Confinement Center Programs: Early Release Consideration, 62 Fed. Reg. 53690 (Oct. 15, 1997); Bureau of Prisons Program Statement 5330.10 (Oct. 7, 1997); Drug Abuse Treatment and Intensive Confinement Center Programs: Early Release Consideration, 65 Fed. Reg. 80745 (Dec. 22, 2000).

In the SRA, Congress specifically delegated to the Sentencing Commission the task of deciding what prior convictions categorically have sufficient relevance to affect the length of time actually served; that is, prior convictions that provide the criminal history points that are considered in reaching a Criminal History Category between I and VI.[46] The Sentencing Commission expressly relied on Parole Commission empirical data in determining that certain sentences over ten or fifteen years old should not count for criminal history points.[47] Given the delegation to the Sentencing Commission of the task of deciding whether the conviction should count toward the length of the current sentence, the BOP's use of stale convictions to eliminate eligibility for the sentencing reduction disregards the empirical conclusion of the body properly delegated to make such decisions. The disqualification of prisoners based on stale convictions would be easily remedied by rule.

The entire question of using prior convictions to disqualify prisoners convicted of a nonviolent offense should also be reexamined. If the sentence has already been enhanced based on a prior conviction, and a sentencing judge already considered the record in imposing sentence, the reduction of up to twelve months still results in a longer sentence for persons based on prior convictions. And these offenders are people who should be given every incentive to participate in a program that can create major changes in their lives and to remove themselves from criminal subcultures, particularly in light of the success of RDAP in lowering recidivism rates.[48] Rather than categorically excluding prisoners, the BOP should exercise discretion individually in determining whether there is some reason a person convicted of a nonviolent offense should not receive the statutory incentive.

Federal Boot Camp Program

In 1990, Congress passed a statute authorizing the creation of a boot camp program with incentives available for successful completion.[49] The BOP, following the statutory direction that the program be available to nonviolent offenders with minor criminal histories, put into place two boot camps for men and one for women.[50] In 1996, through formal rulemaking procedures, the BOP

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[46] 28 U.S.C. § 994(d)(10) (2000) (criminal history one of the factors considered "only to the extent they do have relevance."); *Mistretta v. United States*, 488 U.S., 361, 375-76 (1989).

[47] U.S.S.G. § 4A1.1 (2007); *see* U.S. SENTENCING COMMISSION, A COMPARISON OF THE FEDERAL SENTENCING GUIDELINES CRIMINAL HISTORY CATEGORY AND THE U.S. PAROLE COMMISSION SALIENT FACTOR SCORE, at 3 (Jan. 4, 2005).

[48] 2009 Fed. Bureau of Prisons Annual Report on Substance Abuse Treatment Programs at 7-8 (Jan. 2009) (male participants are 16 percent less likely to recidivate and 15 percent less likely to relapse than similarly-situated inmates).

[49] 18 U.S.C. § 4046 (2000).

[50] Bureau of Prisons Operations Memorandum 174-90 (Nov. 20, 1990).

institutionalized incentives that included, for nonviolent prisoners sentenced to no more than 30 months incarceration, a sentence reduction of up to six months and an extension of community corrections by over a year.[51] For prisoners with sentences between 30 and 60 months, boot camp eligibility provided extended community corrections, but not the sentence reduction.[52]

The federal boot camp program was well received by almost all participants in the federal system. The Sentencing Commission promulgated a guideline addressing it under the Sentencing Options chapter.[53] In addition to providing programming that, anecdotally, assisted many defendants in developing the discipline and skills needed to maintain employment and a crime-free life, minor offenders who did not need 30 months of incarceration had available a sentencing option that would reduce the actual separation from family, employment, and community by six months, coupled with heightened supervision under the community corrections program. In 1996, a study of the Lewisburg federal boot camp for women concluded that the program was effective both in providing skills and lowering recidivism.[54]

In January 2005, the BOP unilaterally terminated the federal boot camp program.[55] The Director of the BOP sent a memorandum to federal judges, prosecutors, probation officers, and federal defenders stating that, due to budget constraints and supposed studies showing the program was not effective, the program was being eliminated, effective immediately.[56] In subsequent litigation, these representations turned out to be questionable: the BOP's assistant director over research and evaluation testified that no new studies had been conducted regarding the efficacy of the federal boot camp program; the state studies did not address federal boot camps, with their limitations on eligibility and the required followup in community corrections; and the change went into effect with little internal discussion.

The recipients of the Director's memorandum are the same actors who are supposed to provide comment on proposed potential changes in the federal sentencing guidelines under 28 U.S.C. § 994(o) and (p). The boot camp termination went into effect without even the notice and chance

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[51] 28 C.F.R. § 524.30 (1996).

[52] 28 C.F.R. § 524.30 (1996).

[53] U.S.S.G. § 5F1.7.

[54] 1996 Lewisburg ICC Evaluation, Federal Bureau of Prisons (1996).

[55] Message from Harley G. Lappin, Director, Federal Bureau of Prisons, to all staff (Jan. 5, 2005).

[56] Memorandum from Harley G. Lappin, Director, Federal Bureau of Prisons, to Federal Judges, United States Probation Officers, Federal Public Defenders and United States Attorneys (Jan. 14, 2005).

to provide comment appropriate under the Administrative Procedure Act. The resulting decision was bad policy – depriving courts of a needed alternative sentencing mechanism for nonviolent first time offenders facing needlessly long incarceration. The BOP should reallocate sufficient resources to reopen the federal boot camp program as contemplated by Congress in 18 U.S.C. § 4046, and as utilized by federal judges for over a decade.

The savings from reinstatement of federal boot camps could be extrapolated from the sentence reductions and increased community corrections while the program existed. The period of community corrections is especially significant because the expense of home detention – which is the preferred form of community corrections – amounts to only $3,743.23 per year rather than $25,894.00 for persons in prison.[57]

Sentence Computation Statutes

The BOP implementation of sentence computation statutes creates three areas of categorical problems that result in over-incarceration: creating de facto consecutive sentences, denying good time credit adjusted concurrent sentences, and not crediting prisoners with time spent in immigration detention prior to the federal prosecution.

One of the most common potentials for over-incarceration derives from the statute on concurrent and consecutive sentences. The federal court only has jurisdiction to impose a sentence consecutively to a sentence that is already in existence.[58] However, under BOP rules, given the vagaries of primary jurisdiction, the BOP can impose de facto consecutive sentences even where the later state sentence explicitly states in the judgment that the sentence is concurrent.[59] The BOP rules are simply inconsistent with the underlying statute, which provides the Executive Branch with no authority to violate the rules of comity by undercutting a state sentence through the manner in which a federal sentence is executed. The BOP should execute the statute to fully credit a later state sentence that is imposed to run concurrently with a previously imposed federal sentence.

Under the plain reading of § 3584(a), the federal court can only impose a consecutive sentence if the defendant "is already subject to an undischarged term of imprisonment," thereby assuring the sentences envisioned by both the state and federal courts. The BOP relies primarily on the last sentence of § 3584(a), which provides that multiple terms of imprisonment run "consecutively unless the court orders that the terms are to be run concurrently." However, the BOP ignores the fact that, for the statute to apply, the sentences must either be imposed at the same time, which could only apply to multiple federal cases, or "if a term of imprisonment is imposed on a

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[57] Memorandum from Matthew Rowland, Deputy Assistant Director, *supra,* note 24.

[58] 18 U.S.C. § 3584 (2000).

[59] Bureau of Prisons Program Statement 5880.28 at 1-32A (Feb. 14, 1997).

defendant *who is already subject to an undischarged term of imprisonment*."[60] Contrary to the plain meaning of the statute and the rules of construction, the BOP construes silence in a federal judgment as an order to have the federal sentence run consecutively to a subsequently imposed state sentence, even though the state judge ordered it to run concurrently to the previously imposed federal sentence.[61]

The BOP's rules are at odds with U.S.S.G. § 5G1.3. Section 5G1.3 is designed to provide guidance for a court considering sentencing options under § 3584(a). In the three subsections of § 5G1.3 and the accompanying commentary, there is no provision for concurrent or consecutive sentencing to an non-existent state sentence. If Congress had intended for § 3584(a) to apply to future sentences, there would be a corresponding guideline. The BOP should not create de facto consecutive sentences that contradict congressional statutes and the Guidelines entrusted to the Commission.

A problem with the implementation of the federal good time credit statute arises when a judge adjusts a sentence pursuant to U.S.S.G. § 5G1.3(b) to achieve a fully or partially concurrent sentence with state time served prior to the imposition of the federal sentence. For example, in order to achieve the fully concurrent sentence called for under the statute and Guidelines, a person charged in both state and federal court with the same gun would need the sentence reduced in federal court for a previously imposed state sentence for the same offense. The courts have held this provision applies even against a mandatory minimum sentence.[62]

When the federal good time credit statute is considered in conjunction with the provision for a fully concurrent sentence, the period of time served concurrently should, assuming good behavior by the prisoner, result in the good time credits against that period of incarceration. In violation of the plain meaning of the statutes, the BOP frequently ignores the period of time that was reduced, as indicated in the judgment in accordance with the commentary to § 5G1.3(b), and makes no assessment regarding good time credits. The relevant statutes require that such credit be given.[63]

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[60] 18 U.S.C. § 3584(a) (2000) (emphasis added).

[61] Bureau of Prisons Program Statement 5880.28 at 1-32A ("If the federal sentence is silent, or ordered to run consecutively to the non-existent term of imprisonment, then the federal sentence shall not be placed into operation until the U.S. Marshals' Service or the Bureau of Prisons gains exclusive custody of the prisoner").

[62] *United States v. Drake*, 49 F.3d 1438, 1440-41 (9th Cir. 1995).

[63] *Kelly v. Daniels*, 469 F.Supp.2d 903, 904 (D. Or. 2007); *see generally* Stephen R. Sady, *Full Good Time Credit For Concurrent Sentences*, The Champion, at 56 (May 2007).

The statute regarding credit for time served provides broad authority for counting time in custody in connection with an offense.[64] However, in immigration cases, with no statutory authorization, the BOP implements the jail credit statute to treat as dead time the time in the administrative custody of the Immigration and Customs Enforcement.[65] In the past ten years, the number of immigration offenses prosecuted in federal court has increased by almost three times.[66] In many of these cases, prisoners are held in immigration custody while the federal criminal prosecution is arranged. Under civil immigration law, the decision whether to proceed against the alien should be made within 48 hours.[67] Federal prisoners are frequently held longer than two days in immigration custody before their first appearance on an illegal reentry charge. Since the time in administrative custody follows the immigration service's knowledge of their presence, and during the time the federal prosecution is being arranged, the time easily falls within the scope of time in custody in relation to the offense.

Nonetheless, with no articulable reason in the administrative record, the BOP has adopted a rule that categorically denies credit for time spent in administrative custody of the immigration service. There is no conceivable justification for not counting all the time in administrative custody of the prosecuting agency against the ultimate criminal sentence imposed: the failure to credit the time not only violates the plain meaning of the statute, but undercuts the underlying policy of imposing no more incarceration than is necessary to accomplish the purposes of sentencing. The rule also introduces unwarranted sentencing disparities in the time similarly situated aliens spend in actual custody, depending on the vagaries of custodial decisions that are irrelevant to the purposes of sentencing.

Conclusion

Basic separation of powers doctrine limits the appropriate role of the BOP in determining the actual length of custody. Where Congress provides ameliorative measures that lessen the period of

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[64] 18 U.S.C. § 3585(b) ("A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences . . . .").

[65] Bureau of Prisons Program Statement 5880.28 at 1-15A (Feb. 14, 1997) ("Official detention does not include time spent in the custody of the Immigration and Naturalization Service").

[66] *Compare* U.S. Sentencing Commission, 1997 Data Profile, Table 1, available at www.ussc.gov/JUDPAK/1997/NIN97.pdf (6,671 immigration sentences *with* U.S. Sentencing Commission, Sourcebook of Federal Sentencing Statistics 2008, Table 46, available at www.ussc.gov/ANNRPT/2008/Table46.pdf (19,333 immigration sentences).

[67] 8 C.F.R. § 287.3(d) (requiring ICE to make decision regarding deportation or prosecution within 48 hours of arrest).

prison and other custody, such programs should be executed in a manner that assures that terms of imprisonment are subject to the full lenity authorized by Congress. By misreading or grudgingly implementing ameliorative statutes, the BOP can seriously exacerbate actual time served. This practice, because it is not connected to the Sentencing Reform Act's purposes of sentencing, has become the engine for massive, unnecessary over-incarceration. The BOP, by failing to fully execute ameliorative laws, unilaterally and unfairly lengthens prisoners' sentences.

At the outset of the Guidelines era, the Supreme Court in *Mistretta v. United States* held that the Guideline's system had sufficient judicial participation and congressional oversight to survive a separation of powers challenge.[68] The BOP's chronic failure to fully implement Congress's ameliorative measures challenges that assumption. By increasing actual time in custody through executive fiat, the BOP added to the soaring incarceration numbers and expense of unnecessarily inflated prison populations. As Justice Kennedy pointed out: "Our resources are misspent, our punishments too severe, our sentences too long."[69] Redirection of the BOP's policy toward full implementation of ameliorative statutes would bring both justice and rationality to a system that incarcerates for longer than necessary to accomplish the purposes of sentencing.

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[68] 488 U.S. 361, 374 (1989).

[69] Justice Anthony M. Kennedy, Address at the American Bar Association Annual Meeting (August 9, 2003).

Mr. SCOTT. Mr. Glover?

TESTIMONY OF PHIL GLOVER, LEGISLATIVE COORDINATOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, JOHNSTOWN, PA

Mr. GLOVER. Thank you, Mr. Chairman, Ranking Member Gohmert. I appreciate the opportunity to testify today. You have our written statement for the record.

I am a correctional officer by trade. I have been a correctional officer, soon to be 20 years in September of 2010. And I would like to get into the issue of assaults and violence inside the prison system. We have documentation given to us by local unions across the country, what some of the Members here have talked about, speaking to the correctional officers in the field.

Just in July and June timeframe reported to us, there have been 10 lockdowns in the Federal Bureau of Prisons: USP Hazelton, drug relations between gang members; USP Big Sandy, Kentucky, inmate static; USP Beaumont, gang-related disturbance; USP Canaan, gang-related violence; FCI Oxford, a medium, gang-related disturbances; USP Hazelton, gang-related disturbances; USP Atwater, which was discussed this morning, gang-related fighting; FCI Big Spring, gang-related disturbances; USP Terre Haute, Indiana, inmate fighting.

These are not isolated. The problem that has been going on, and what we have been talking about, is these are not isolated cases.

So far this year, reported to the union, we have had 101 assaults on staff without weapons, and we have had 33 assaults on staff with weapons. Now the inmates are fabricating weapons, or they are using mop handles. They are breaking off pieces of plastic and sharpening it, and stabbing our staff.

So, the idea that we cannot carry a 2.5-ounce can of pepper spray to keep an inmate off of us when they are attacking is ridiculous. And we have told the Bureau of Prisons this repeatedly.

So, it is a shame that we have to come to a congressional Committee to get 2.5-ounce cans of pepper spray for staff to carry around with them, if they are about to get punched in the face by an inmate.

So far, January 2009, we had 14 staff assaulted; February 2009, 13; March, 17; April, 6; May, 11; June, 27. And so far this month we have had eight assaults.

Some of the assaults—an officer tells an inmate in a hallway to pull up his pants. The inmate turns around and strikes the officer on the side of the head with his fist. The officer receives contusions on the side of his head.

Staff assaulted by an inmate at Hazelton. An inmate threw feces and urine on the officer in our A-1 step down unit. The facility is currently locked down due to drug interaction in gangs.

USP Atwater, a fight was announced at approximately 11 a.m. in unit 5-B. This is one of the units that the officer was killed in last year. The fight moved from a cell into the flats and back into the cell. The fight was over cell assignments according to one inmate.

And if any of you have seen the BOI report from the murder, which we sent to the Committee, I believe, that was one of the issues. It is describing the problems at Atwater prior.

Hazelton, a staff member assaulted in the seg unit. Again, the inmate held the food slot open while the officer was feeding. The inmate spit on the officer, then threw a food tray lid and hit the officer in the face.

FCI La Tuna, another medium, an inmate began kicking a door located between unit one and three. When the unit officer approached to investigate, the inmate attacked the officer, placing him in a headlock, and struck him with his fist. The inmate was restrained and placed in a special house.

McCreary USP, an inmate approached a quarter officer from behind and punched him one time in the facial area. The inmate was restrained and was transported to health services, where he again became combative, pulling away from staff and kicking staff.

Coleman USP, an inmate was escorted to the disciplinary hearing office by the lieutenant. When he was asked what is going on, the inmate jumped on the desk and hit the officer in the chest area and pushed him against the wall. Staff then responded and removed him.

The last one I will read, FMC Devens, July 2. At 10 a.m., a nurse was assaulted by a mental health inmate with a lock and a sock. The nurse was transported to a local hospital where she——

There are I don't even know how many here to read. And I am not going to do that to you. I would like to put them into the record.

The idea, we have been understaffed for many years. In 2006, the director cut 2,300 positions due to budgets, now telling people that he is fighting for 3,000 new positions. That is commendable.

But we really need Congress to act. We cannot continue to have officers in housing units by themselves in high-security housing units.

One of our suggestions to the bureau was to put two officers working as teams, like you do on patrol in a police force, inside these high-security housing units. It would require a grand total of about 120 positions to put one extra officer in the unit from 2 to 10 p.m., when the inmates are then locked down for the night in the high-security housing units.

We have gotten nowhere on this issue. The director approved two staff to rove additionally on a shift—not inside the housing units, but rove on the compound. It is not working.

On less than lethal munitions, we put in our literature, yes, we put in there that we would like pepper spray, batons or Tasers. Tasers—we are not worried about having Tasers. We are not worried about walking around with Tasers. That is not the point.

But the point is, the idea that you now have more access to pepper balls that are locked up in the captain's office, when an inmate is about to assault you, it does not make sense to the staff. And you have heard that from members out in Texas, I know, because I know they have had meetings.

So, these things have got to be looked at. Unfortunately, they are now at this level. We wish we could get the bureau to agree to take care of these things.

The vest issue, you heard Congressman Cardoza. And he has been a great advocate for us since the murder. Yes, vests were provided to the staff. If you want a vest, you can ask for one. But you must wear it on every single post you work anywhere in the institution, even in annual refresher training.

And so, what staff are doing are turning them back into the arms room, because it is a policy that was meant to make you not want and wear a vest. We wanted to negotiate locally on what housing units might require the use of a vest—segregation and other places. That has gone nowhere. And again, we have to come to Congress and talk about it.

A couple of things that came up during some of the other testimony. Federal Prison Industries, with the DOD rules kicking in, those kind of issues, with the limited amount of contracts, with the DOD not purchasing as much. My institution, for instance, at FCI Loretto, used to have 500 inmates that worked in FPI, an electronics factory. We are down to 300 inmates in the FPI in our facility.

What is happening now is, we are down to 4 days a week. We were running 5 days a week. Now we are down to four.

What this is causing inside the facility—for those people that do not understand this—is, if you normally have 200 inmates down in the recreation area, now you have 400. And our recreation areas are not built to handle those kind of amounts—those amounts of inmates. The other inmates that get laid in end up in the housing unit with the correctional offices.

And so, the education programs are stressed. The recreation facilities are stressed. And this all causes safety issues within the facility.

We have asked for ability to go overseas and bring back work. That has not come through. We have tried to partner with companies. That has not come through.

We would like—we have asked for an appropriation. What we are doing now is we are asking for an appropriation, to say, let us build things, and give us the Katrina victims. Let us make mattresses, blankets, whatever. We will give this stuff away, but we have to—our staff are paid out of UNICOR sales, FPI sales.

And so, we cannot just create items and pay for raw materials, and pay the inmates and the staff and their benefits, without having some form of funds coming in. And since the sales are down, that is where we are with FPI.

We think we have signed on to several bills talking about sentencing changes. Our union has supported them. We think it is necessary to change some of the sentencing in order to reduce crowding. If we are not going to build at 40 percent over-crowded, which is what we are now, and we are not going to build, then we need to look at reducing sentences in some way that makes sense.

Non-violent offenders, programming, we know there is a group on veterans. I am on the Union Veterans Council for AFL-CIO, and there is actually work being done to move veterans into veterans' quarters, to get them so they are not incarcerated in Federal prisons. So, we think those are all good ideas that need to be discussed.

The Second Chance Act, the Adam Walsh Act, the Prison Rape Elimination Act—those acts, unfortunately, are not funded. And as

much as the bureau director is telling you they are, if the money is there, we are not seeing staff increases in case management.

We are not seeing staff increases in counseling. We have one drug treatment specialist for 1,450 inmates at my facility. So, we are not seeing increases in those.

And with that, I hope to answer any of your questions.

[The prepared statement of Mr. Glover follows:]

PREPARED STATEMENT OF PHIL GLOVER

American Federation of Government Employees,
AFL-CIO
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STATEMENT OF

PHIL GLOVER
LEGISLATIVE COORDINATOR

OF THE

COUNCIL OF PRISON LOCALS
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY

HOUSE JUDICIARY COMMITTEE

ON

FEDERAL BUREAU OF PRISONS

JULY 21, 2009

Mr. Chairman and Members of the Subcommittee -

My name is Phil Glover. I am the Legislative Coordinator for the Council of Prison Locals, AFGE. On behalf of the more than 34,000 federal correctional officers and staff who work at Bureau of Prisons (BOP) correctional institutions, I want to thank you for the opportunity to testify today on various BOP issues that are critically important to the safety and security of federal correctional officers and staff, federal prison inmates, and the local communities surrounding federal prisons.

Summary

BOP prisons have become increasingly dangerous places to work primarily because of serious correctional officer understaffing and prison inmate overcrowding problems. The savage murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at the United States Penitentiary in Atwater, CA; the brutal stabbing of a correctional officer on April 23, 2009, by a prison inmate at the United States Penitentiary in Terre Haute, IN; and the increasing inmate-on-staff and inmate-on-inmate assault rates system-wide illustrate that painful reality.

In addition, BOP correctional officers and staff have become increasingly demoralized because of: (1) the failure of the Bush administration and previous Congresses during the 2001-2009 time period to provide the necessary financial and programmatic tools to improve the safety and security of BOP prisons, and (2) the adoption by BOP management beginning in 2005 of unsound operational policies and practices.

AFGE strongly urges the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security to:

1. Direct BOP to hire additional correctional staff to help remedy the serious correctional officer understaffing problem that is plaguing BOP prison facilities.

2. Direct BOP to adopt needed management policy changes for improving the safety and security of BOP prison facilities.

3. Support the Federal Prison Industries (FPI) prison inmate work program.

4. Recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities.

5. Prohibit BOP from meeting additional bed space needs by incarcerating prison inmates in private prisons.

Discussion

1. Direct BOP to hire additional correctional staff to help remedy the serious correctional officer understaffing problem that is plaguing BOP prison facilities.

Nearly 207,000 prison inmates are confined in the 115 BOP prison facilities today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. By 2010, it is expected there will be 213,000 inmates incarcerated in BOP institutions nationwide.

This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s, as documented in the *History of Mandatory Minimums*, a study produced by the Families Against Mandatory Minimums Foundation (FAMM).

- The Comprehensive Crime Control Act of 1984 created a mandatory 5-year sentence for using or carrying a gun during a crime of violence or a drug crime (on top of the sentence for the violence itself), and a mandatory 15-year sentence for simple possession of a firearm by a person with three previous state or federal convictions for burglary or robbery.

- The 1986 Anti-Drug Abuse Act established the bulk of drug-related mandatory minimums, including the five- and 10-year mandatory minimums for drug distribution or importation, tied to the quantity of any "mixture or substance" containing a "detectable amount" of the prohibited drugs most frequently used today.

- The Omnibus Anti-Drug Abuse Act of 1988 created more mandatory minimums that were targeted at different drug offences. At one end of the drug distribution chain, Congress created a mandatory minimum of five years for simple possession of more than five grams of "crack" cocaine. (Simple possession of any amount of other drugs – including powder cocaine and heroin – remained a misdemeanor with a mandatory 15-day sentence required only for a second offense.) At the other end, Congress doubled the existing 10-year mandatory minimum for anyone who engages in a continuing criminal enterprise, requiring a minimum 20-year sentence in such cases.

The number of federal correctional officers who work in BOP prisons, however, is failing to keep pace with this tremendous growth in the prison inmate population. The BOP system is currently staffed at an 87% level, as contrasted with the 95% staffing levels in the mid-1990s. This 87% staffing level is *below* the 90% staffing level that BOP believes to be the minimum staffing level for maintaining the

safety and security of BOP prisons. In addition, the current BOP inmate-to-staff ratio is 4.9 inmates to 1 staff member, as contrasted with the 1997 inmate-to-staff ratio of 3.7 to 1.

At the same time, prison inmate overcrowding is an increasing problem at BOP institutions despite the activation of new prisons over the past few years. The BOP prison system today is overcrowded today by about 37%, up from 31.7% as of January 1, 2000.

This serious correctional officer understaffing problem, combined with the prison inmate overcrowding problem, is resulting in significant increases in prison inmate assaults against correctional officers and staff, and against other prison inmates. In December 2006, the BOP Intelligence Section of the U.S. Department of Justice issued a report documenting that: (1) inmate-on-inmate assaults (armed and unarmed) in FY 2006 had increased 15.5% over the previous fiscal year, and (2) inmate-on-staff assaults (armed and unarmed) in FY 2006 had increased 6.0% over the previous fiscal year.

AFGE has long been concerned about the safety and security of the correctional officers and staff who work at BOP institutions. But the savage murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates in a housing unit at the United States Penitentiary in Atwater, CA, and the brutal stabbing of a correctional officer on April 23, 2009, by a prison inmate at the United States Penitentiary in Terre Haute, IN, has greatly intensified our concern about – and desire to solve – the correctional officer understaffing problem.

Unfortunately, BOP management is failing to take advantage of increased federal funding to hire additional correctional officers, despite stating in various budget documents that their highest priority continues to be "filling staff positions that have direct contact with inmates to ensure the safety of Federal inmates, staff, and surrounding communities." (*FY 2010 Congressional Budget for Federal Bureau of Prisons,* page 1) For example:

(a) *FY 2009 BOP Funding and Correctional Officer Understaffing*

The final FY 2009 Omnibus Appropriations Act (P.L. 111-8), which President Obama signed into law on March 11, 2009, provided $5.6 billion for the BOP Salaries and Expenses account – which is $545 million above the enacted FY 2008 level and $160 million above President Bush's FY 2009 budget request. In its committee report accompanying the FY 2009 Commerce, Justice, and Science appropriations bill, the House Appropriations Committee said that:

> "[w]hile the Department has taken some steps to reverse these trends [correctional officer understaffing and increases in assaults by inmates] in its FY 2009 budget request, the Committee recommends an increase of $160,000,000 to hire new correctional officers and

fill other critical shortfalls in BOP programs."

However, BOP management rejected this committee report language, deciding that *none* of the $160,000,000 increase will go toward hiring new correctional officers. Instead, this funding increase will go toward paying for the FY 2009 federal employee pay raise; for utility, medical care, and inmate care costs that are higher than BOP anticipated when President Bush's FY 2009 budget request was initially made; for new staff positions for education and drug treatment; and for restoring the National Institute of Corrections, which President Bush wanted to eliminate.

(b) FY 2010 Obama Budget Request and Correctional Officer Understaffing

The Obama administration's FY 2010 budget requests $5,979,831,000 for the BOP Salaries and Expenses account – which is $384,077,000 above the enacted FY 2009 level of $5,595,754,000. Of this $384,077,000 increase, the Obama FY 2010 budget provides $70,568,000 "for increased BOP correctional officer staffing to effectively manage the growing inmate population at BOP institutions." (http://www.usdoj.gov/jmd/2010factsheets/pdf/prisons-detention.pdf)

BOP would be able to hire 742 new correctional officers if all $70,568,000 is spent to increase the correctional officer staffing level ($70,568,000 divided by $95,000 per officer equals 742). However, AFGE has learned from informed sources that BOP management has decided that *none* of the $70,568,000 increase will be going toward hiring new correctional officers. Instead, this funding increase will be used to help rebuild various BOP operational activities (inmate care programs and prison facility maintenance and security functions) that were allowed to erode due to years of inadequate Salaries and Expenses account funding.

(c) House Appropriations Committee FY 2010 BOP Funding and Correctional Officer Understaffing

The FY 2010 Commerce-Justice-Science appropriations bill, which the House Appropriations Committee approved on June 9, 2009, recommends $6,077,231,000 for the BOP Salaries and Expenses account – which is $481,477,000 above the enacted FY 2009 level and $97,400,000 above the Obama administration's FY 2010 budget request. In its committee report accompanying this bill, the House Appropriations Committee stated that:

> "Chronic underfunding based on inadequate budget requests have forced BOP to rely excessively on correctional officer overtime and the diversion of program staff instead of hiring additional correctional officers, leaving the workforce spread dangerously thin and compromising BOP's ability to operate the Federal Prison System in a safe and efficient manner.

> The Committee believes that....a reduction in the staff-to-prisoner ratio must not be delayed. As a result, the Committee directs that no less than $70,568,000 of the total salaries and expenses appropriation be used entirely for additional correctional officer staffing."

As can be seen, the House Appropriations Committee's report language "directs" BOP to spend $70,568,000 for additional correctional officer staffing - the same as provided by the Obama administration's FY 2010 budget. However, AFGE has learned that BOP management is continuing to maintain its position that *none* of the $70,568,000 increase will be going toward hiring new correctional officers. Instead, this funding increase will be used to help rebuild various BOP operational activities (inmate care programs and prison facility maintenance and security functions) that were allowed to erode due to years of inadequate Salaries and Expenses account funding.

(d) Senate Appropriations Committee FY 2010 BOP Funding and Correctional Officer Understaffing

The FY 2010 Commerce-Justice-Science appropriations bill, which the Senate Appropriations Committee approved on June 25, 2009, recommended $5,979,831,000 for the BOP Salaries and Expenses account – which is $384,077,000 above the enacted FY 2009 level and equal to the Obama administration's FY 2010 budget request. In its committee report accompanying this bill, the Senate Appropriations Committee stated that:

> "Chronic underfunding based on inadequate budget requests have forced BOP to rely excessively on correctional officer overtime and the diversion of program staff instead of hiring additional correctional officers, leaving the workforce spread dangerously thin and compromising BOP's ability to operate the Federal Prison System in a safe and efficient manner.
>
> Although Congress provided an additional $160,000,000 above the request for fiscal year 2009 [for hiring additional correctional officers], BOP used those additional funds to meet basic operational needs of its facilities, and plans no net increase in staffing in fiscal year 2009 to begin to address its understaffing problem. The Committee is extremely concerned that the proposed budget for fiscal year 2010 would once again not permit BOP to manage the basic operational needs of its prisons."

AFGE has learned that Senate appropriators are assuming that $70,568,000 of the $384,077,000 increase for the BOP Salaries and Expenses account will be used by BOP management to hire additional correctional officers. However,

AFGE has also learned that BOP management is continuing to maintain its position that *none* of the $70,568,000 increase will be going toward hiring new correctional officers. Instead, this funding increase will be used to help rebuild various BOP operational activities (inmate care programs and prison facility maintenance and security functions) that were allowed to erode due to years of inadequate Salaries and Expenses account funding.

2. Direct BOP to adopt needed management policy changes for improving the safety and security of BOP prisons.

A few days after the June 20, 2008 stabbing murder of Correctional Officer Jose Rivera at USP Atwater, John Gage, AFGE National President, and Bryan Lowry, President of the AFGE National Council of Prison Locals, met with BOP Director Harley Lappin to strongly urge that BOP adopt various policy changes for improving the safety and security of BOP institutions. Among other changes, they urged that:

(a) High security penitentiaries place two correctional officers in each housing unit, particularly during the evening watch shift (3:00 p.m. to 11:00 p.m.), and medium and low security institutions place at least one correctional officer in each housing unit on all shifts.

High security penitentiaries currently assign only one correctional officer to each housing unit. This unsound correctional practice is particularly dangerous during the evening watch shift when only one officer is available to lock down inmates for the 4:00 p.m. inmate count and to perform the 11:00 p.m. inmate lockup. (Correctional Officer Jose Rivera was murdered while locking down inmates for the 4:00 p.m. count alone.)

Medium and low security institutions since 2005 are no longer required to assign one correctional officer in each housing unit. This policy change has resulted in an unsound correctional practice being implemented in which only one officer is assigned to supervise two – and in some cases three – housing units during the various shifts. This practice leaves housing units unsupervised for long periods of time, thereby providing violent inmates the time to make homemade weapons, to organize and plan gang activity, to carry out assaults on other inmates, and to move contraband undetected throughout the institution.

On July 15, 2008 BOP issued a directive that authorized two additional officers per high security penitentiary for evening watch each day of the week and for day watch on the weekends and federal holidays. The officers working these posts are intended to function as "rovers" to provide assistance to housing unit staff. (The decision will be made locally, at each facility, regarding how best to staff these positions, that is, whether the sick and annual roster can be used, overtime authorized, or whether new staff must be hired.) The July 15,2008 directive was silent with regard to medium and low security institutions.

AFGE believes the July 15, 2008 BOP directive is totally inadequate. The safety of correctional officers and prison inmates, at the very least, requires two correctional officers in each housing unit on the evening watch shift in high security penitentiaries, and at least one officer per housing unit on all shifts in medium and low security institutions.

Indeed, AFGE strongly urges the House crime subcommittee to direct BOP to reinstitute the BOP staffing practices of the 1990s and early 2000s - namely, to authorize two correctional officers per housing unit *plus* three or four additional officers who would function as "rovers" that provide assistance to the housing unit staff.

This staffing practice was standard until 2005 when BOP management instituted the Mission Critical Post policy, a cost reduction strategy under which certain correctional staff posts were deemed critical for the safe and secure operations of BOP institutions and were to be vacated only in rare circumstances. The Mission Critical Post initiative was intended (a) to eliminate the necessity for filling "non-mission critical" BOP posts, and (b) to reduce BOP institutions' reliance on overtime and non-correctional staff, who had typically been used for temporary correctional post assignments.

Interestly, a recent Government Accountability Office (GAO) report has found that BOP has never conducted a systematic evaluation of the Mission Critical Post initiative, despite an internal directive from the Assistant Director of Correctional Programs and the requirements of the *Standards for Internal Control in the Federal Government*. As a result, GAO has concluded that:

> "Without assessing its mission critical post initiative and data on temporary assignments, BOP does not know whether it is efficiently and effectively using staff for temporary assignments or achieving the desired cost savings. Also, without reviewing the effect of leaving mission critical posts unassigned, BOP cannot assess the effect, if any, of unassigned posts on the safety and security of its facilities." (*Bureau of Prisons: Written Policies on Lateral Transfers and Assessment of Temporary Assignments Needed,* GAO-09-141, February 2009.)

The GAO report recommends that BOP "systematically assess temporary assignments to ensure that BOP is meeting the objectives of the mission critical post initiative and effectively and efficiently using resources." BOP, in response, has agreed with and plans to take action on this recommendation. But given the fact BOP officials could not explain to GAO why the original systematic evaluation was not conducted, AFGE strongly urges the crime subcommittee to exert its oversight powers to ensure that BOP actually conducts this necessary evaluation.

(b) All correctional officers be issued protective vests that are stab-proof and light-weight, and can be worn comfortably under a uniform.

In its July 15, 2008 directive, BOP announced that it would begin making protective vests available to staff – first at high-security penitentiaries, and then at all institutions. However, BOP has adopted a somewhat overbroad implementation policy with regard to these protective vests. If a staff member chooses to wear a protective vest, he or she must wear the vest *at all times and in all locations* – even when it is obviously unnecessary. For example, some wardens are ordering correctional staff to wear their protective vest to annual refresher training at facilities that are a half mile away from the secure prison facility. In addition, the failure to wear the voluntarily selected vest *at all times and in all locations* may be cause for a disciplinary action. This unreasonable policy is resulting in correctional staff returning their vests and not wearing them in obviously dangerous locations, such as a housing unit, special housing unit, or compound officer post.

AFGE strongly urges the crime subcommittee to direct BOP to continue making protective vests available to correctional staff but to adopt a more reasonable implementation policy.

(c) Correctional officers working in housing units, compound posts, and high security areas of BOP prisons be equipped with and trained in the use of non-lethal weaponry, such as batons, pepper spray, and/or TASER guns. Training should include the appropriate use of such non-lethal weaponry so they are not used as a "first strike"response before other protective tactics are considered or attempted.

Unfortunately, BOP opposed – and continues to oppose - providing correctional officers with batons, pepper spray, and/or TASER guns. BOP argues that it would send the wrong message to prison inmates, namely that such non-lethal weaponry is necessary because conditions at BOP institutions have signficantly worsened.

But AFGE believes Officer Rivera's brutal murder and the increasing number of inmate assaults on correctional officers are sending a strong message to BOP management - namely that conditions at penitentiaries and other institutions *have* worsened. They are more violent than a few years ago because of serious correctional officer understaffing and prison inmate overcrowding – and because correctional officers are being forced to control more aggressively dangerous offenders, including more gang-afflilated inmates.

AFGE strongly urges the crime subcommittee to direct BOP to institute a new non-lethal weaponry policy under which correctional officers in potentially dangerous situations are provided batons, pepper spray and/or TASER guns.

Such non-lethal weapons are vitally necessary to help prevent further serious inmate-on-officer assaults.

3. Support the Federal Prison Industries (FPI) prison inmate work program.

The increasingly violent and dangerous environment in which BOP correctional officers and staff work is the primary reason why AFGE strongly supports the FPI prison inmate work program.

The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep 21,836 prison inmates – or about 17% of the eligible inmate population – productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% *less likely* to recidivate than those who had not participated, and (2) 14% *more likely* to be employed than those who had not participated.

- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% *less likely* to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction,* by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

Later in 1999, Saylor and Gaes published a follow-up paper to report further analyses of the PREP data focusing on the differential effect of the FPI prison

inmate work program on the post-release recidivism of four groups: (1) non-Hispanic whites, (2) non-Hispanic blacks, (3) Hispanic whites, and (4) Hispanic blacks. Their analyses revealed that the FPI prison inmate work program provides even greater benefit to the three minority groups that are at the greatest risk for recidivism (non-Hispanic blacks, Hispanic whites, and Hispanic blacks) than it does for the non-Hispanic white group. In general, the recidivism improvement rates for minority inmates who participated in the FPI work program compared to those minority inmates who did not participate were between 37% and 147% higher than the recidivism improvement rates for non-Hispanic white inmates who participated in the FPI work program compared to those non-Hispanic white inmates who did not participate. As Saylor and Gaes concluded:

> "Regardless of whether a minority was defined on the basis of race or ethnicity, and despite their being at a higher risk of recidivism, minority groups benefited more from [FPI work program] participation than their lower risk non-minority counterparts. While the absolute differences may not appear that large, the relative improvements [in recidivism rates] indicate a much larger program effect for minority program participants who are otherwise more likely to be recommitted to prison." *(The Differential Effect of Industries Vocational Training on Post-Release Outcome for Ethnic and Racial Groups,* William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 6, 1999.)

Unfortunately, over the past eight years the FPI prison inmate work program has experienced a significant decline in the percentage of eligible BOP inmates employed as a result of limitations imposed by Congress and the FPI Board of Directors on FPI's mandatory source authority relating to Department of Defense and federal civilian agencies' purchases from FPI. While the FPI program employed 25% of the eligible BOP inmate population in FY 2000, it is currently employing only 17% of that population. Indeed, 32,112 prison inmates would be employed now – not 21,836 – if the FPI program were currently employing 25% of the eligible BOP inmate population.

To make matters worse, Section 827 in the National Defense Authorization Act for FY 2008 (P.L. 110-181) is expected to create another substantial impediment to the FPI program's ability to keep BOP inmates productively occupied in labor-intenstive work activities. Specifically, Section 827 will reduce the applicability of the FPI mandatory source authority with regard to Department of Defense purchases of FPI-made products. While the FPI Board of Directors in 2003 administratively ended the application of mandatory source authority for those products where FPI's share of the Federal market exceeded 20%, Section 827 will end the application of the mandatory source authority with regard to Department of Defense purchases of FPI-made products for those products where FPI's share of the Department of Defense market is only 5%. Initial analyses of the effect of this significant reduction from 20% to 5% estimated that

it would result in a potential loss of up to $241 million in FPI sales revenues and 6,500 FPI prison inmate jobs.

The latest indicator of this reduction's adverse effect on FPI is the July 15, 2009 announcement by Paul Laird, the FPI Chief Operating Officer, that FPI is closing factory operations at 14 BOP prisons: USP Coleman I &II, FCI Victorville II, USP Florence, FCI Talladega, FCI Big Spring, FCI Williamsburg, FCI Estill, FCI Sandstone, FCI Fairton, FCI Otisville, FCI Marianna, FCI Phoenix, and FCC Allenwood. In addition to these closings, FPI is also downsizing operations at four other BOP prisons: FCC Lompoc, FPC Alderson, FCC Butner, and USP Leavenworth. According to COO Laird, "these actions were necessary to reduce our excess production capacity and staffing to a level consistent with the current and forecasted business activity." FPI has had a net loss of $20 million over the past year, and negative earnings for the last seven months. (See attached *Memorandum for All UNICOR Staff Regarding Factory Restructuring, July 15, 2009)*

AFGE has long opposed any legislative attempt to eliminate the mandatory source preference for FPI-produced goods because we believe it would result in the loss of countless numbers of FPI prison inmate jobs. This loss of inmate jobs, in turn, would seriously endanger the safety of our members – the correctional officers and staff who work inside BOP institutions.

However, in the past couple of years of negotiations with the Anti-FPI Coalition and with Rep. Pete Hoekstra's (R-MI) staff, we have come to accept the idea of eliminating the FPI mandatory source if – and only if – a strong work-based training program is developed to supplement the FPI program. This strong work-based training program must create a sufficient number of new federal prison inmate jobs to replace the prison inmate job positions that would be lost if the FPI mandatory source preference is eliminated.

A reform proposal that AFGE thinks has merit – and which we recommend the crime subcommittee seriously consider - was included in the May 11, 2006 discussion draft of Rep. Hoekstra's H.R. 2965. This discussion draft established a strong work-based training program for federal inmates based on two authorities:

(1) The first authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service is not produced or performed within the United States by non-inmate workers. However, this authority probably would not create enough new prison inmate jobs to replace those lost FPI inmate jobs, given the harsh restriction of "not produced or performed within the United State by non-inmate workers." Thus, the need for the second authority below.

(2) The second authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service: (a) is being currently produced or performed outside the United States by or for the private business and (b) has been so produced or performed for a period of 36 months prior to the date such private business initially submits a proposal to FPI.

This second authority, which would probably create more federal prison inmate jobs than the first, would be intended to provide employment for the greatest number of federal prison inmates as long as (a) no single private industry is forced to bear an undue burden of competition from the products or services of federal prison factories or workshops; and (b) competition with private industry or private labor is reduced to a minimum.

4. Recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities.

AFGE and its members who work at BOP prison facilities strongly believe in the fair treatment of prison inmates. We also believe that inmates should be better prepared to reenter – and remain in – our communities. Congress has passed laws in the past few years to help accomplish these tasks, such as the Prison Rape Elimination Act of 2003 (P.L. 108-79) and the Second Chance Act of 2008 (P.L. 110-199).

But what continues to be left out of the picture are the additional staffing and staff training necessary to accomplish these tasks. When one correctional officer (or non-correctional staff member) is required to supervise two or three housing areas at a time, it is virtually impossible to properly implement the Prison Rape Elimination Act of 2003. In addition, training is needed to fully explain to correctional staff how to implement this law – and currently this is not being done. While a cursory half hour to one hour per year is spent to highlight the Prison Rape Elimination Act of 2003 during annual refresher training, many of the procedural items in the law are not covered.

In the case of the Second Chance Act of 2008, Congress's intent is clear. But when teachers, vocational-technical instructors, mechanical services employees, case managers, and counselors are pulled repeatedly to work correctional officers posts because of correctional officer understaffing, it is unclear who will be responsible for the duties clearly outlined in the law. Correctional officers and staff take their jobs very seriously in federal prisons. But they simply can't accomplish two tasks at the same time.

AFGE strongly urges the crime subcommittee to recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates

reentering our communities. Any new laws would result in additional workloads on BOP staff members who are already handling more work with less staff than eight years ago.

5. Prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons.

In recent years, the federal government and some state and local governments have experimented with prison privatization as a way to solve the overcrowding of our nation's prisons – a crisis precipitated by increased incarceration rates and politicians' reluctance to provide more prison funding. But results of these experiments have demonstrated little evidence that prison privatization is a cost-effective or high-quality alternative to government-run prisons.

Private Prisons Are Not More Cost Effective

Proponents of prison privatization claim that private contractors can operate prisons less expensively than federal and state correctional agencies. Promises of 20 percent savings are commonly offered. However, existing research fails to make a conclusive case that private prisons are substantially more cost effective than public prisons.

For example, in 1996, the U.S. General Accounting Office reviewed five academic studies of prison privatization deemed to have the strongest designs and methods among those published between 1991 and mid-1996. The GAO concluded that "because these studies reported little cost differences and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money." (*Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service,* GGD-96-158 August 16, 1996.)

Similarly, in 1998, the U.S. Department of Justice entered into a cooperative agreement with Abt Associates, Inc. to conduct a comparative analysis of the cost effectiveness of private and public sector operations of prisons. The report, which was released in July 1998, concluded that while proponents argue that evidence exists of substantial savings as a result of privatization, "our analysis of the existing data does not support such an optimistic view." Instead, "our conclusion regarding costs and savings is that.....available data do not provide strong evidence of any general pattern. Drawing conclusions about the inherent [cost-effective] superiority of [private prisons] is premature." (*Private Prisons in the United States: An Assessment of Current Practice,* Abt Associates, Inc., July 16, 1998.)

Finally, a 2001 study commissioned by the U.S. Department of Justice concluded that "rather than the projected 20 percent savings, the average saving from privatization was only about one percent, and most of that was achieved through

lower labor costs." (*Emerging Issues on Privatized Prisons*, by James Austin, Ph.D. and Garry Coventry, Ph.D., February 2001.)

Private Prisons Do Not Provide Higher Quality, Safer Services

Proponents of prison privatization contend that private market pressures will necessarily produce higher quality, safer correctional services. They argue that private prison managers will develop and implement innovative correctional practices to enhance performance. However, emerging evidence suggests these managers are responding to market pressures not by innovating, but by slashing operating costs. In addition to cutting various prisoner programs, they are lowering employee wages, reducing employee benefits, and routinely operating with low, risky staff-to-prisoner ratios.

The impact of such reductions on the quality of prison operations has been obvious. Inferior wages and benefits contribute to a "degraded" workforce, with higher levels of turnover producing a less experienced, less trained prison staff. The existence of such under-qualified employees, when coupled with insufficient staffing levels, adversely impacts correctional service quality and prison safety.

Numerous newspaper accounts have documented alleged abuses, escapes and riots at prisons run by the Correctional Corporation of America (CCA), the nation's largest private prison company. In the last several years, a significant number of public safety lapses involving CCA have been reported by the media. The record of Wackenhut Corporation (now The Geo Group), the nation's second largest private prison company, is no better, with numerous lapses reported since 1999.

And these private prison problems are not isolated events, confined to a handful of "under performing" prisons. Available evidence suggests the problems are structural and widespread. For example, an industry-wide survey conducted in 1997 by James Austin, a professor at George Washington University, found 49 percent more inmate-on-staff assaults and 65 percent more inmate-on-inmate assaults in medium- and minimum-security private prisons than in medium- and minimum-security government prisons. (referenced in "Bailing Out Private Jails," by Judith Greene, in *The American Prospect*, September 10, 2001.)

Lacking data, BOP is not able to evaluate whether confining inmates in private prisons is more cost-effective than federal government prisons.

Despite the academic studies' negative results, BOP has continued to expand its efforts to meet additional bed space needs by incarcerating federal prison inmates in private prisons. Over a 10 year period, the costs to confine federal BOP inmates in non-BOP facilities nearly tripled from about $250 million in FY 1996 to about $700 million in FY 2006. To determine the cost-effectiveness of this expanded use of private prisons, Congress directed the U.S. Government

Accountability Office (GAO) in the conference report accompanying the FY 2006 Science, State, Justice and Commerce Appropriations Act (P.L. 109-108) to compare the costs of confining federal prison inmates in the low and minimum security facilities of BOP and private contractors.

However, GAO determined in its October 2007 report that a methodologically sound cost comparison analysis of BOP and private low and medium security facilities was not feasible because BOP does not gather data from private facilities that are comparable to the data collected on BOP faciltiies. As a result, the GAO concluded that:

> "[W]ithout comparable data, BOP is not able to evaluate and justify whether confining inmates in private facilities is more cost-effective than other confinement alternatives such as building new BOP facilities." (*Cost of Prisons: Bureau of Prisons Needs Better Data to Assess Alternatives for Acquiring Low and Minimum Security Facilities,* GAO-08-6, October 2007)

BOP officials told GAO that there are two reasons why they do not require such data from private contractors. First, federal regulations do not require these data as means of selecting among competing contractors. Second, BOP believes collecting such data could increase the cost of the private contracts. However, BOP officials did not provide evidentiary support to substantiate this concern.

BOP Director Harley Lappin gave two somewhat different reasons in disagreeing with GAO's recommendation that the Attorney General direct the BOP Director to develop a cost-effective way to collect comparable data across BOP and private low and minimum security facilities:

- "The Bureau does not own or operate facilities to house solely criminal aliens and will not be receiving funding [from Congress] to construct such low security facilities. Accordingly, there is no value in developing data collection methods in an attempt to determine the costs of housing this particular group of inmates in a Bureau facility."

- "The Bureau has been able to determine what it actually costs to contract out this particular population to private contractors via open competition. [And so] we do not see the value of requiring existing private contractors to provide specific comparable data to aid in a cost comparison. This requirement would have the potential to increase current contract costs at a time when the Bureau is facing serious budget constraints."

In conclusion, AFGE strongly urges the crime subcommittee to prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons. Prison privatization is not the panacea that its proponents would

have us believe. Private prisons are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services. Finally, without comparable data, BOP is not able to evaluate or justify whether confining inmates in private facilities is more cost-effective than building new BOP facilities.

This concludes my statement. I thank you for your attention and will be happy to answer any of your questions.

ATTACHMENT

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

July 15, 2009

MEMORANDUM FOR ALL UNICOR STAFF

FROM: Paul M. Laird, Assistant Director
Industries, Education, and Vocational Training

SUBJECT: Factory Restructuring

Throughout this fiscal year, we have implemented a number of cost containment initiatives to offset the ongoing losses we have been experiencing. Year to date, the corporation has a net loss of over $20 million, and we have had negative earnings for the last seven months. While the cost reduction initiatives have been helpful, they have not been sufficient to reverse the negative earnings trend. Therefore, it is necessary to further reduce operating expenses by downsizing and closing some existing factories.

Yesterday, we initiated the closing of factories at USP Coleman I & II, FCI Victorville II, USP Florence, FCI Talladega, FCI Big Spring, FCI Williamsburg, and FCI Estill. We are also closing operations in specialized units at FCI Sandstone, FCI Fairton, FCI Otisville, FCI Marianna, FCI Phoenix, and FCC Allenwood. In addition to these closings, we are also downsizing operations at FCC Lompoc (Cable); FPC Alderson (Distribution); FCC Butner (Filter); and USP Leavenworth (Distribution).

These actions were necessary to reduce our excess production capacity and staffing to a level consistent with the current and forecasted business activity.

Some of the affected staff positions at the above locations are or will soon be vacant. However, many are encumbered, and we will need to vacate those positions as we did during previous factory reorganizations.

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This was an extremely difficult decision because it affected a number of dedicated FPI staff. However, it is critical that FPI not incur costs that we have insufficient business to support. These factory initiatives will reduce operating costs by nearly $16 million per year, although they will not take full effect until late 2010. These savings and other cost containment initiatives will be critical for us in returning the corporation to a profitable position in the future.

I understand this will be a very difficult and unsettling time. We will do our best to keep you informed of any further developments and progress. During this time, it is imperative that we all do everything we can to reduce our costs and increase our efficiency. We will also continue to aggressively pursue new business opportunities and new product lines. Working together, we can overcome the challenges ahead and ultimately establish new lines of business in our impacted factories.

cc: Chief Executive Officers
FPI Board of Directors

Mr. SCOTT. Thank you, Mr. Glover.

I will now recognize ourselves under the 5-minute rule. And I will start with Mr. Fornaci.

In terms of medical care in the federally run prisons, they are—we have heard they are accredited and there is oversight. And did I understand that you were saying there was not as much problem

with the federally run prisons and medical care as there was with the private prison?

Mr. FORNACI. Yes, that is correct.

And I would say that, in terms of accreditation issues, those are things that generally happen at the opening of a facility and at certain intervals over a period of years.

But our concern has been the sort of ongoing monitoring of problems as they arise. But, yes——

Mr. SCOTT. The accrediting process does not contain ongoing oversight?

Mr. FORNACI. It does, but I believe it is 3 to 5 years. Like the JCAHO process, I believe, is 5 years?

Mr. SCOTT. Okay. And the private medical care is not under any accreditation?

Mr. FORNACI. They are also JCAHO accredited. At the Rivers case, it was accredited at the time of its opening. I do not know whether they have been visited since then. That was in 2001.

Mr. SCOTT. Mr. Lewis, you indicated the value of faith. Is there any barrier to voluntary participation in faith-based volunteer programs?

Mr. LEWIS. There has been some anecdotal reports coming from volunteers that I have had an opportunity to talk to, that their access has been increasingly restricted due to the number of volunteers wanting to gain access to prison facilities at the Federal and State level.

Mr. SCOTT. Okay. If you could provide us with some information on those, that would be helpful.

And in terms of programs available to prisoners, Mr. Lewis, we hear most of the comments on getting the GED, which is absolutely critical. But some come in with close to a GED. But after they have gotten the GED, have you seen any benefit from those who continue their education on through college?

Mr. LEWIS. Not so much going through college. But there is evidence that folks who do get educational programming while in prison, that is, complete their GED, end up having better outcomes, better employment outcomes.

Mr. SCOTT. Is that because you have not noticed the college participation, or because they cannot afford to get into college anymore?

Mr. LEWIS. It is a relatively low percentage of folks who actually go to college. A lot end up going to more sort of a community college, and then maybe a 4-year degree.

Mr. SCOTT. Okay. And could you describe the program you mentioned that had a 50 percent recidivism rate reduction?

Mr. LEWIS. There were two studies that I mentioned. One was the InnerChange Freedom Initiative study. And——

Mr. SCOTT. I am sorry. Could you speak up?

Mr. LEWIS. The InnerChange Freedom Initiative study is a program that is run by Prison Fellowship. This particular program was just outside of Houston in Sugar Land at the Carol Vance Unit.

And the folks who graduated from the program were indeed 50 percent less likely to be rearrested upon release, and 60 percent less likely to be incarcerated during the 2-year follow-up period.

Mr. SCOTT. And can you provide for the record a description of that program, so we will have that for the record?

Mr. LEWIS. Absolutely.

Mr. SCOTT. Mr. Sady, you indicated that the 85 percent requirement for prior to—a minimum of 85 percent was not being effectively utilized, because of a mathematical calculation.

Can you explain why that is the case?

Mr. SADY. Yes. The Bureau of Prisons in 1988, basically took the position that good time should be calculated against time served, rather than the sentence imposed. The problem was that the Sentencing Commission had used the time against the sentence imposed, which is the 85 percent against the sentence, when they calculated the table for the imposition of sentences.

So, that whole grid that every sentence is made on is 2 percent higher based on their calculation.

Further, the folks in Congress have basically said that it was, if you do 10 years, you are going to do 8.5. And so, the legislative history is full of this idea that it is an 85 percent rule—the same rule that Congress required from States in their truth in sentencing legislation.

However, because they used the other method of calculating—which I believe has no support anywhere except for they mistakenly thought that was what was required—has created the 87.2 requirement.

Mr. SCOTT. And how could that be cured?

Mr. SADY. I think that tomorrow morning, if Director Lappin issued a directive with a simple computer change, that could be solved tomorrow—no new legislation, no anything.

Mr. SCOTT. The gentleman from Texas?

Mr. GOHMERT. Thank you, Mr. Chairman.

One quick question. A topic that has been coming up lately is over-criminalization, federalizing crime, over-criminalizing what would normally be civil violations.

I am just curious if any of you had any opinions on what some of us think is the trend toward over-criminalizing conduct.

Sure. Mr. Glover?

Mr. GLOVER. We have seen closure. And I started in—this year, 207,000 inmates.

A lot of this has to do with federalizing State crimes—obviously, State and local crimes—for whatever reason, that was done through that period of time through the 1980's.

They have pushed to do that, so that Federal prosecutors could get a bite at the apple.

And so, the late—at the end of it—207,000 people in Federal prisons and at 86 percent staffed. [Off mike.]

Mr. GOHMERT. When you said, "for whatever reason," it occurred to me back when I was a judge, and I would see campaign commercials that we are going to end burglary, we are going to—you know.

And I laughed the first time I saw a commercial like that. And that is not their job. That is a State crime.

But——

Mr. SCOTT. Did they get elected?

Mr. GOHMERT. Yes. I mean—— [Laughter.]

So, apparently, it was a popular thing. And that is why we have apparently federalized so many crimes.

But now, I was a little shocked, Mr. Glover, at your insensitivity. You did not seem to want to give inmates the benefit of the doubt, that if the warden has teargas available, and an inmate starts to assault one of the guards, that the inmate would not give the guard a chance, if he asked to go get the teargas, to come back to protect himself. So, you need to work on your sensitivity somewhat, I think, there.

But I did want to point out, too, having been to Gitmo a couple of times, apparently, there have been two to three dozen really innovative attacks with urine and feces when these guys are being so restricted. But as Khalid Sheikh Mohammed said, we are terrorists to the bone, you know, God be praised.

Mr. Glover, your comment about two partners and high-risk housing areas seems to have a great deal of merit to it. So, I appreciate your bringing that up.

I mean, police do that in high-risk areas. It makes sense. And I appreciate that comment.

And as far as the privatization, yes, I am a Republican, and we do believe, you know, generally, privatizing some things are good. But I have always had concerns about privatizing certain things that really are governmental functions.

If you can privatize what is inherently a governmental function in prisons, then perhaps we could privatize Congress, as well. And you all may be supportive of that.

With regard to the RDAP—the RDAP, the drug and alcohol programs—I had seen reports that they are waiting until people have less than a year to stick them in those programs. Now, my experience as a judge, you can put somebody in a 30-day program, and under optimum situations, maybe they are better. But usually, it takes many months to change the behavior and be able to win that daily fight.

Is that your experience, from any of you, observed people getting put in these programs with less than a year, which means they are not going to finish the programs?

Mr. SADY. They generally have to be within 9 to 12 months of the completion of the program before going into 6 months of community corrections as part of the program—it is moved out quite a bit from there.

The problem is that the decision and the eligibility determination is not being made until very late in the day, and not including the sentence reduction. So, there is this huge glut at the end, where people are on waiting lists and being bumped, instead of making the decision when the person comes in.

They could make the eligibility decision. And then, if there is another facility, for example, where there are open spaces and they can make a more rational allocation of those scarce resources. And, because of the savings that you would get if you were able to get the full year for these non-violent offenders, they would be able to fund the classes necessary, so there are enough classes, so everybody can get in with enough time to complete the program, so it is not trying to cram something in at the end.

Mr. GOHMERT. Well, that is a really interesting point. Perhaps it could be——

Mr. SCOTT. Would the gentleman yield?

Mr. GOHMERT. Yes, sure.

Mr. SCOTT. And if people have a longer time to be in, what would that do to the idle hands, as the gentlelady from California was mentioning?

Mr. SADY. This is a really excellent program. I have talked to hundreds of people who have come out of it. It has changed their lives. It is a 9-to 12-month residential program. And so, the participation is extremely intense and creates a documented reduction in recidivism.

So, for that period of time, when they are headed for that as something that usually happens toward the end of their sentence, but with enough planning time so that they can get the full year off, I think that it would reduce idle time and is extremely productive for both the individual, their families, and for our society, because it lowers recidivism. They have documented it in the TRIAD report.

Mr. SCOTT. Thank you.

Mr. GOHMERT. Well, I understand the thinking of the past, that you do not want to broadcast to an inmate that they will be going into a program at the end. What their thinking is, it ought to be a reward, you know. You conduct yourself appropriately, and then we will reward you by giving you one of these programs at the end.

But that doesn't seem to have worked very well. And it does seem like a great thing could be done to say when people are assessed coming in, "Wow, you have got a bad drug problem. This will be what you do the last year of your time."

Now, of course, if you act up, you know, do something, it seems like you could go ahead and give them something to shoot for at the beginning.

Mr. SADY. You are exactly right, because that is how it operated until the last few years.

Mr. GOHMERT. Oh, is that right?

Mr. SADY. It worked perfectly that way. That is why there has been a decrease in the amount, because at the beginning of the program, many people were being determined very early. They were finishing the residential part, and then they had a transitional period before they started the community corrections.

So, it was working with the full year. But we have been seeing that average length of the sentence reduction tanking at a time when we should be trying to lower the growth, so that we do not have these ratios that are dangerous to correctional officers and to prisoners.

Mr. GOHMERT. I know my time has expired. Could I ask one——

Mr. SCOTT. We are going to have a second round.

Mr. GOHMERT. Okay.

Mr. SCOTT. Do you want to go now?

Mr. GOHMERT. Because I just had this one last question.

But it was regarding, Mr. Lewis, about the, you know, the cuts in recidivism. It seemed, from my experience in dealing with State prisons in Texas, that a great deal of the success came through the

follow up, the mentoring, the visits after—well, like in AA or NA, that accountability after leaving confinement.

But I had understood that there had been some difficulties in faith-based mentors being able to have access. Are you familiar with that at all?

Mr. LEWIS. I am familiar with the finding that it is very important that, to sustain the success that we have while in prison, that there be adequate after-care in the community upon——

Mr. GOHMERT. But as far as the lack of access to being able to mentor or have contact after release, are you familiar with that problem at all?

Mr. LEWIS. After release, no. It was more so during release. I can look into that.

Mr. GOHMERT. After release is what I had understood.

Okay. Thank you.

Thank you, Chairman.

Mr. SCOTT. Thank you.

Mr. Glover, you, in mentioning the paper spray, we obviously want to be helpful. But my initial reaction is that Congress really is an inappropriate place to make decisions like that.

Is there any accreditation or board, or some professional people, that can look at questions like this and make recommendations?

Mr. GLOVER. Unfortunately, Mr. Chairman, you saw the chair of the ACA board. So, they are the accreditation group for Federal prisons and State prisons.

The only thing that we can do is appeal to the Department of Justice, A.G. Holder, and ask him to change his policies——

Mr. SCOTT. Well, I mean——

Mr. GLOVER [continuing]. Come to you.

Mr. SCOTT. Are there—I mean, are there professional committees that look at this to determine what is the most professional way to equip guards, without having the decisions be made on an ad hoc, political basis?

Mr. GLOVER. I do not know of any, Mr. Chairman. All I know is how many of the big State systems already provide this to their staff. They provide a stab-proof vest in California. They have some staff carry Tasers. Some carry pepper spray. Florida——

Mr. SCOTT. Has there been any—has there been any independent evaluation of which works best for the security of the prison?

Mr. GLOVER. Not to my knowledge.

Mr. SCOTT. You mentioned the Federal Prison Industry jobs and suggested that some could be made for disaster relief, the problem being, if you gave it away, you would not have the income stream necessary to support FPI, because there is no appropriation for FPI. Once you get—decades ago, you got started. And after that, you are on your own.

Could FEMA or someone buy blankets and other kind of disaster equipment to help supply a number of jobs and to have an outlet for the goods and services?

Mr. GLOVER. I have no doubt, in the discussions that I have had with Mr. Laird, that they are looking for any type of work that will make sure that they pay the staff—they can pay their staff and benefits. They cannot lose money on the item. That would be the only concern that I know of.

But we already make some mattresses for the institutions. We make some other material—sheets, other things—for the institutions. So, to expand those projects I do not think would be a huge burden.

Mr. SCOTT. And finally, you indicated that your organization has taken a position on sentencing policy. I did not hear a mention of mandatory minimums. Have you taken a position on mandatory minimums?

Mr. GLOVER. We have not specifically taken a position on mandatory minimums, but we know that they have been responsible for much of the increase—— [Off mike.]

We have looked at H.R. 61, for instance, that—— [Off mike.]

The only problem with some of the bills that we could see is that it leaves the discretion to the bureau warden or the bureau director to release the inmates. We do not think, politically—I mean—talking—that many wardens or many administrators within the system will release inmates early, if it is a judgment call, due to the fact that, if something happens on the outside, it is going to come right back to them.

I think that would be a difficulty. There needs to be some sort of panel, commission, something, to run those decisions through as far as we are concerned.

Mr. SCOTT. You had a list of physicians you had taken. If you could provide us with the entire list of physicians you have taken—alternatives, we would appreciate it for the record.

The gentlelady from Texas?

Ms. JACKSON LEE. Chairman, thank you very much. And let me apologize for my delay, but also moving in front of you, Mr. Chairman, for trying to get some materials. But I do thank you for this hearing.

And I just want to focus on one line of questioning. And I believe it is to Mr. Fornaci? Thank you.

And I am sure it was in your testimony, so please forgive me as I review it subsequently.

I have a detention center, a Federal detention center, in my congressional district, actually, in downtown Houston and, of course, a large population, Federal population, a series of prisons going out toward Beaumont and then into Louisiana. So, geographically, we are well endowed with Federal prisons in the Gulf region.

We know that we have been under the burden of mandatory sentencing for a long period of time. And I have been working for at least 7 years consistently on something called good time early release.

Having visited the Federal prisons, and knowing that many of the individuals there are incarcerated for drug offenses—it may be that they had little or none. It may be that they were wrapped up or rounded up in a conspiracy.

And the premise of my legislation has been—or the theory behind it has been—non-violent offense, good time, or well-behaved, if you will, whatever the good time criteria is, and that these individuals have the opportunity for early release.

Has your—have you been engaged or have any sense of that kind of challenge, meaning the overcrowding of prisons, because people

are in on mandatory sentencing and something that would be in place called early release for good time?

Mr. FORNACI. I think, actually, I think I would turn to Mr. Sady, who I think is more familiar with these issues. But we certainly would support the goals of that legislation.

Mr. SADY. As a first step, we have been asking that the 85 percent that is already permissible under the statute be provided, because at this point, the Bureau of Prisons' own—even the best behaved prisoners are required to serve 87.2 percent.

So, it would certainly be a step in the right direction, and it is a direction that I agree is one that should be continued to be explored to avoid unnecessary incarceration for folks, especially nonviolent offenders, who have available programs, or reductions of sentence that are not being fully implemented by the Bureau of Prisons at this time.

Ms. JACKSON LEE. Well, let us explore that further. Let us not just say it randomly, as if I am an expert in what you are an expert in.

So, start again. You are saying there is a requirement, or this is the administrative requirement of the Bureau of Prisons——

Mr. SADY. Yes——

Ms. JACKSON LEE [continuing]. To serve 80——

Mr. SADY [presiding]. 87.2 percent, rather than the 85 percent that is permitted by the statute.

Ms. JACKSON LEE. And what do you determine is the basis of that?

Mr. SADY. That is because the statute, I believe, was written to allow 54 days against every year of the sentence imposed.

Ms. JACKSON LEE. I understand. What is the basis of the prison holding people on 87 percent, on extra time?

Mr. SADY. The extra time is a result——

Ms. JACKSON LEE. Do they just like them? They have become family, and they just do not want to see them go? [Laughter.]

Mr. SADY. In 1988, a Bureau of Prisons lawyer looked at the statute and misread it to say that it required time to be calculated against time served, not the sentence imposed, which creates a 7-day disparity for every year of the sentence imposed, which is why we are spending $981 million to incarcerate people for 36,000 years that I do not believe Congress ever authorized or intended.

And that is what——

Ms. JACKSON LEE. Well, it looks like we have a roundtable, a pen in hand or pencil in hand—pencils always seem to get things done a little better—pencil in hand calculating to do, because it looks like we have possibly—so, then, give me my immediate solution. Is this a petition to Mr. Lappin, or to recalculate the 85 to 87 percent?

Mr. SADY. The courts have been in some disarray about how to read this. But they have basically said that it was ambiguous, and then deferred to the Bureau of Prisons. That means that the Bureau of Prisons has discretion.

If the Bureau of Prisons has discretion, why in the world would they take away 7 days of credit for every year that Congress said they could obtain as a reward for good conduct?

Ms. JACKSON LEE. And what we are discussing here are clearly, only to those who have engaged in good conduct. So, we have a

precedent. We have a record that we can address. Is that not correct, that the Bureau of Prisons could look at a clear record of that individual, and they had to have good conduct? Is that correct?

Mr. SADY. Absolutely. Without the good conduct, you do not get those days.

Ms. JACKSON LEE. And does it also include or assess the original conviction, whether it was for non-violent acts? Does it include that? Or does it include individuals who are non-violent, as well?

Mr. SADY. Unlike about four of the other programs that I described, this is for all prisoners who have received a term of imprisonment, over 1 year. That is 95 percent of the prison population, of all——

Ms. JACKSON LEE. So it does not——

Mr. SADY. Okay.

Ms. JACKSON LEE. It does not account for what kind of conviction it was.

Mr. SADY. Yes. That is unlike, for example, the residential drug abuse treatment 1-year incentive, which is for non-violent offenders; the boot camp, which would be for non-violent offenders; the Second Look compassionate release, which would be for people who have extraordinary and compelling circumstances. Those are all more oriented toward that type of criteria.

This is more like the Second Chance Act, which is one that affects every prisoner, because, as we heard before, everybody gets out, so they need those kinds of programming. And those kinds of programming can result in less incarceration expense, simply by fulfilling what Congress intended, when you double the amount of time of mandatory consideration of community corrections with the Second Chance Act, for example. Or when you allowed for 85 percent of good time against the sentence imposed for all prisoners.

Ms. JACKSON LEE. Well, it looks as if—if I can just pursue this line of reasoning, Mr. Chairman, just a little bit more—it looks as if we have an opportunity to cut costs, because these individuals, if this was revisited by the Bureau of Prisons, could be out, because you have cut that 87 to 85. So, that does get us a large net of individuals that might be able to come out, be released.

We passed the Second Chance Act, which many of them would be funneled into. And in your capacity as defense counsel, public defender, would you calculate that the costs would be less than continuing to incarcerate these individuals?

Mr. SADY. Absolutely.

Ms. JACKSON LEE. Would you also include that some of these people are aging and are creating an added financial burden on the Federal Bureau of Prisons?

Mr. SADY. Yes, especially the Second Look statute, that aimed for somebody who has a stroke, for example, and is no danger to anyone. But there is no mechanism to get that case back in front of a judge to decide, now, on the second look, what sentence is sufficient, but not greater than necessary to serve the purposes of sentencing.

And all of this serves not only to reduce waste, but it also is a safety issue for both correctional officers and inmates. Inmates care about the ratios also, because they want to be in a safer place.

Ms. JACKSON LEE. Well, let me just finish on this last question so I can understand.

Is there a court decision that is now in place that would bar, or that the Bureau of Prisons would argue, oh, we have got this court decision, so we cannot do an administrative review, which is what I believe is possible to do.

Because you mentioned that the courts are confused. But is it not clean enough for the Bureau of Prisons—obviously, in consultation with the Department of Justice and the new attorney general, who has shown himself to be broadly talented and open-minded on new concepts of criminal justice.

The question is, are you suggesting that there is a case that is barring this consideration?

Mr. SADY. Absolutely not. I believe that the statute at worst is ambiguous. If it is ambiguous, that means that the courts have been saying that the agency can construe it. As a litigator, I am arguing that they should not be able to do it, that the statute says what it says, and it has to be 85 percent.

But the courts, in general, are saying it is ambiguous. That means that the agency can say, tomorrow morning, "No. We are going to count our good time against the sentence imposed," as, for example, then-Senator Joseph Biden said when he described the statute. He said, on a 10-year sentence, you will have to serve at least 8.5 years.

And the Bureau of Prisons is saying that he was wrong. And I think it is perfectly sensible tomorrow for Director Lappin to say——

Ms. JACKSON LEE. Eighty-five percent on the sentence imposed versus——

Mr. SADY. Eighty-five percent on actual time, which takes us—what they call an arithmetically complicated formula that nobody can understand. But it eventually comes down to 7 days less.

Ms. JACKSON LEE. Well, Mr. Fornaci, you referred me. So, the only thing I want from you is that—you sound like you are the man that is dealing with civil rights. Does this sound like a just and right thing to do?

Mr. FORNACI. Absolutely, yes.

Ms. JACKSON LEE. All right.

Mr. Lewis, you look like you wanted to say something. But if you do not, that is all right. And I will——

Mr. LEWIS. My caution would be that there are social costs to consider. When we think about reducing sentences of non-violent offenders, we have to think very carefully about what we mean by "non-violent."

I know that there is an ongoing——

Ms. JACKSON LEE. And what is—I am sorry. I called on you probably by mistake. [Laughter.]

You represent whom?

Mr. LEWIS. I am with ICF International. And I have done——

Ms. JACKSON LEE. It is a private prison?

Mr. LEWIS. No, it is a consulting firm that has done research and evaluation on faith-based prisons.

Ms. JACKSON LEE. All right. Well, let me just say this, and I will not cut you off. You made your opening comment.

I think the very fact that we have in place the Second Chance Act, the opportunities for faith-based organizations, we need to put them to work. And we certainly would be cautious in the direction that we would take, and I hope that we would be.

But I think I am trying to get to the core of the legal argument. And we certainly would not violate I think what you were about to say to me, which is to make sure that we do this in a proper and appropriate way. And your organization would probably be one that would certainly be included in this.

Mr. Chairman, I am very happy to yield back. Thank you.

Mr. SCOTT. Thank you.

And I would like to thank all of our witnesses for their testimony today.

Members may have additional written questions, which we will forward to you and ask that you answer as promptly as possible, so that your answer can be made part of the record.

And witnesses have indicated that there is certain information that will be forthcoming. We would appreciate if that would—that information would come as promptly as possible, so it also could be made part of the formal record.

The hearing record will remain open for 1 week for the submission of additional materials.

And without objection, the Subcommittee stands adjourned.

[Whereupon, at 12:39 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

The Judiciary Committee's oversight of the Federal Bureau of Prisons plays a major role in ensuring that the Bureau is effective.

This responsibility has become even more important over the past decade, in light of the substantially diminished oversight role that courts have over our Nation's jails and prisons since the enactment of legislation such as the Prison Litigation Reform Act.

Tasked with the critical responsibility of incarcerating more than 205,000 inmates, the Bureau is making a concerted effort to carry out its work in the most professional and safe manner.

Nevertheless, there are areas where the Bureau should improve. Let me explain at least three concerns that I believe it needs to address.

First, I am concerned about the quality of medical services provided by the Bureau to Federal inmates.

Based on the findings of an audit released by the Justice Department's Inspector General in 2008, there are serious problems—and possible Constitutional violations—in the way medical services are provided.

Federal prison inmates and their advocates have long called for improvement in this area.

The audit revealed poorly administered medical services that often failed to comply with Bureau policy, and put inmates unnecessarily at risk.

In addition, the audit concluded that Bureau facilities did not consistently provide preventative care as required by Bureau policy.

And it revealed that the Bureau has failed to provide even basic medical services to some inmates, such as monitoring prisoners with serious chronic health conditions.

And these problems are not new to the Bureau, as past reviews have cited many of these same deficiencies in prisoner health care.

Even more disturbing, the Bureau has failed to issue any Bureau-wide recommendations to address these problems.

Accordingly, I want to hear from the Director today exactly what efforts the Bureau has taken, or is planning, to respond to these systemic problems.

The failure to maintain adequate medical care for inmates poses a serious public health risk—and not only to the prisoners, but also for those who work there, and for all of us.

For example, the audit found that the Bureau failed to provide sufficient preventive care such as giving measles, mumps, and rubella vaccinations as required by Bureau guidelines.

As prison staff interact with inmates, and as inmates re-enter communities each year, the Bureau's failure to provide proper preventive health care has serious public health consequences both inside and outside the Federal prison walls.

Second, there are increasing safety concerns about the working conditions at Bureau institutions because of under-staffing by correctional officers and inmate overcrowding.

Representative Cardoza will discuss an incident that occurred at the Atwater, California Federal prison, where Correctional Officer Jose Rivera was stabbed to death by two prison inmates while locking prisoners in their cells during the evening.

The growing inmate population necessitates that precautions must be taken to ensure the safety and security of prison employees.

I want to hear how Director Lappin plans to prevent incidents like this from happening again, and what policies are now in place to keep correctional officers and staff safe.

One way to provide greater protection to prison guards is to give them protective vests that can be worn under their uniforms. Although the Bureau is authorized to issue these vests, they apparently are not sufficiently available to correctional officers.

Another way to maintain safety and security would be to increase staffing levels at Bureau facilities.

The 34,000 Federal correctional officers and staff who work at Bureau prisons around the Nation deserve to be safe as they conduct the work of the Bureau.

However, the current BOP inmate-to-staff ratio of 4.9 inmates to 1 staff member leaves me concerned about the safety of officers and staff.

Finally, I'd like to discuss the use of private prisons by the Bureau. According to recent estimates, approximately 18% of Bureau inmates are detained in private prisons. Most, if not all, of these individuals are immigration detainees.

While I know private prison companies claim their facilities reduce the government's cost of housing prisoners, I'd like to hear whether the Bureau has any evidence substantiating that claim.

For example, the Government Accountability Office found in 2007 that the Bureau did not gather enough information from the private low- and medium-security prisons to determine whether contracting with them had resulted in any true savings.

Also, a 2001 Justice Department report concluded that the average savings from contracting with private prisons was only about one percent, and that most of these savings were achieved through paying less in prison official and staff salaries—which means either cutting the pay of corrections officers, or reducing staffing levels.

I would seriously question whether either of those is a prudent course of action.

I thank Chairman Bobby Scott for holding this important oversight hearing, and I look forward to hearing more from Director Lappin and the other witnesses about how we can address my concerns.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Mr. Chairman, I ask for leave to extend my remarks for the record. Mr. Chairman, I salute your leadership in convening this important hearing to fulfill our duty to oversee the Federal Bureau of Prisons. I would like to thank our distinguished witnesses, the Honorable Dennis Cardoza of California's 18th District; Harley G. Lappin, Director, Federal Bureau of Prisons; Reginald A. Wilkinson, President & CEO, Ohio College Access Network; Philip Fornaci, Director, DC Prisoners' Project, Washington Lawyers' Committee for Civil Rights & Urban Affairs; Richard A. Lewis, Senior Manager, ICF International; Stephen R. Sady, Chief Deputy Federal Public Defender, Portland, Oregon; and Phil Glover, Legislative Coordinator, the American Federation of Government Employees, Johnstown, PA. I look forward to your testimonies.

As of last Thursday at 12 p.m., there were 206,895 people incarcerated in Federal prisons. Prisoners are disproportionately from minority communities. According to the Bureau of Prisons, the inmate population of Federal prisons is comprised of 57.2% Whites, 39.3% Blacks, 1.8% Native Americans, and 1.7% Asians. Furthermore, according to the Bureau of Justices Statistics an estimated 32 percent of black males will enter prison during their lifetime, at current rates, compared with 17 percent of Hispanic males and 5.9 percent of white males.

Most inmates come from emotionally, socially, morally, intellectually or financially deprived environments. Criminal behavior is often an adaptive response to these negative influences. The criminal subculture reflects social relationships defined by and heavily invested in the criminal values that are used by criminals to manipulate or control their environment in lieu of normal more productive values.

The treatment of prisoners in the United States reflects greatly on the values of our nation. It is important that prisoners are treated in the most humane way as possible. Even though prisoners are deprived of liberty, they are still entitled to basic human rights. They are often deprived of very basic human rights such as access to proper medical attention and education. In most states convicted felons are not allowed to vote from prison; in twelve states, felons are disenfranchised for life. The result of that is disproportionately meager electoral representation. Legislative

efforts should be made to allow prisoners the right to vote while incarcerated. Although they are incarcerated, they are still Americans. Because of the high incarceration rate of minorities their voices are ignored at a great number.

While incarcerated, prisoners deserve rehabilitation services such as education, job training and counseling. Legislative efforts need to be made to provide drug treatment for abusers instead of incarceration. Drug policy should emphasize treatment over criminalization. Also there needs to be alternatives to prison for non-violent offenders, thus eliminating prison overcrowding. This Congress, I introduced legislation to address these issues, specifically, H.R. 245 Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2009 and H.R. 61 The Second Chance Act of 2009.

Once released, many prisoners lack job skills and face employers who are not willing to hire former convicts. These factors contribute to widespread unemployment in minority communities, causing them to resort back to the criminal lifestyle. Additionally because no true rehabilitation took place while incarcerated the results are high recidivism rates.

Equally those that are entrusted with the care and supervision of prisoners should likewise be treated with the utmost respect. The negative environment in which correctional officers work has a very negative impact upon their personalities and their behavior. This situation is similar to the dilemma inmates find themselves in.

Law enforcement and corrections generally reflect the adaptive response of society to the impact of criminal behavior on its environment. That collective response forms the correctional culture. The culture then embodies the problem just as criminal values embody and institutionalize their own deficiencies.

The negative environment in the prisons has a corrosive influence on correctional staff. We must realize that crime is often an adaptive response to the environments in which certain individuals find themselves. Next we must look critically at what caused the problems in their environments. Then we need to look at what changes need to be made to solve the problem, not adapt to it. Unfortunately that is not an overnight process.

When we start to look at the process of reforming prisons we will see that the process of rehabilitating inmates will look strangely similar to reformation for correctional officers. In many ways, the inmates and the correctional staff are all in the same boat. It makes no sense to fight over who we should throw overboard to lighten the load without addressing the leaks that are sinking the boat.

Those leaks consist of inadequate drug rehabilitation, job training and limited educational opportunities for inmates and understaffing, low wages, long hours, inadequate safety and competition from privately owned prisons for correctional officers. There has to be a healthy medium where Federal prisoners are treated fairly and Federal prisons are ran in a safe, efficient and effective manner.

My District, the 18th Congressional District in Texas, has had its share of problems with Federal Bureau of Prison facilities. According to the *Houston Chronicle,* Houston's Federal Detention Center has seen a spike in the number of violent inmates over the past 10 years. In Houston, the downtown facility houses around a 1,000 inmates. Overcrowding has always been an issue with detention as these facilities continue to house more and more inmates.

The budget crisis gripping the Federal Government has increased the problem confronting our Federal prison system. To reduce costs over the past three years, the Federal Bureau of Prisons closed prison camps and eliminated more than 2,300 positions. Federal prison workers also say that inmate crowding and staffing shortages are among the reasons for an increasingly violent U.S. prison system. There are 10 serious prisoner assaults and nearly two serious staff assaults per 5,000 inmates in the 114-prison system reports the *Houston Chronicle.*

These figures are a clear sign that the major steps need to be taken to change the security situation at the Federal Detention Center in Houston and in our Federal prisons around the country. According to the Pew Study "For the first time in history more than one in every 100 adults in America are in jail or prison—a fact that significantly impacts state budgets without delivering a clear return on public safety."

When we start to look at the process of reforming prisons we will see that the process of rehabilitating inmates will look strangely similar to reformation for correctional officers. In many ways, the inmates and the correctional staff are all in the same boat. It makes no sense to fight over who we should throw overboard to lighten the load without addressing the leaks that are sinking the boat. Those leaks consist of inadequate drug rehabilitation, job training and limited educational opportunities for inmate and understaffing, low wages, long hours and improper safety for correctional officers.

Another issue compounding the challenges facing the Federal prison system is the government's practice of housing inmates in privately owned facilities. The private prison industry has a sordid past, dating from the turn of the century when inmates were handed over to private businesses under the "convict lease" system, primarily in the South. Abuses by private prison firms—abuses that used inmates for forced labor, including a high rate of prisoner deaths—led government agencies to abandon the concept of for—profit incarceration.

The industry revived in the early 1980s due largely to tough-on-crime sentencing laws and the war on drugs, which resulted in a large increase in the prison population. A number of companies were formed to capitalize on the developing market for housing inmates, including the industry leader, Corrections Corp. of America (CCA), the industry's second-largest firm, GEO Group (previously known as Wackenhut Corrections), and Cornell Corrections, MTC, Civigenics and various other smaller companies.

Today, approximately 8% of state and Federal prisoners are held in privately-operated facilities, totaling over 126,000 inmates. Government agencies contract with private prison companies for several reasons, primarily anticipated cost savings and a need for additional bed space. However, there are a number of negative factors related to private prisons that should be considered, including the following: Staff Turnover Rate Staffing costs account for about 80% of operational expenses for prisons whether they are public or private.

Thus, one of the main ways that private prison companies reduce costs so as to increase their profit margins is by cutting staffing expenses. This is typically done by staffing private prisons with fewer employees than in the public sector, paying lower wages, offering fewer or less costly benefits, providing less training, and leaving unfilled positions vacant for extended periods of time. Due to these factors, private prisons tend to have much higher staff turnover rates.

According to the last self-reported industry statistics from 2000, the public prison turnover rate was 16% while the private prison staff turnover rate was 53%. Higher turnover rates mean less experienced staff and thus greater instability in privately-operated prisons. Several studies have shown that privately-operated prisons experience higher rates of inmate-on-inmate violence, including a 2004 article in the Federal Probation Journal that found private prisons had more than twice as many inmate-on-inmate assaults than in public prisons, and a 2001 Bureau of Justice Assistance report that found private prisons had 50% more inmate-on-inmate assaults and almost 50% more inmate-on-staff assaults than in public prisons with comparable security levels.

Private prison firms are accountable to their shareholders, not to the public, and add a layer of secrecy when citizens want to learn about problems or misconduct at privately-operated facilities. In 2008, CCA general counsel Gus Puryear admitted that CCA did not disclose detailed audit reports to contracting government agencies. In response to a question from Senator Dianne Feinstein he stated, "we did not make customers aware of these documents."

Because companies like CCA and GEO Group are private entities, they are not covered by the Federal Freedom of Information Act (FOIA) or most state public records statutes. Private prison companies have a documented history of concealing information from the public, including, in some cases, internal prison policies that are available to inmates in private prisons but not to members of the general public.

Although private prison companies claim they can save government agencies up to 30%, only minimal savings if any have been documented. According to a comprehensive 1996 General Accounting Office (GAO) report that reviewed five private prison studies, cost savings resulting from prison privatization were inconclusive. It is difficult to obtain an "apples to apples" comparison of public and private facilities due to a number of factors. For example, public prison systems have higher costs because they house maximum security, death row and female prisoners, who cost more to incarcerate. Few private prisons house such inmates.

Also, private prison companies have a record of "cherry picking" prisoners with few medical or mental health problems, which passes the costs associated with housing such inmates to the public prison system. Further, in some cases private prison companies have a cap on the medical expenses they must pay for prisoners, with medical costs above the cap paid by the public prison system. These factors, as well as other costs such as monitoring and oversight of private prisons by public prison officials, make it hard to determine the costs savings, if any, that are achieved through privatization.

The private prison industry relies on a number of allies and research studies to justify its claims of cost savings and proficiency; however, most of these sources have industry connections or vested financial interests. For example, the Reason Foundation, a strong proponent of prison privatization, has received funding from

private prison firms. The American Correctional Association (ACA) receives sponsorship money from CCA and other private prison companies for its bi-annual conferences, and receives additional payments for accrediting private prisons.

As more and more stories are revealed of the horrific treatment of prisoners both within the Federal prisons and contracted prisons emerge, it is imperative that we hold these facilities accountable. Concerns about internal problems within private prisons have been raised by a myriad of organizations and even Representatives from within this Congress. One such organization, the Private Corrections Institute, recently voiced its concerns stating, "there are more safety concerns and more escapes in private prisons where guards are not well trained, are poorly compensated, and where this is rapid turnover of personnel."

Mr. Chairman, because we are sending our Federal prisoners to these private facilities, there must be some sort of mechanism with the capability of holding them up to the same Federal standards mandated to Federal prisons and correctional facilities. It is our obligation to know under what conditions Federal prisoners are living, whether they are living in a privately-owned facility or a government-owned facility.

This hearing is an important step toward guaranteeing that Federal prisoners—whether they are housed in a government-owned facility or in a privately-owned facility contracted by the government—be treated the same. We can not allow the great city of Houston to be tainted by the problems of the Harris Federal Detention Center, nor can our nation afford to pay for prisons elsewhere that are neither reforming inmates nor reducing crime. The citizens of my district deserve better and the rest of the nation does as well. Thank you, Mr. Chairman. I yield back the balance of my time.

DISTURBANCE STATISTICS FOR 2009

STAFF: MURDERED BY INMATES	INMATE HOMICIDES	ASSAULT OF STAFF W/OUT WEAPONS	ASSAULT ON STAFF WITH WEAPONS
0	4	101	33

USP- HAZELTON
Drug relations between gang memebers
July 13, 2009
Lockdown Continues
USP-BIG SANDY
Inmate Stabbing
July 9, 2009
July 15, 2009
USP- BEAUMONT
Gang Related Disturbance
July 5, 2009
Lockdown Continues
USP- CANAAN
Gang Related Violence
June 26, 2009
June 30, 2009
FCI- OXFORD
Gang Related Disturbances
June 25, 2009
June 26, 2009
USP- HAZELTON
Gang Related Disturbances
June 21, 2009
June 25, 2009
USP- ATWATER
Gang Related Fighting
June 11, 2009
June 11, 2009 After Emergencey Count
FCI- BIG SPRINGS
Gang Related Disturbances
June 11, 2009
Lockdown Lifted
USP- TERRE HAUTE
Inmate Fighting
June 11, 2009
June 19, 2009

FCI- TUCSON
Inmate Stabbing
May 29, 2009
Lockdown Lifted
USP- HAZELTON
Inmate Disturbances
May 27, 2009
June 1, 2009
FCI- SANDSTONE
Gang Related Activites
May 26, 2009
May 27, 2009
FCI- EL RENO
Gang Related Activites
May 15, 2009
May 19, 2009
FCI- GILMER
Gang Related Activites
May 12, 2009
May 14, 2009
USP- VICTORVILLE
Inmate Stabbing Causing Death
May 11, 2009
May 26, 2009
USP- BIG SANDY
Disruptive/ Assaultive Inmates
May 11, 2009
May 19, 2009
USP- LEAVENWORTH
Inmate Fighting
May 10, 2009
Lockdown Lifted
USP- HAZELTON
Disruptive/ Assaultive Inmates
May 9, 2009
May 13, 2009
USP- HAZELTON
Numerous Inmate on Inmate Assaults
April 30, 2009
Lockdown Lifted
USP- TERRE HAUTE
Officer Stabbed
April 23, 2009
May 11, 2009
FCC- FORREST CITY MEDIUM

Inmate Disturbance
April 22, 2009
Lockdown Lifted
FCI- OXFORD
Influenza B outbreak
April 17, 2009
Lockdown Lifted
USP- BIG SANDY
Various Gang Activity
April 15, 2009
Lockdown Lifted
USP- CANAAN
Food and Work Strike
April 14, 2009
April 29, 2009
USP- BIG SANDY
Inmates fighting with weapons
April 6, 2009
April 10, 2009
USP- HAZELTON
Assault on Staff Member
March 25, 2009
March 31, 2009
FCI- TUCSON
Staff Assault
March 24, 2009
March 26, 2009
FCI- GREENVILLE
Gang Related Stabbing
March 17, 2009
Lockdown Lifted
USP- COLEMAN USP 1
Large Inmate Fight With Weapons
March 12, 2009
Lockdown Lifted
USP- BIG SANDY
Gang- Related Activities
February 26, 2009
Lockdown Lifted
FCI- BUTNER II
Gang- Related Activities
February 20, 2009
February 20, 2009
FCI- GILMER
Inmate Disturbance

February 13, 2009
Lockdown Lifted
FCI- VICTORVILLE II
Disruptive Gang Activity
February 13, 2009
Lockdown Lifted
FCI- VICTORVILLE I
Disruptive Gang Activity
February 12, 2009
Lockdown Lifted
FCI- OTISVILLE
Gang Related Activities
February 10, 2009
February 11, 2009
USP- HAZELTON
Staff Assault
February 8, 2009
Lockdown Lifted
USP- BIG SANDY
Inmate Homicide
January 28, 2009
February 2, 2009
USP- COLEMAN 2
Gang Related Activities
January 25, 2009
Lockdown Lifted
FCI-EDGEFIELD
Gang Related Activities
December 31, 2008
January 9, 2009
FCI- FLORENCE
Gang Related Homicide
December 29, 2008
Lockdown Lifted
USP- HAZELTON
Inmate Disturbance
December 24, 2008
Janurary 20, 2009
FCC- VICTORVILLE
Gang Related Disturbance
December 23, 2008
Lockdown

FCI- BASTROP- JULY 18, 2009

Around noon today approximately 50 to 60 inmates began fighting on the rec yard with rakes and other weapons, the outside patrol officer being concerned for the safety of the recreation officer fired a warning shot into the ground, inmates then laid down. As of this time two inmates are in the local hospital, no staff injuries reported at this time.

MCFP- SPRINGFIELD- JULY 17, 2009

At approximately 5:15pm an officer told an inmate in the hallway was told to pull his pants up. The inmate turned around and struck the officer in the side of the head with his fist. The officer received a bump on the side of his head and a swollen hand received while gaining control of the inmate. The inmate received a few scratches on his face. The inmate was escourted to lock up.

FCI- OTISVILLIE- JULY 15, 2009

A body alarm was sounded in food service during the noon meal. A fight between 3 inmates broke out, 2 inmates attacked another inmate. All 3 inmates received minor cuts and or bruises on them. No staff were hurt responding to the incident.

USP- HAZELTON- JULY 13, 2009

A staff was assaulted by an inmate. An inmate threw feces and urine on an officer in our A-1 step down unit. The facility is currently locked down due to drug interaction between gang members. $84,000 of heroin was confiscated by West Virginia Police in the parking lot from a visitor.

FCC- FORREST CITY MEDIUM- JULY 10, 2009

At approximately 5:30pm, a fight broke out in the housing unit TV Room involving 4 inmates. Other inmates attempted to get involved in the fight requiring the Lieutenant to call for additional staff twice. A total of 5 inmates were placed into shu and the housing unit was locked down for the rest of the night. not staff injuries noted.

USP- ATWATER- JULY 10, 2009

A fight was announced at approximately 11:00am in unit 5-B. The Fight moved from a cell into the flats and back into the cell. It was 1 inmate on 1 inmate. The fight was over cell assignments according to one inmate. The inmates are both new to the institution and are attempting to assign their cells according to gangs. Both inmates were from different gangs but of the same race. No staff injuries were reported and it is unknown if weapons were used. But due to the nature of head injuries it appears blunt objects were used but none were recovered.

FCC- FORREST CITY MEDIUM- JULY 9, 2009

An assault happened in a housing unit, one inmate was sent to the local hospital and then both inmates to shu. no lock down or staff injuries.

USP- BIG SANDY- JULY 9, 2009

At 6:55pm, Control announced Staff needs assistance on C-3 Block, 6 inmates were assaulting 1 inmate with Homemade weapons (Shanks). The assaulted was taken to a Trama Hospital with no Staff injuries to report. U.S.P. Big Sandy is locked Down.

FCC- COLEMAN USP 1- JULY 8, 2009

At approximately 7:12 a.m., two inmates were observed striking each other on the body and head with closed fists. Responding staff separated each inmate and escorted them
to the Lieutenant's Office. Both inmates were medically assessed and placed in Special Housing without further incident. No injuries were noted by staff or inmates during this incident or during the medical assessments.

MCFP- SPRINGFIELD- JULY 8, 2009

At approximately 4:13pm, the unit OIC was passing the evening meal. He opened an inmate's food slot to feed him. The inmate kicked the food tray and then spun around and dipped liquid out of the toilet and threw it against the food slot as it was being shut. The liquid splashed upward, striking the OIC in the face and neck area. The staff and inmate were not injured.

USP- HAZELTON- JULY 8, 2009

At 12:30pm an officer was assaulted in the SHU. The inmate held his wicket open while the officer was feeding. The inmate
spit on the officer then threw a food tray lid and hit the officer in
the face.

FCI- LA TUNA- JULY 7, 2009

At 12:28 a.m. an inmate began kicking the door located between unit 1 and unit 3. When the unit officer approached to investigate, the inmate attacked the officer placing him in a headlock and struck him with his fists. The inmate was restrained and placed in special housing.

USP- MCCREARY- JULY 6, 2009

At 11:51 am, an inmate approached a corridor officer from behind, and punched him one time in the facial area. The inmate was restrained and escorted to health services, where he again became combative pulling away from and kicking staff. The inmate was moved to special housing and placed in four point restraints.

FCC- FORREST CITY- JULY 6, 2009

At approximately 07:00AM, an Inmate on Inmate fight occurred
in the housing unit, no staff injuries, both inmates were taken to medical and then to SHU..no lock down needed.

FCI- TUCSON- JULY 5, 2009

One inmate attacked two other inmates and the other inmates went after the inmate who committed the assault. The inmate that was the object of this was chased out of the unit. Three officers were pushed out of the way and suffered minor injuries.

FCI- OXFORD- JULY 5, 2009

At approximately 5:15 pm, an inmate was in the Special Housing Unit Range

Shower waiting to be visually searched and processed into the Special Housing Unit. At this time, the inmate stated he was ready to comply with staff and be searched. Staff ordered the inmate to the cell door so his restraints could be removed. The left restraint was removed from the inmate's wrist, at which time, the inmate forcefully pulled away causing injury to the staff member's left hand and right forearm, assaulting the staff member. The inmate then refused all orders to remove the hand restraints and submit to a visual search. A Use of Force Team was assembled. Upon
being given a final order to submit to restraints, the inmate complied and restraints were reapplied. The Team entered the cell, placed the inmate on the floor, and applied leg restraints. He was then searched and properly processed into the Unit without further incident. An investigation continues.

USP- BEAUMONT- JULY 5, 2009

A fight Sunday evening involving a group of inmates has caused the U.S. Penitentiary - Beaumont to be put on lockdown.
Staff gained control of the incident immediately, a release from the correctional complex stated, and one inmate, who was treated for a contusion at a local hospital, has been returned to the prison.
There were no injuries to staff members, and there was no threat to the community, the release stated.
The lockdown, a state of increased security and inmate supervision, has been put into place while the incident is investigated, the release stated.
During lockdown, inmates are generally confined to their housing units or cells shile services such as meals, medical care and showers are provided to all inmates within their assigned units.
Visiting has been suspended during the lockdown, but it is anticipated to be back to normal operations shortly, the release stated.

FCI- OXFORD- JULY 4, 2009

At 8:50 am, an inmate became loud, belligerent, and refused numerous orders to submit to hand restraints. The inmate was taken to the floor to allow hand restraints to be applied safely. An examination by the on duty medical staff reveale the inmate sustained no injuries. During the immediate use of force the Compound Officer received an red mark to the right cheek. The inmate was placed into the Special Housing Unit without further incident. An investigation continues.

***** At 10:30 am, an inmate notified the Federal Prison Camp Officer he had been assaulted by another inmate. The Inmates had been involved in a verbal altercation when one inmate pushed the other and struck him in the back of the head. An examination by the on duty medical staff revealed***
neither inmate sustained any injuries. Both inmates were placed in the Special Housing Unit without incident. The investigation continues.

USP- COLEMAN 2- JULY 2, 2009

An inmate was escorted to the DHO office by the Lieutenant. When the inmate was asked "what's going on," he started yelling that he was suicidal and climbed

onto the desk asn jumped toward the officer. He hit the officer in the chest area, pushing him against the wall. The inmate landed on the officer's feet. Staff then responded and removed the inmate and placed him in SHU.

FMC- DEVENS- JULY 2, 2009

At 10:00 a.m. a nurse was assaulted by a mental health inmate with a lock in a sock. The nurse was transported to a local hospital where stitches are needed.

USP- TERRE HAUTE- JULY 1, 2009

A stabbing occured in the SHU Recreation Cage. One inmate was taken to local hospital for treatment of multiple stab wounds.

USP- TUCSON- JULY 1, 2009

A fight broke out in Special Housing rec cage, three inmates on one, with a weapon (shank). The one inmate had superficial wounds and was not transported to the hospital.

USP- COLEMAN 1- JULY 1, 2009

At approximately 7:54 PM, staff observed two inmates assaulting another inmate in the Special Housing Unit rec cage. The two inmates were kicking the other inmate in the upper torso and face area while he was on the ground. Responding staff gave the inmates several orders to stop and
they complied. The three inmates were placed in hand restraints, separated,and medically assessed. The one inmate sustained a possible fractured jaw and was escorted to the local hospital. An investigation continues.

USP- COLEMAN 2- JUNE 30, 2009

A Counselor was assaulted in SHU today, the inmate slipped his cuffs off and pulled out a shank and attempted to stab the counselor, the inmate also spit in the counselor's face.

USP- HAZELTON- JUNE 29, 2009

At 05:38 PM, inmates in SMU refused to lock down. Multiple chemical agents used to restore order and gain the inmates' compliance. Two staff were assaulted (pushed) during the incident.

USP- CANAAN- JUNE 29, 2009

An officer had his eye socket distroyed due to
an inmate assault.
**An inmate was life flighted to phialdelphia truma unit from USP Canaan another taken to a local truma center, 1 staff member hurt by a flash bang from the tower.*
***several officer at Usp Allenwood injured, two taken to*
the hospital. Inmates squared off on them.

MDC- BROOKLYN- JUNE 29, 2009

At approximately 2:12 to 2:15 pm, the Counselor for unit 2 South was assaulted by a male inmate. The Counselor tried to defend himself while making his way off of the unit and towards the Unit Team Offices. The inmate pursued and continued to assault the Counselor until, as we're being told, three other inmates pulled the assaultive inmate off of the Counselor. It was also reported that it took five responding staff members to subdue the assaultive inmate. The Counselor

was taken by ambulance to the local hospital where he was diagnosed with a broken nose and several fractures to his cheek bone. Events or factors leading up to the assault are not known at this time. He also received 8 stitches under his right eye!

USP- TERRE HAUTE- JUNE 27, 2009

An incident occured on the Recreation Yard at the FCI. Inmates participated in an unauthorized tackle football game. When staff intervened, numerous inmates surrounded staff and refused to comply with orders to disburse. The Recreation Yard was shut down, ending the incident.

USP- HAZELTON- JUNE 27, 2009

At 08:58 AM, a body alarm was hit in the Facilities Corridor. An inmate became combative during a search and struggled with the officer, attempting to punch him in the face.

FMC- LEXINGTON- JUNE 26, 2009

At approximately 4:00pm Control announced a Body Alarm in R/D. While Bus Crew and R/D Staff were removing all the
restraints on Trans-Seg inmates who were being processed in R/D, (2) Trans-Seg inmates assaulted another Trans-Seg inmate as he entered the Holdover Cell in R/D. It is believed this incident is Gang related. Inmates were placed in SHU. No Staff injuries were reported.

USP- CANAAN- JUNE 26, 2009

At approximately 7:30 pm a major assault kicked off in front of the housing unit this fight was gang related. Two inmates were stabbed multiple times. Tower 7 had to throw a flash bang to get inmates to drop their shanks. Two inmates were taken to outside hospitals for multiple stab wounds and major head trama. Staff had to be called in due to staff shortages. 11 inmates were placed in Special Housing Unit after they were medically checked. 1 staff received minor injury due from flash bang. USP Canaan was then placed on lock down status.

FCI- OXFORD- JUNE 25, 2009

A fight occurred between two inmates in the dining hall
while serving the morning meal. Both inmates were separated, examined by medical staff and placed in SHU pending an investigation. No staff injuries reporte

**A fight occurred between two inmates in the dining*
hall while serving the evening meal. Both inmates were separated by staff, examined by medical staff and placed in SHU pending investigation. No staff injuries reported.

***At approximately 6:10 pm a body alarm was activated in*
Columbia unit for a fight between inmates. Upon arrival of responding staff the inmates were separated. A total of five inmates were involved in this fight. The five inmates were examined by medical staff and placed in SHU pending investigation. It was determined that the five

inmates were fighting over ice in the ice machine. The institution was locked down until Friday morning. Resumed normal operations on Friday June 26, 2009. No staff injuries reported.

USP- BIG SANDY- JUNE 25, 2009

At 1:00pm, a Officer working SHU, was putting a food tray in the food slot, An ADX bound inmate had 2 magazines rolled
together with a (shank) in the end of it and proceeded to stab the Officer in the stomach, The Officer Quickly backed away and the shank barely was stuck in the officers stomach. The shank also had Feces all over it. The Officer was taken to Medical and treatment was applied and he is doing well.

USP- TERRE HAUTE- JUNE 24, 2009

A fight broke out in the housing unit involving weapons. Three inmates attacked a fourth inmate, the victim was treated at the institution hospital for multiple stab wounds.

FCI- ASHLAND- JUNE 24, 2009

An inmate was in the Lt's Office and became verbally aggressive. When the Lt. told the inmate to cuff up, he swung at one Lt and struck another. No injuries and the inmate went to Seg.

MDC- LA- JUNE 24, 2009

An Officer was assaulted by an inmate. The inmate is a study case in the Psychology Unit and was being escorted to the shower when the staff member was punched in the face by the inmate. The second staff member then took the inmate to down to floor and the inmate was restrained. The Officer received minor facial injury to his left eye as assessed by the Medical Dept. and was sent home.

USP- TERRE HAUTE- JUNE 23, 2009

A fight occured in the housing unit. Three inmates were involved, two inmates were taken to the local hospital, one inmate suffered with multiple head lacerations and one with a possible forearm fracture.

USP- VICTORVILLE- JUNE 23, 2009

An inmate was drunk and put the LT in a headlock and then compound officer put the inmate in a headlock and brought him down. Then other inmates were upset and jumped in on the situation and multiple staff were needed to contain the situation. We are currently running normal operations.

USP- LEAVENWORTH- JUNE 23, 2009

At approx. 14:55p.m., an internal gang fight broke out, 4 inmates vs. 1 inmate with a weapon (lock and a sock). Staff responded to body alarm and the situation was controlled.
1 inmates was taken to Health services with minor injuries then taken to SHU. No staff injured.

FCC- FORREST CITY MEDIUM- JUNE 22, 2009

On E/W shift, recreation staff noticed an inmate with blood

all over his upper body walking towards the outbound gate of the recreation yard. Staff immediately placed the inmate outside of the recreation yard, and called for medical staff. Inmate had been assaulted on the handball courts with unknown weapons, and while recreation staff were asking him about the assault, he turned over a ice pick style weapon which he had on his person. The compound and recreation yards were closed, inmates recalled to units for upper body checks. Assault victim taken to outside hospital for treatment and then placed into SHU. The medium was locked down for the rest of the night..

USP- HAZELTON- JUNE 21, 2009

At 11:08 AM, a body alarm was hit in an unit for a fight with weapons. Eight inmates attacked one inmate with shanks. One inmate was sent to the hospital with stab wounds / blunt trauma. The incedient was gang related. The institution was placed on lockdown (lifted on 6-25-09).

FCI- SANDSTONE- JUNE 19, 2009

Inmate walks into the Counselors office and begins raising voice, and refusing orders. Operations notified immediately of the inmates actions and potential for violence. Incident report delivered within 10 minutes. Almost 2 1/2 hours later, Operations Lieutenant finally address's the issue, and the inmate attempts to assault the Operations Lt. No staff or inmate injuries reported. Investigation continues.

USP- HAZELTON- JUNE 18, 2009

At 12:22 PM, an Assistance call for inmate an assault with a weapon in Red Corridor. The inmate received stab wounds to the head. One inmate was sent to the local hospital.

USP- BIG SANDY- JUNE 17, 2009

At 2:00pm, a fight was announced on the Recreation Yard, 2 Inmates were fighting on the Yard. Responding Staff stopped the fight and the Inmates were Medicinal Assessed. No Staff
injuries to Report.

*****At 5:14pm, Staff needs Assistance in an unit, 4 Inmates were fighting with no injuries. No Staff injuries to report.***

USP- ATWATER- JUNE 17, 2009

At 8:34pm during the East side corridor recall a fight with weapons in an unit was called. The fight was 6 on 1. This appeared to be a gang related incident. The inmate who was assaulted was released to the housing unit from the Modified SHU Unit earlier in the day and had recently transferred to the institution. . This inmate informed the SIS dept that he wasn't able to go to the yard, but he was still told he was going to the yard. The 6 inmates were using locks on belts as weapons. No staff injuries were reported.

USP- LEWISBURG- JUNE 16, 2009

At approximately 1:16 p.m., staff called for assistance on a Block recreation after observing an inmate stabbing a second inmate numerous times in the head and

body. Two other
inmates were also observed striking the second inmate about the head and body with closed fists. As responding staff arrived, the inmates complied with orders to stop and submitted to hand restraints. All inmates were medically assessed and returned to their cells without incident.
*****Lewisburg staff also conducted 12 forced cell moves and responded to one suicide attempt requiring outside medical attention during the same time frame.***

USP- LEWISBURG- JUNE 15, 2009

At approximately 7:56 p.m., Block staff were escorting an inmate when the inmate attempted to pull away from staff
and spit directly in an escorting Officer's face. Staff called for
assistance and regained control of the inmate. The inmate also refused to accept a cell mate. A use of force team was assembled and confrontation avoidance was initiated with positive results.

USP- LEWISBURG- JUNE 14, 2009

At approximately 9:39 a.m., an Officer called for assistance upon observing two inmates fighting inside the second floor shower area. Both inmates refused to comply with staff's orders to submit to hand restraints. The Activities Lieutenant dispensed (1) two second burst of O.C. from the MK-9 O.C. dispenser into the shower area. Both inmates then complied with staff's orders, were placed in hand restraints, and escorted to separate showers for decontamination. Two staff members were treated for exposure to chemical agent.

*****At approximately 10:40 p.m., an Officer observed two inmates fighting in a cell. The inmates complied with the Officer's order to separate and stop fighting. Upon the arrival of the Operation's Lieutenant, the inmates were placed into hand restraints for medical assessments.***

USP- HAZELTON- JUNE 14, 2009

Two inmates assaulted 1 inmate in their cell in the (SHU) Special Housing Unit. Currently there are 5 three man cells in the special housing unit at Hazleton due to overcrowding.

USP- LEWISBURG- JUNE 12, 2009

At approximately 6:50 p.m., an Officer called for assistance when he observed inmate #1 assaulting inmate #2 with a
piece of broom handle in the first floor television room. Responding staff ordered inmate #1 to drop the weapon, which he refused. Staff then utilized immediate use of force to gain control of the weapon and place inmate #1 on the floor. Both inmates were placed in hand restraints and escorted to Health Services where medical assessments were completed. Inmate #2 sustained multiple fractures to the right and left hands and a
6 cm laceration to the head which required 11 sutures to close.

USP- ATWATER- JUNE 11, 2009

At 5:30PM a inmate on inmate fight started behind unit 2 in the secure corridor during the mainline move. The fight escalated and more inmates got involved to

make it a 4 on 2 inmate fight between the inmates. Staff saw weapons involved and called for weapons and the secure corridor grills to be closed. The fight moved from Unit 2 to the entrance of the institution. Once staff were able to bring less than leather weapons into the institution they were able to secure the situation. The institution was placed on lock down for an emergency count. This is a continuation of a fight that happened on June 9, 2009.

FCI- BIG SPRING- JUNE 11, 2009

At approx. 7:30 pm, an inmate assaulted another inmate after the inmate disrespected him. The Lt and officers went to the ranges and talked it over with the groups. After being told it was done, the Lt allowed inmate movement. With one hour escalated into multiple fights (5-10) between different races of inmates. Large groupings accumulated in the dorm. Two officers were injured in the pushing/crowding. The Lt. and Officers had to lock themselves into the staff offices, and inmates took over the 860-bed dorm. The recall system worked at 9:30pm. Once staff arrived, they took control of the dorm again. All inmates were brought out of the dorm, searched and placed in cuffs on the ground. Numerous inmate injuries occurred. The SHU was already full at 80 plus (including 15-20 Pollock high security inmates).The VP of the local was one of the injured staff. His lower ribs popped after being elbowed in a crowd. Initial assessment shows they are not broken. Another staff injured his ankle when a locker feel onto his leg. Emergency room assessment shows not broken. Both were treated and releas

USP- TERRE HAUTE- JUNE 11, 2009

At 0810, three inmates assaulted another inmate with weapons on the Recreation Yard at USP Terre Haute. Center Tower officers fired two less lethal rounds (grenades) and five live rounds, striking one inmate in the left buttocks. The inmate victim of the assault was taken to the local hospital for treatment of a puncture wound to the left side of the abdomen and facial trauma. Another inmate was taken to a local hospital for treatment of a gunshot wound to the left buttocks and a fratured left femur. No staff were injured. The USP has been placed on lockdown.

USP- BIG SANDY- JUNE 11, 2009

At 11:25am, A fight was called out in SHU, Responding staff escorted 2 Inmates out of a cell , who were fist fighting, to the Recreation Cages. No staff injuries to report.

MCFP- SPRINGFIELD- JUNE 10, 2009

At approximately 8:24am, an inmate was standing by the Officer's station. The OIC asked the inmate how he was doing. The inmate replied "Why don't you leave me the fuck alone". The OIC left the area and notified the nurse and the bld LT. that he would be locking the inmate up. The OIC returned to the unit with another officer and found the inmate sitting on a chair by the unit TV. The OIC told the inmate that he would be moving and that he needed to submit to hand restraints. The inmate stood up and the second officer began placing hand restraints on the inmate. The inmate than began to verbally assault the OIC, spat in his face, and then lunged forward as if to head butt the OIC. The inmate was

taken down to the floor to gain control of him and the body alarm was activated. The inmate continued to resist and was removed from the unit by responding staff and placed in lock up. The OIC and the assisting officer were not injured. The inmate received a cut to his forhead.

USP- BIG SANDY- JUNE 10, 2009

At 5:36pm a fight was called out on an Unit, 2 Inmates were fighting with closed fists. Responding staff stopped the fight with no staff injuries to report.

USP- BIG SANDY- JUNE 9, 2009

At 8:00am, a fight was called out on an unit, 5 Gang related inmates assaulted 1 inmate in a Cell, with weapons. The inmate was stabbed 8 times with a Homemade weapon (Shank). He was sewn up in our Medical Department. No Staff injuries to report.

USP- HAZELTON- JUNE 9, 2009

At 11:44 PM, a body alarm was activited in the visiting room. The inmate became combative after a legal visit and ran from staff, as the inmate was being placed in a holding area, he kicked the door open, injuring a staff member's hand.

***At 03:52 PM, a body alarm was hit for a fight with weapons in an unit. An inmate who had just been released from the SMU attacked another inmate on the top tier while two other inmates attempted to distract the unit officer. One inmate to was sent to the local hospital.*

FCI- EL RENO- JUNE 9, 2009

At approximately 12:00 PM an inmate walked up to another inmate in the main dining hall and punched him. Several staff members were present and the inmate was placed on the ground to control the situation and both inmates were moved to the special housing unit

***At approximately 12:45 PM, the Unit * officer called and reported an assault had taken place in his unit. The unit was immediately placed on lockdown and upper body searches were conducted. The victim of the assault was an inmate. Subsequently 5 more inmates were placed in the special housing unit for investigation in to this event.*

No staff were injured in either event and no inmates were moved for outside medical treatment.

FCC- LEWISBURG- JUNE 8, 2009

At approximately 7:35pm, an inmate housed at the satellite camp, fled from the Camp Officer when ordered to submit to a pat search. While running, the inmate struck a second staff member with the exit doors. The Camp Officer caught up with the inmate and placed him on the ground. The inmate struggled with the staff member, until hand restraints were applied by responding staff. A staff member sustained a dislocated left shoulder and the inmate sustained an abrasion on his right pinky toe.

USP- BIG SANDY- JUNE 7, 2009

An assault occured on an Unit, 4 inmates assaulted 1 inmate. The Inmate was

taken out to a local hospital for treatment. No Staff injuries to report.

FCC- VICTORVILLE- JUNE 6, 2009

At approximately 8:45 pm, 5 intoxicated inmates entered the housing unit during the yard recall. The unit officer observed that they were intoxicated, began conversing with them to determine their status, and when one inmate became combative and belligerent a physical confrontation ensued. The unit officer engaged his body alarm and several responding staff were slightly injured before order was restored to the unit. The worst injury to staff was a head laceration that was caused by an inmate who used an unit officers maglight that dropped from his duty belt during the fight as a weapon. All 4 staff that were injured were taken to the hospital and released with the exception of the officer with the head laceration who stayed for observation and a CT scan that was negative. The officer received 15 staples in his head and was released at approximately 2:30 am.

FCI- LEXINGTON- June 5, 2009

At approximately 7:47pm, three Study inmates were fighting on a housing. One inmate was transported to the Outside Hospital but later returned to the Institution. All three inmates were placed in SHU. No Staff injuries reported.

FCC- COLEMAN- USP 1- JUNE 4, 2009

At approximately 8:20pm, at USP-1 in the Special Housing Unit, an inmate was lying on the cell floor, bleeding from his head. There was another inmate also in this cell. The Inmate was sent to the local hospital. No staff injuries were reported.

USP- BIG SANDY- JUNE 3, 2009

Two Officer's suffered injuries today responding to a fight in SHU. Both officers moved to restrain the two inmates in their cell. One Officer received a fracture to his 3rd metatarsal bone on his right foot. The second Officer received sprain to his lower back to the point he cannot bend over without pain.

USP- HAZELTON- JUNE 3, 2009

At 07:41 PM, an emergency count was conducted. An inmate from SMU changed out of the SMU uniform in Food Service and was later located in a general pop. The inate was sent to the housing unit.

FCC- FORREST CITY MEDIUM- JUNE 3, 2009

During the lunch meal, the unit secretary called a fight on the radio. Staff Responded and found one inmate laying on floor bleeding with a lock-on-belt in his hand, while another inmate was found in the tv room. Staff tried to secure inmate on floor with restraints, he refused and staff had to use compliance measures to apply handcuffs to inmate. The other inmate submitted to restraints. One inmate sent to outside hospital for treatment of head injuries, both inmates to shu.

USP- TERRE HAUTE- JUNE 2, 2009

Two officers were assaulted by an inmate in a housing unit at USP Terre Haute. The unit officers had noticed that the inmate had been the victim of an apparent

assault and were attempting to escort him from his cell to the Lieutenant's Office. When the officer opened the cell door, the inmate struck him in the face with a closed fist. The officer pushed the cell door closed and was attempting to secure the door when the inmate broke out the glass in the door with a lock in a sock, hitting the officer in the face and eyes with flying glass. As the two officers were attempting to restrain the inmate, he struck the other officer in the jaw, knocking a crown off from one of his teeth. The inmate was transported to another facility.

USP- HAZELTON- JUNE 1, 2009

At 07:15 PM an inmate was assaulted by another inmate with a weapon (lock on belt).

USP- BIG SANDY- JUNE 1 ,2009

At 11:46am, The Corridor Officer was Doing Pat Downs when an Inmate refused to be pat down and Hit the Officer with a punch. Responding staff coraled the Inmate and took him to SHU. Corridor Officer was shaken up but returned to duty.

FCI- TUCSON- MAY 29, 2009

One inmate was stabbed and two others were injured when two separate fights broke out at the maximum security federal prison Thursday night. Both incidents, which were not related, spurred a lockdown that remained in effect on Friday. Each fight involved two inmates who used homemade weapons, according to Scott Pennington, spokesman for U.S. Penitentiary Tucson. Pennington did not know what the inmates used to make the weapons. Three of the four inmates were taken to local hospitals for treatment, Pennington said. Two have since been released while the one who was stabbed remained hospitalized in stable condition. No staff members were injured. The prison will remain on lockdown pending the investigation. The names of the inmates were not released.

USP- HAZELTON- MAY 27, 2009

Hazelton is on lockdown due to a disturbance in the chow hall 6 white boys attacked each other and an officer was punched in the chest while responding. Hazelton will be on lockdown until Monday.

FCC- FORREST CITY- MEDIUM- MAY 27, 2009

An inmate was assaulted on the recreation yard. There were no staff injuries to report. The inmate was medically assessed and then placed into shu, no lock down needed. Inmate had just arrived off of the bus.

FCI- SANSTONE- MAY 26, 2009

Approximately 120 white and 120 black inmates faced off against one another on the recreation yard at FCI-Sandstone. The inmates were fighting over who had control of the gambling. The organizers of the fight were placed in SHU. The institution has been placed on locklown status.

USP- BIG SANDY- MAY 26, 2009

At 12:07pm, A fight was called out at the Grill, 2 Inmate's were fighting with weapons. Responding Staff broke up the fight with no Staff injuries to report. **At 7:30pm, an assault was called out on an Unit, 2 Inmates was assaulted by 6

other Gang related Inmates. The Inmates were taken to a Local Hospital for treatment.

USP- BIG SANDY- MAY 24, 2009

At 3:18pm, A fight was called out on the Recreation Yard. 2 Inmates were fighting on the Recreation Yard with weapons. Responding Staff broke up the fight with no Staff injuries to report.

USP- HAZELTON- MAY 23, 2009

At 2:20p.m., a fight was announced in SHU. An inmate assaulted another inmate while being escorted.

FMC- LEXINGTON- MAY 23, 2009

At approximately 9:00pm Control notified a Lieutenant that an inmate was knocking on the Control window in the Central Park area. This area is out of bounds for an inmate. When the Lieutenant responded the inmate became agitated and grabbed the Lieutenant around the neck area, other Staff responded and were able to restrain the inmate. The inmate was taken to SHU. There were no Staff injuries.

USP- BIG SANDY- MAY 23, 2009

At 10:30am, An Inmate that was assaulted was found on an Unit by the Unit Officer. The Inmate was sent to the Local Hospital for treatment.

USP- BIG SANDY- MAY 21, 2009

At 7:55am, a staff needs assistance call was made from

R & D, an inmate in route to being transferred , assualted 2 staff assigned to R &D with a plastic homeade weapon (shank). The inmate initially began stabbing one staff member, and then stab the other once he responded to the assistance call. The weapon is alleged to have been initially stored in the inmates anal cavity area. One staff member was stabbed multiple times in the neck area and the other under his eye and cheek. Both staff were taken to the local hospital, required stitches, and have now been released.

FMC- LEXINGTON- MAY 20, 2009

At approximately 6:30pm Control announced Rec Staff needed a assistance in the Gym. Rec Staff observed 2 inmates fighting. No Staff injuries were reported. The inmates were not placed in SHU per the Operations and Activities Lieutenants because both inmates showed no visual signs that they had been figh

FMC- LEXINGTOM- MAY 19, 2009

At approximately 2:30pm an inmate on a Housing Unit hit a Staff Member on the shoulder. The inmate then proceeded to leave the area and go to his room. When the Officer attempted to enter the room the inmate attempted to hit the Officer with a cane. The Officer received no injuries. The inmate was placed in SHU.

USP- LEWISBURG- MAY 18, 2009

At approximately 8:18 a.m., the recreation officer called for assistance after observing an unknown amount of inmates in an altercation in the outside recreation pens. Responding staff observed an inmate in the corner of the pen

bleeding profusely from several stab wounds and the other inmates had already backed away from the inmate. Significant amounts of blood were found on inmates 2 other inmates. A weapon was recovered outside of the recreation pen where the assault took place. The inmate was transported to an outside hospital for further treatment. No injuries were sustained any other inmates.

FCI- OAKDALE- MAY 18, 2009

An inmate assaulted a staff member by throwing a tray through the food slot, striking the staff member in the groin area. The staff member and inmate were medically assessed by Health Services staff.

USP- CANAAN- MAY 18, 2009

At approximately 6:00 am, an inmate was banging on the door in the R & D Holding Pen. Staff responded and the inmate stated that he was assaulted by other inmates. Inmate was removed from the holding pen, was medically assessed and then placed in the Special Housing Unit. No staff was injured. **At approximately 4:45 pm, a fight broke out in the R & D Housing Pen. Two inmates on one which was gang related. All inmates were restrained, medically assessed, and then placed in the Special Housing Unit. No staff was injured.

FMC- DEVENS- MAY 17, 2009

At 8:00 p.m. an inmate assaulted the Unit Nurse, by kicking her twice in the arm as she was obtaining his blood sugar levels. The Nurse and inmate were medically assessed and the inmate was escorted to N-A unit.

USP- CANAAN- MAY 17, 2009

At approximately 8:30 pm, a call for assistance was announced for a fight in the inmate housing unit. Three intoxicated inmates were assaulting one inmate with a lock in a sock while kicking and punching him. Responding Staff Members were being threatened by the inmate with the weapon. One inmate took the weapon from the other inmate. The inmate that had the weapon assaulted a Staff member by punching him in the eye which resulted in a serious injury. The Staff Member was taken to a local outside hospital for the injuries that he sustained. The inmate that was attacked was taken to the Institutional Hospital for his injuries and then taken to the Special Housing unit. All other inmates that were involved in the fight were taken to the Special Housing Unit also.

MCFP- SPRINGFIELD- MAY 16, 2009

At approximately 4:55pm, an inmate approached another inmate that was seated at a table and began having a verbal arguement with him. The first inmate than struck the second inmate with an open hand. The assaultive inmate turned to leave and the second inmate stood up and struck the first inmate on the right side of the head with an open hand. The first inmate reported the incident to the officer. No staff or inmates were injured.

USP- LEWISBURG- MAY 15, 2009

At approximately 1:30 p.m., 13 inmates refused to exit the Block recreation pens: Authorization was received from the Warden to assemble several use of force teams and for the utilization of chemical agents and less than lethal munitions to extract the inmates from the recreation cages. Confrontation avoidance was

initiated with negative results. A final order to submit to restraints to inmates in the first cage was given by the Lieutenant, however the inmates refused to comply. The Lieutenant dispersed a two second burst of OC using the MK 21, which proved effective and the inmates submitted to restraints. A final order to submit to restraints to inmates in the second cage was given, however they also refused to comply. The Lieutenant dispersed several rounds of OC utilizing the pepperball launcher, which proved effective and the inmates submitted to restraints. The inmates in the third recreation cage were also give a final order to submit to restraints, and they refused. The Lieutenant delivered 1 (T-471) Magnum Ultra Flash into the recreation cage. These inmates subsequently submitted to hand restraints. All inmates were decontaminated, medically assessed, and placed into ambulatory restraints without further incident.

FCC- FORREST CITY- MEDIUM- MAY 15, 2009

Around 9:30am there was a fight on compound, inmates ran into the barbershop and could not be identified, then at the noon meal, a fight on compound, two inmates involved and sent to shu, no staff injuries, locked down was conducted..lock down ended after 4pm count.

FMC- LEXINGTON- MAY 15, 2009

At approximately 10:00am a fight occurred between (2) inmates in Food Service. Control announced a Body Alarm and Staff responded. One of the inmates may have sustained a broken nose. Both inmates were escorted to SHU. There were no Staff injuries reported.

FMC- CARSWELL- MAY 14, 2009

An inmate, while being placed in the Special Housing Unit, assaulted an Officer by kicking her in the chest. Staff placed inmate on the ground and once control was regained, she was placed in a holding cell.

USP- COLEMAN 2- MAY 14, 2009

At 12:15 an inmate assaulted the LT and another officer as they attempted to shake him down, the inmate was found with packets of drugs..the officer had confiscated his wallet, when
she was about to open it, inmate slapped it off her hand. The Inmate ran and was tackled by the officer, the inmate then bit the officer in the right hand... several staff arrived to subdue the inmate who was on top of the officer and refused to release him .

USP- COLEMAN 2- May 12, 2009

An inmate spit in an officers face. The inmate was written up and placed in SHU. Today the inmate threatened to throw feces on the officer.

USP- VICTORVILLE- MAY 11, 2009

An inmate was stabbed and died two days later in a local hospital. There were no staff injuries, and the USP remains on lock down.

USP- BIG SANDY- MAY 11, 2009

At 3:40pm, a fight/Assault, with weapons on an unit occured. 2 inmates were assaulting another inmate. No staff injuries to report.
*****At 5:09pm, a fight/Assault, with weapons on an unit. 4 inmates were assaulting another inmate. No staff injuries to report.***

USP- LEAVENWORTH- MAY 10, 2009

At approx 17:30, a fight occurred in a cell house between 2 inmates. Control announced body alarm, staff responded. 2 inmates in SHU no staff injuries we are locking down for the night due to this and prior fight on yard.

USP- COLEMAN 1- MAY 10, 2009

At approximately 7:02 PM, an Officer was collecting food trays in the unit when an inmate assaulted her by reaching thru the food slot and striking her on the groin area. The tray slot was secured without further incident. The inmate was medically assessed and escorted to Special Housing Unit, pending further investigation.

USP- HAZELTON- MAY 8, 2009

At 7:03p.m., a fight was announced in an unit, 5 inmates against 1. The institution was placed on lockdown.

FCC- FORREST CITY- MEDIUM- MAY 7, 2009

At approx. 10:45am, an inmate on inmate fight occured in the housing unit. No staff injuries were reported, both inmates were placed in shu. The institution was not placed on lock down.

MCFP- SPRINGFIELD- MAY 6, 2009

At approximately 12:33pm, one of the unit officers applied hand restraints to an inmate. When the door was opened, the inmate turned and began kicking at staff. The inmate was placed on his bed and given an injection by the nurse. An officer hurt his thumb during this incident. The inmate was not injured.

USP- HAZELTON- MAY 5, 2009

At 5:02p.m., a fight broke out with weapons in an unitl. 6 inmates on 1. One inmate was sent to a local hospital for head injuries.

USP- BIG SANDY- MAY 5, 2005

At 11:35am, a fight was announced by the Control Center,
6 Inmates 5 on 1 with weapons. The 1 Inmate received 9 stab wound's with a Home made weapon's. Responding staff broke up the assault . No staff injuries to report.

USP- CANAAN- MAY 4, 2009

At 3:40 pm a body alarm was announced in a inmate housing unit. Inmate on inmate fight with a weapon was involved were one inmate was stabbed several times. One inmate was taken to institutional hospital and then placed in Special Housing Unit.
*****At 9:45 pm a fight was announced in a inmate housing unit were an inmate on inmate with a weapon involved. Inmate with weapon tried to stab the other inmate but failed. The other inmate assaulted the aggresser by stompping and kicking him in the head, the inmate was taken to outside local hospital. No staff***

was injuried.

FCC- VICTORVILLE- MAY 3, 2009

In the Special Housing Unit, an inmate assaulted the Operations Lieutenant and one of the Special Housing Unit Officers on shift with a liquid substance.

USP- HAZELTON- APRIL 30, 2009

At 6:59a.m., assistance was called in an unit for a fight with weapons. There were multiple inmates involved. Two inmates were sent to a hospital for stab wounds.

USP- TUCSON- APRIL 30, 2009

At approximately 7:15 pm, an inmate informed recreation staff that there was an Officer being assaultedin an unit. Notifications were made to Control via radio. Responding Officers saw an inmate assaulting the unit officer, his radio had been thrown from his duty belt in the attack and he could not radio for help nor activate his body alarm. Even after other staff responded, the inmate would not stop fighting. Chemical munitions were used. The inmate has had numerous charges of assault on staff and an extensive psychical history. The unit officer had multiple bruising on his head and body and an injury, possibly a break, to his elbow. One of the responding officers ankle was twisted and then stepped on while attempting to subdue the inmate. Both Officers were taken by the Duty Officer to a local hospital for further
assessment and treatment. The inmate was treated by medical and admitted to SH

USMCFP- SPRINGFIELD- APRIL 27, 2009

In the mental health unit, the Officer confronted an Inmate who was out of bounds talking to another Inmate. When the first Inmate became belligerent with the Officer he was told to cuff up and he refused. The Officer then grabbed the Inmates hand to place cuffs on him when he jumped on the Officer. Additional staff arrived and the inmate was restrained. When staff went to get the other Inmate involved he also refused to be cuffed and staff had to take the Inmate to the floor to place cuffs on him. The Officer sustained a cut to his ear and injured his knee.

USP- HAZELTON- APRIL 26, 2009

At 3:32p.m., multiple body alarms were hit for a fight with weapons in a corridor. 1 inmate was sent to a local hospital with multiple stab wounds.

FCI- HERLONG- APRIL 23, 2009

At approximately 7:15 p.m., several inmates engaged in a fight with homemade weapons on the recreation yard. Three inmates were transferred to nearby hospitals with various injuries, and two have subsequently been returned to the institution. One inmate currently remains in serious condition at a local hospital. There were no reported staff injuries. At no time was there a threat to the community.

USP- TERRE HAUTE- APRIL 23, 2009

At 8:55a.m., an Officer was stabbed seven times by an inmate in a housing unit at the USP. The inmate entered the officer's station (office), and after a brief verbal exchange with the officer, pulled out a homemade shank and stabbed the Officer

several times. The Officer was able to get out of the office and pull the door closed, trapping the inmate inside. However, the inmate was able to get the door open and stabbed the Officer twice more in the back near his left shoulder. The Officer and responding staff then restrained the inmate. Another inmate, who was not involved in the assault, kicked the weapon away in an attempt to prevent staff from recovering the weapon. However, the weapon was recovered by staff. Both inmates were transported to another facility. The Officer was transported to a local hospital by ambulance. He suffered a laceration to his forehead, a laceration under his left eye, laceration to the back of his head, and four puncture wounds in the back of his left shoulder. He is listed in stable condition and remains hospitalized at this time. The Officer's actions were very commendable, as he continued to assist in restraining the inmate, despite bleeding profusely from his wounds.

FCC- FORREST CITY MEDIUM- APRIL 22, 2009

An inmate was assaulted with unkown object in housing unit. The assault appears to be gang related, one on one. The unit is locked down for short period of time, no staff injuries, one inmate sent to local hospital, other inmate to shu.

APRIL 20, 2009

Official: Incident At HIA Involved Prisoners

U.S. Marshals Regularly Transport Prisoners At Airport

HARRISBURG, Pa. -- A representative for Harrisburg International Airport said there was an incident involving prisoners Monday night.
The representative said U.S. Marshals regularly transfer prisoners at the airport, but that a fight may have broken out among them, bringing out additional emergency workers.
U.S. Marshals would not say exactly what happened.

USP- HAZELTON- APRIL 18, 2009

At 9:28 a.m., 2 inmates were involved in a fight with weapons.

FCI- OXFORD- APRIL 17, 2009

An Influenza B outbreak caused 17 inmates to be identified as positive. The Institution was placed on lockdown, visiting was cancelled for the weekend, masks were issued to staff if requested, C.S.T. and Command center activated, and bag meals were handed out. Know one on the staff was sent home from illness. Staff advised per Cpt. that if you have the symptoms to notify supervisor and consult your healthcare provider.

USP- HAZELTON- APRIL 16, 2009

At 08:15 PM, in SHU an inmate threw a food tray at an officer and cut his hand.

USP- BIG SANDY- ARPIL 15, 2009

At Approximately 10:15 am, 3 inmates were involved in an altercation, 2 inmates assaulted 1 inmate with weapons involved. Responding staff broke up the assault and escorted the inmates to Medical and on to SHU. No staff injuries to report.

*****At Approximately 7:30 PM, A fight was called out on an Unit, with weapons involved. 2-3 inmates assaulted 1 inmate with a***

Homemade weapon (Shank). Responding Staff stopped the assault and the 1 inmate Assaulted was taken to a Trama Unit with Upper Head wounds. No Staff injuries to report.

USP- HAZELTON- APRIL 14, 2009

At 1:02 p.m., a fight with weapons was announced in recreation. 1 inmate was sent to a hospital for his injuries.

USP- BIG SANDY- APRIL 11, 2009

At 8:43pm, a fight was called out on an Unit involving weapons, 2 Inmates were assaulting another Inmate with homademade weapons (Shanks). Responding Staff broke up the assault and moved the Inmates to Medical and on to SHU. No Staff injuries to report.

FCC- FORREST CITY- MEDIUM- APRIL 9, 2009

On day watch, inmate on inmate fight in the recreation yard, both inmates were sent to shu, no staff injuries. Also, one homemade weapon was found on an inmate of the same gang during search of the inmates, this inmate was also sent to shu.

FMC- CARSWELL- APRIL 9, 2009

At approximately 2125, an inmate assaulted a mental health nurse by hitting her in the face numerous times with a closed fist. All necessary paperwork was filled out .

FCC- FORREST CITY- MEDIUM- APRIL 8, 2009

On evening watch, inmate on inmate fight in the recreation department, both inmates to shu, no staff injuries, no lock down.

USP- HAZELTON- APRIL 6, 2009

At 9:57p.m., a body alarm was hit because 4 inmates were assaulting 1 inmate in a cell.

FCC- TERRE HAUTE- APRIL 6, 2009

An inmate assaulted in housing unit by unknown inmates, taken to outside hospital with head injuries.

USP- BIG SANDY- APRIL 6, 2009

At 7:25pm, an Unit officer announced a fight was in progress in an Unit with weapons, 3 on 2 inmate fight , 1 inmate was transported to a Local Hospital then on to A Trama Unit. No staff injuries to report. We are locked down pending an investigation at this time.

FCC- TERRE HAUTE- APRIL 4, 2009

Fight in housing unit, two inmate victims sent to local hospital, two inmates placed in SHU. Cell fight in housing unit, both inmates placed in SHU. Completed inmate suicide in SHU.

FCC- TERRE HAUTE- APRIL 3, 2009

Fight in housing unit, one inmate victim sent to local hospital. Two inmates placed in SHU.

USP- LEE- MARCH 31, 2009

At approximately 12:20 p.m., the Administrative Lieutenant was escorting an inmate, to the holding cell in the Lieutenant's Office. The inmate became agitated and aggressively turned towards staff. The inmate was placed on the wall and given numerous direct orders to cease his actions in which he refused to comply. The inmate then attempted to lunge towards staff again. The inmate was placed onto the ground to gain control of his disruptive behavior. While staff were attempting to place restraints on the inmate, he verbally threatened staff, resisted, and refused orders to place his arms behind his back. Once the inmate was controlled, restraints were

applied. The inmate refused to walk and had to be carried by escorting staff to the Special Housing Unit. Medical staff attempted to assess the inmate and he refused to treatment. An investigation continues.

USP- LEE- MARCH 30, 2009

At approximately 3:42 p.m., staff called for assistance upon observing an inmate with facial injuries running out of a unit. Responding staff secured the unit and began to conduct upper body searches. The CCTV was reviewed and determined at 3:34 p.m., four inmates had assaulted an inmate while he was standing under the rear stairwell in the unit. The inmates involved were restrained, escorted out of the unit, medically assessed and placed into the Special Housing Unit without further incident. The FBI was notified and an investigation continues.

USP- LEE- MARCH 29, 2009

At approximately 12:20 p.m., as staff exited the Food Service Warehouse, an inmate placed his hand into the staff members right front pocket with his left hand. The staff member placed the inmate on the wall and escorted him to the Lieutenant's Office. The inmate was medically assessed and admitted into the Special Housing Unit without further incident. The staff member was medically assessed. The FBI was notified and an investigation continues.

***At 2:35 p.m., an inmate was insolent and threatening the officer in the a housing unit officer's station. The unit Officer called for Compound Officers to remove the inmate from the unit. As the inmate was moved to the unit entrance door, he continued to be insolent in the presence of approximately 20 inmates. As the unit officer attempted to move the inmate's wheelchair, the inmate grabbed the officers right hand. The officer pulled away and moved the inmate outside the unit without further incident. As staff escorted the inmate to the Lieutenant's Office, he attempted to lock the brakes on his wheelchair. The inmate then raised himself up from the wheelchair and threw himself onto the ground. Staff placed the inmate back into his wheelchair. The inmate was medically assessed and admitted into the Special Housing Unit. The FBI was notified and an investigation continues.*

USP- LEE- MARCH 28, 2009

At 6:59 a.m., staff called for assistance in the Special Housing Unit upon observing an inmate assaulting another inmate in a cell. Specifically, one inmate was striking the other in the facial area with his right fist. The inmate refused staff orders to cease his actions and submit to hand restraints. Upon the arrival of sufficient staff, the cell door was opened. Both inmates were separated to gain control. The inmate resisted staff as they attempted to apply restraints. The inmate was placed on the bed and at this time he attempted to strike staff in the facial area with his left fist. Staff immediately placed the inmate on the floor to gain control of his actions and for the application of restraints. The inmate continued to resist staff. Both inmates were removed from the cell, medically assessed, and placed into separate cells. Two staff members were medically assessed. The FBI was notified and an investigation continues.

USP- LEE- MARCH 25, 2009

At approximately 3:10 p.m., the fire alarm system activated in the Special Housing Unit. The sprinkler head in a cell was destroyed and water was flooding the range. One inmate was the sole occupant of the cell. Notifications were made and the Warden authorized the assembly of a calculated Use of Force Team. Confrontation avoidance was successful, the inmate submitted to restraints, and was removed from the cell. The inmate was placed into ambulatory restraints and medically assessed without further incident. The investigation continues.

USP- HAZELTON- MARCH 25, 2009

A corridor officer was assaulted while attempting to pat search an inmate. The inmate punched the officer in the face twice. He will have some bruises, but is doing fine.

USP- LEE- MARCH 24, 2009

At approximately 11:15 a.m., the fire alarm system activated in the Special Housing Unit. The sprinkler head in a cell was destroyed and water was flooding the range. Two inmates occupied the cell and both inmates refused to submit to restraints and were holding their food trays.

Notifications were made and the Warden granted authorization for a calculated Use of Force Team. Confrontation avoidance was successful, the inmates submitted to restraints and were removed from the cell. Both inmates were placed into ambulatory restraints and medically assessed without further incident. The investigation continues.

FCI- TUCSON- MARCH 24, 2009

At approximately 1:30pm, an officer was assaulted in the unit. An inmate punched the offier in the back of the head. The inmate was intoxicated. The institution was placed on lock down for 2 days.

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USP- TUCSON- MARCH 21, 2009

An inmate fight broke out in the housing unit, one staff member broke their arm during this incident.

USP- HAZELTON- MARCH 19, 2009

At 5:48p.m., a body alarm was hit because an inmate was caught with narcotics and was attempting to swallow them. Immediate use of force was used to gain control of the inmate.

USP- LEE- MARCH 17, 2009

At approximately 11:39 a.m., staff observed two inmates in a unit stairwell, striking another inmate in the head and upper torso area repeatedly with both of their fists. The inmate being assaulted was attempting to cover his face and head area. Responding staff gave several orders for the inmates to stop their actions and get on the ground and the inmates did not comply. Staff used immediate force to separate the two assaultive inmates and place them on the ground. All three inmates were restrained, medically assessed, and admitted into the Special Housing Unit without further incident. The staff member was medically assessed. The FBI was notified and an investigation continues.

*****At 12:20 p.m., the fire alarm system activated in the Special Housing Unit. The sprinkler system in a cell had been broken and water was flooding the range. Two inmates were the occupants of***

the cell with the broken sprinkler. Due to the inmates disruptive behavior, the Warden authorized a calculated use of force to place both inmates into ambulatory restraints. A Use of Force Team was assembled and confrontation avoidance proved successful. Both inmates submitted to restraints and were removed from the cell. Both inmates were placed into ambulatory restraints and housed in the A-range holding cell. Both inmates were medically assessed with no injuries noted.

****At 7:00 p.m., staff were escorting an inmate back to his assigned cell in the Special Housing Unit. As staff attempted to place the inmate into the cell, he resisted staff and refused to enter the cell. Staff maintained physical control of the inmate; however, as he was being placed into the cell the inmate then turned towards staff and kicked a staff member in the right leg. Staff escorted the inmate to the SHU recreation cage without further incident. The FBI was notified and an investigation continues.*

*****At 8:15 p.m., an inmate approached staff and became verbally argumentative. Staff ordered the inmate to submit to restraints and he refused to comply. As staff attempted to place the inmate on the wall for the application of hand restraints, he physically resisted staff. Due to his disruptive behavior, the inmate was placed on the ground to gain control of his actions. He was escorted to the Lieutenants Office, medically assessed, and admitted into the Special Housing Unit without further incident.*

FCI- GREENVILLE- MARCH 17, 2009

During the 9:30AM controlled move , an inmate stabbed the leader of a gang. Staff quickly subdued both inmates. The stabbing victim was transported via ambulance to a local hospital, treated and returned to the institution. The institution was placed on lockdown and members of the DCT were activated. Intel later revealed that the same inmate had stabbed another rival gang member earlier in the day. Several inmates were placed in SHU. The incident may have been related to the recent USP Coleman disturbance. The institution remains on lockdown. No staff were injured.

USP- LEE- MARCH 15, 2009

At approximately 12:44 p.m., control announced several inamtes fighting each other an Unit. Upon arrival, staff observed three inmates on the top tier of the unit striking each other to the head and upper torso with their fists. The inmates refused to comply with staff orders to stop fighting. Immediate force was used to separate, restrain and gain control of the inmates. Simultaneously two other inmates were observed by staff striking each other to the head and upper body with their fists. Staff gave the order to stop fighting and get on the floor and both inmates complied. One inmate threw a sharpened metal weapon to the floor. The weapon was retrieved and secured by staff. As the housing unit officer was giving the combative inmates orders to stop fighting, another inmate approached the officer from the side and kicked at the officer, striking the officer in the face. The inmate continued his assault by striking the officer several times with his fists in the head and upper body. Responding staff used immediate force and immediately placed the inmate on the floor to stop his assaultive behavior. All inmates involved were restrained, medically assessed. While escorting an inmate to SHU, the inmate continued his assaultive behavior, and was placed on the ground to regain control of him. All inmates were placed into the SHU. The FBI was notified and an investigation continues.

***At 1:10 p.m., an inmate was escorted to the Special Housing Unit to be medically assessed and placed in the SHU for an assault on staff. During the assessment, the inmate was placed on the ground in the recreation cage due to being disruptive and not complying with staff's orders. The inmate was placed in a holding cell near the SHU Officer's station in hand and leg restraints. The inmate continued to threaten staff. Notifications were made and approval was granted to assemble a calculated Use of Force team. At approximately 3:19 p.m., confrontation avoidance was initiated and proved successful. The inmate was medically assessed. An investigation continues.*

****At 8:37 p.m., SHU staff were escorting an inmate to a cell. Upon opening the cell door, staff attempted to place the inmate into the cell. When he (the inmate) began to resist staff and refused to go into the cell. The inmate stopped walking and forcibly reversed direction, causing his upper body to strike the upper body of escorting staff. The inmate then fell down on the floor and*

attempted to pull from staff's grasp, during which time he bumped the right side of his head against the door frame of a cell. Staff maintained control of inmate Pete, stood him up, and escorted him off the range. The inmate was medically assessed and placed into another cell without further incident. The FBI was notified and an investigation continues.
*****At 8:45 p.m., Staff ordered an inmate to submit to hand restraints in order to accept a cell mate. The inmate refused to comply and covered his cell window with a towel. The SHU Lieutenant attempted conflict resolution with him. Conflict resolution was unsuccessful, and the inmate refused staff orders and proceeded to destroy the fire suppression system in the cell, causing the cell and range to flood. Notifications were made and authorization granted to assemble a use of force team. Confrontation avoidance was initiated and was successful. The inmate was restrained, removed from the cell and placed into ambulatory restraints in a Range holding cell without further incident. The investigation continues.*

USP- CANAAN- MARCH 15, 2009

At approximately 12:35 pm a fight broke out in the Special Housing Unit. Three inmates on one. The inmate that was assaulted was taken to a local hospital, for the injuries he sustained.

USP- HAZELTON- MARCH 14, 2009

At 9:12 p.m.,assistance was called to unit because an inmate was caught with narcotics and struggled with an officer in attempt to flush them.

USP- LEE- MARCH 12, 2009

At 10:56 a.m., staff announced a fight in the SHU recreation cage upon observing an inmate assaulting another inmate by striking him multiple times in the head and upper body area with both fists and kicking him in the upper body. The inmate refused staff orders to stop his assault and get on the ground. Another inmate was threatening staff with bodily harm if they entered into the recreation cage during the assault. As staff entered the cage, one inmate attempted to block the slider door and lunged towards staff. Two inmate were immediately placed on the ground, restrained, and removed from the area by responding staff. All three inmates were medically assessed and placed into different cells without further incident. Two staff members were medically assessed. The FBI was notified and an investigation continues.
***At 5:22 p m., staff called for assistance upon observing one inmate assaulting another inmate, by striking him in the back of the head with a combination lock tied to the end of a belt. Staff ordered inmate the inmate to cease his actions and he refused to comply. At this time, both inmates began running towards Building One. Responding staff used immediate force, and placed both inmates on the ground to gain control of their actions. Both inmates were restrained, medically assessed, and admitted into the Special Housing Unit without further incident. Responding staff were medically assessed. The FBI was notified and an investigation continues.*

MCFP- SPRINGFIELD- MARCH 12, 2009

At approximately 4:30pm, an inmate threw urine water on the OIC. There were no staff or inmate injuries.

USP- COLEMAN USP 1- MARCH 12, 2009

A major disturbance occurred at USP-Coleman I. At 1:50 PM a major fight broke out around the Commissary. As staff responded to the fight another body alarm was called at a Corridor. Multiple fights broke out with homemade weapons. Fighting then ensued on the Institutional Inmate Recreation Yard yard. Approximately over 150 inmates participated in the disturbance. Fourteen inmates were injured in a fight. Eleven of the inmates were flown to hospitals in Tampa and Orlando, while three were treated at hospitals near the prison. No staff injuries were reported.

USP- LEAVENWORTH- MARCH 10, 2009

At approx 1315 a disturbance occurred on the recreation yard involving gang memebers. The tower officer fired 5 less lethal rounds and staff responded. Inmates were placed on the ground and yard recall began with upper body checks. Believed
to be 30-50 inmates against one. No staff injured and some homemade weapons found on the yard. Modified locked down till 11am next morning.

FCC- COLEMAN USP 1- MARCH 10, 2009

At approximately 8:35 pm an Officer was conducting random pat searches of inmates coming off the rec yard. As an Officer conducted a pat search on an inmate he observed the inmate put something in his mouth. The Officer ordered the inmate to spit it out at which time he became assaultive and struck the officer in the left eye with his elbow and continued to resist. The officer then took the inmate to the ground to gain control of him and hand restraints were applied. The contraband was recovered and later tested positive for marijuana.

USP- BIG SANDY- MARCH 10, 2009

At 6:30am, a fight broke out between 2 inmates on a Corridor. No Staff injuries to report.
*****At 3:30pm, a fight broke out between 4 inmates, 2 on 2. No Staff injuries to report.***

USP- HAZELTON- MARCH 9, 2009

At 5:46 p.m., and inmate was found assaulted with multiple stab wounds. The inmate was transported to a local hospital for his injuries.

USP- BIG SANDY- MARCH 9, 2009

At 5:30pm, 2 Inmates started fighting in the Chow Hall. No Staff injuries to report.

USP- HAZELTON- MARCH 7, 2009

At 12:02 p.m., a body alarm was hit due to fight in an unit. # inmates were sent to SHU and 1 inmate was sent to a hospital.

USP- HAZELTON- MARCH 6, 2009

At 7:17 pm, officers were escorting an inmate to the Lieutenants office, the inmate tried to pass something to another inmate, officer retrieved items to search them and the inmate slapped the property out of his hands, as officers tried to restrain the inmate, he punched the first officer in the temple, then as a female officer responded, the inmate punched her in the eye. A third staff member twisted his ankle during the struggle.

USP- HAZELTON- MARCH 5, 2009

At 11:15 a.m. UNICOR inmates refused to eat lunch due to portion size complaints.

MCFP- SPRINGFIELD- MARCH 4, 2009

At approximately 9:17pm, an inmate on the unit was holding his food slot hostage. The OIC attempted to shut the slot and the inmate grabbed his arm and threw an unknown liquid in the OIC's face and on his upper body. The food slot was eventually secured. At approximately 10:50pm a use of force team was assembled and the inmate was taken to another unit and placed in four point soft restraints. No staff or the inmate was injured.

USP- LEE- MARCH 3, 2009

At approximately 9:04 p m., staff called for assistance after observing two inmates striking each other with fists to the head and upper body. One inmate had a sharpened metal weapon, and was striking the other inmate with it in the head and upper body. Responding staff separated the two inmates and applied restraints to the inmates. Both inmates were medically assessed and placed in the Special Housing Unit without further incident. FBI was notified and an investigation continues.

FCC- FORREST CITY- MEDIUM- MARCH 3, 2009

An assault occurred in the recreation area during the am hours, 3 inmates jumped onto 1, requiring medical attention for the one assaulted. No staff injuries, all 4 inmates placed into SHU...no lock down.

USP- LEE- FEBRUARY 27, 2009

At approximately 6:10 a.m., a unit Officer activated his body alarm upon observing two inmates assaulting another inmate. Specifically, inmates two inmates struck the one in the head and upper body with their fists. Both inmates then began kicking the inmate to the head and upper body. Staff ordered

both inmates to stop their assault and they refused to comply. Upon the arrival of responding staff, the inmates stopped their assault on the inmate and submitted to restraints. The inmates were medically assessed and admitted into the Special Housing Unit without further incident. The FBI was notified and an investigation continues.

USP- LEE- FEBRUARY 26, 2009

On February 26, 2009, at approximately 9:55 a.m., as SHU staff were removing restraints from an inmate, he pulled his arm into the cell with one arm still restrained, breaking the restraint key. At this time, the inmate attempted to pull a staff members arm into the tray slot, causing injury to the staff member=s right thumb. Staff ordered the inmate to re-submit to restraints and he did not comply. The SHU Lieutenant ordered the inmate to submit to restraints and he complied. As staff entered the cell and began to remove the inmate from the cell, he attempted to pull away from staff. Staff placed the inmate against the wall due to his disruptive behavior. The inmate once again attempted to pull away from staff and was placed on the floor to gain control of his actions. Staff removed the inmate from the cell and placed him into a holding area. The staff member and inmate were medically assessed. The FBI was notified and an investigation continues.

***At 6:00 p.m., a Tower Officer called for assistance upon observing two inmates involved in a physical altercation in the Building Three courtyard. Specifically, two inmates were observed striking one another with their fists to the head and upper body. Responding staff ordered both inmates to stop fighting and they complied. Both inmates were restrained, medically assessed, and placed into the Special Housing Unit without further incident. An investigation continues.*

USP- BIG SANDY- FEBRYARY 26, 2009

At 7:57pm, A fight broke out in SMU Unit between 9 inmates, 8 on 1. The one inmate was stabbed 36 times by a gang housed in our SMU Unit. The inmate was transferred to a Outside Hospital Trama Unit. No staff injuries to report. U.S.P. Big has been locked-down since the incident.

USP- LEE- FEBRUARY 25, 2009

At approximately 12:53 p m., staff called for assistance from the Special Housing Unit due to two inmates claiming they were going to commit suicide. The inmates had the cell window covered and sheets hanging in the cell, blocking staff from observing their actions. Staff used an immediate Use of Force to prevent the inmates from causing injury to themselves. Staff entered the cell and restrained both inmates. As one of the inmates were being escorted off the range, he attempted to spit on staff and was placed on the floor in order to gain control of his actions. Both inmates and staff members were medically assessed. Both inmates were interviewed by Psychology and placed into a holding cell without further incident. The FBI was notified and an investigation continues.

USP- HAZELTON- FEBRUARY 24, 2009

At 5:18 pm an inmate pushed a female officer into wall, tried to punch a second officer but missed and punched a third officer in the head.

FCC- TERRE HAUTE- FEBRUARY 24, 2009

An inmate assaulted the warden in a housing unit as she was making rounds. The inmate swung at the warden with a closed fist, she ducked and blocked punch with her hand, he swung again, but missed when she moved away. The warden was not injured, inmate was transferred.

USP- HAZELTON- FEBRUARY 23, 2009

At 10:40 pm, an inmate slapped the hat off of female officer's head.

MCFP- SPRINGFIELD- FEBRUARY 23, 2009

At approximately 8:30am, an inmate kneed the recreation officer in the groin area as he was about to go outside for recreation. The recreation officer and the other unit officers gained control of the inmate. The inmate received a cut lip. No staff were injured.

USP- TERRE HAUTE- FEBRUARY 23, 2009

A cell fight broke out in a housing unit between two inmates, no injuries.

FCI- GREENVILLE- FEBRUARY 23, 2009

At approximately 11:20 am, an inmate started yelling obscenities toward the medical secretary.

He was calling her a bitch and a whore and other obscenities. As the inmate walked by staff the staff member advised him to come over to him. The Inmate turned and said, "Fuck you!" and kept walking away from staff. Staff then ordered the inmate to come over to him, the inmate replied, "If you want me you fucking got me! I am going to kick your ass!" At this time the inmate threw his coat to the ground and charged at the officer with his fist drawn back. Staff tried to subdue the inmate so restraints could be applied. The inmate was still kicking, flailing and fighting with staff members. Additional staff arrived and assisted with the inmate so the inmate could be placed in restraints. The inmate was then placed in the special housing unit. Staff received minor abrasions from the altercation.

USP- LEE- FEBRUARY 22, 2009

At approximately 6:10 p.m., staff radioed for assistance in a Unit. As staff conducted a search of a cell the unit, an inmate attempted to enter the cell. Staff ordered the inmate to exit the cell and he refused, blocking the cell door. When staff attempted to close the door, the inmate placed both hands on the chest of a staff member. Staff immediately placed the inmate on the floor to gain control and applied restraints. The inmate was escorted from the unit, medically assessed, and admitted into the Special Housing Unit without further incident. Staff were medically assessed. The FBI was notified and an investigation continues.

USP- LEE- FEBRUARY 19, 2009

At approximately 5:45 p.m., a unit Officer observed injuries on an inmate consistent with being involved in a physical altercation. The Operation=s Lieutenant was notified and the unit was secured. Upon review of the CCTV, it revealed the inmate had been assaulted by an inmate striking him three times in the head and upper body with his right fist. The inmate also kicked the one inmate twice in the face as he laid on the floor outside of a cell. Both inmates were restrained and escorted out of the unit. Both inmates were medically assessed and admitted into the Special Housing Unit without further incident. The FBI was notified and an investigation continues.

FCC- FORREST CITY- MEDIUM- FEBRUARY 19, 2009

There were three different assaults on single inmates throughout the institution during the am hours. These were new inmates off the bus. The inmates were medically assessed and placed into shu, lock down was ordered til the noon meal. There are no staff injuries to report.

FMC- BUTNER- FEBRUARY 19, 2009

An inmate on staff assault occured. Staff injured with lost of manhours.

USP- LEE- FEBRUARY 18, 2009

At approximately 12:00 p. m., a staff member observed an inmate exit a unit with injuries on his face and immediately called for assistance. The unit was secured and a review of the CCTV was conducted. Three inmates were identified as being involved in the assault on the inmate. A lock attached to a belt was identified as being used as a weapon during the assault. It was recovered and preserved as evidence. The four inmates were restrained, medically assessed, and admitted into the Special Housing Unit without further incident. The FBI was notified and an investigation continues.
**At 8:30 p.m., a unit officer activated his assigned body alarm, upon observing two inmates striking each other with fists to their heads and upper bodies. The inmates were separated and restrained by responding staff. When one inmate was being escorted to the SHU, he spit on two staff members, striking one in the leg and the other in the face. The staff and inmates were medically assessed and the two inmates were placed in the SHU without further incident. The FBI was notified and the investigation continues.

FCC- COLEMAN USP 1- FEBRUARY 18, 2009

At approximately 8:20 P.M., the SHU officer was conducting rounds on a range, when he observed two inmates in a cell, both with injuries consistent with being involved in a fight. The inmates were separated, medically assessed and placed in different cells, pending further investiga

FCI- WILLIAMSBURG- FEBRUARY 18, 2009

At approximately 5:46 AM, two gang members began assaulting an inmate in the Food Service Department. A second inmate joined in the fight. All inmates were medically assessed and placed

in Special Housing. No staff members were injured. The institution was placed on lock down until mass interviews were conducted. Normal operations resumed after the 4:00 PM count.

USP- LEE- FEBRUARY 17, 2009

At approximately 11:30 a.m., staff ordered an inmate to submit to hand restraints in order to receive a cell mate and he refused to comply. Authorization was granted to assemble a calculated Use of Force team for the application of ambulatory restraints. Confrontation avoidance was initiated and was successful. The inmate was restrained and moved to a holding cell.
**At 11:40 a.m., as SHU staff retrieved food trays from an inmate threw a food tray containing a liquid substance at staff. The contents of the food tray struck staff in the chest, legs, and arms. Staff immediately secured the tray slot and at this time, the inmate then threw a second tray striking the cell door. Confrontation avoidance was initiated and was successful. Authorization was granted to assemble a calculated Use of Force team for the application of ambulatory restraints. The inmate was placed into ambulatory restraints and medically assessed without further incident. Notifications were made.

MCFP- SPRINGFIELD- FEBRUARY 17, 2009

At approximately 2:20pm, an inmate came out of the TV room and into the hallway and assaulted another inmate, knocking him to the ground. The OIC heard the fight and responded. He ordered the aggressor to stop his actions and the inmate initially refused. The inmate then started walking down the hall and refused to stop when the OIC ordered him to do so. Responding staff put the inmate on the wall and secured him. The aggressor did not receive any injuries and the inmate that was attacked received some minor injuries that bled a little. No staff were injured.

USP- LEE- FEBRUARY 16, 2009

At approximately 6:08 p.m., a unit officer called for assistance upon observing two inmates fighting in the common area. Specifically, each inmate were striking one another in the face and upper body with their fists. Responding staff ordered both inmates to lay on the floor and they complied. Both inmates were restrained, medically assessed, and placed in the Special Housing Unit without further incident. An investigation continues.

FCC- COLEMAN USP 1- FEBRUARY 16, 2009

At approximately 2:19 p.m., recreation staff announced a medical emergency in the Leisure Center alleging an inmate was sick lying on the floor. Responding staff observed the inmate bleeding from the mouth area and upon closer observation noted bleeding from upper left chest area. The injuries incurred required additional medical treatment, escorted via ambulance and life flighted to an outside medical facility. The investigation continues.

USP- LEE- FEBRUARY 14, 2009

At approximately 6:39 p.m., as SHU staff attempted to place an inmate into a cell, he resisted staff and slipped his restraints to the front. Staff radioed for assistance and immediately placed the inmate against the wall to gain control. Staff ordered the inmate to cease his actions, he refused, continued to resist, and tried to break free from staff. Due to his disruptive behavior, staff placed the inmate on the ground to gain control. The inmate was restrained, medically assessed, and placed into an observation cell without further incident. An investigation continues.

USP- LEE- FEBRUARY 13, 2009

At approximately 9:10 p.m., a unit officer called for assistance via radio upon observing six inmates engaged in a physical altercation. One inmate assaulted another inmate by throwing a plastic chair, hitting him in the upper body. Another inmate struck a separate inmate across the upper body with a wooden push broom. Staff observed the inmates striking each other with a homemade weapon several times. Responding staff separated the inmates and placed them on the ground to apply restraints to regain control of the situation. The six inmates were escorted from the unit, medically assessed and placed into the SHU without further incident. The FBI was notified and the investigation continues.

FCI- GILMER- FEBRUARY 13, 2009

An inmate was assaulted with a shank. He was stabbed at least 3 times in the back and a couple times in the hands. The institution was locked down with upper body checks conducted, two inmates where pulled population and sent to SHU, the stabbed inmate was sent to the hospital.

The suspects both had weapons. One of them ran to the laundry room and ditched his and the other inmate had one hidden in his underwear and it was discovered during a pat down in the lieutenants office. No officers were hurt.

FCC- FORREST CITY MEDIUM- FEBRUARY 13, 2009

A staff member on evening watch inside a housing unit noticed an inmate on inmate assault. An inmate assaulted the other inmate with a lock in a sock weapon. The inmate was treated by medical and both inmates went to shu, no lock down needed, no staff injures.

USP- LEE- FEBRUARY 12, 2009

At approximately 9:47 a.m., SHU staff radioed for assistance upon observing an inmate assault another inmate in a cell. Specifically, as staff placed the one inmate back into the cell and removed his restraints, he began striking the other inmate in the head and face with his fists. The inmate being assaulted was still restrained. Upon the arrival of sufficient staff, the cell door was opened and staff separated both inmates. Both inmates were medically assessed and placed into different cells. The FBI was notified and an investigation continues.

USP- HAZELTON- FEBRUARY 12, 2009

At 5:09 pm, inmate pushed female officer. No serious injuries reported.

USP- LEE- FEBRUARY 10, 2009

At approximately 7:12 a.m., a unit officer activated the assigned body alarm after observing two inmates wrestling on the floor, and each inmate striking each other with their fists. Responding staff separated the inmates, applied hand restraints, and escorted both to the SHU to be medically assessed. The CCTV was reviewed and revealed a third inmate involved. Another inmate departed a cell and he was observed using his right fist to strike one inmate in the head three times. The three inmates were placed into the SHU without further incident. The FBI was notified and the investigation continues.

FCC- COLEMAN USP 1- FEBRUARY 10, 2009

While conducting random pat searches the inmate was told to submit to a pat search. The inmate pushed the officer. The
inmate was restrained and placed in the special housing unit. No further incident was reported.

FCI- OTISVILLE- FEBRUARY 10, 2009

A rival of gang members were involved in an incident on the Compound at about 6:50 pm which resulted in one staff member being injured and three inmates having to be taken out to local Hospitals for injuries they received during the altercation. The Inmates involved had been previously released from the Institutions Special Housing Unit at approximately 2:30 pm that same day. The Administration, ignoring information received from staff and inmates from previous meetings, intelligence gathering and two prior fights between these same rival gangs still decided that they would try to reintegrate these rival gang members into the general inmate population. The institution was placed on lockdown.

FCC- COLEMAN- MEDIUM- FEBRUARY 9, 2009

At 8:58 A.M., there was a call for assistance in SHU. An officer was assaulted by an inmate. The inmate slammed his head into the officer's face.

USP- LEE- FEBRUARY 8, 2009

At approximately 9:30 p.m., an housing unit Officer observed two inmates involved in a physical altercation at a cell, and activated his body alarm. Specifically, both inmates were striking one another with their fists to the head and body. Staff ordered both inmates to cease their actions and they complied. Both inmates were restrained, medically assessed, and admitted into the Special Housing Unit without further incident

USP- HAZELTON- FEBRUARY 8, 2009

At 7:45 pm an inmate assaulted an officer. As officer was searching cell, inmate entered cell behind him and struck him in the head/face numerous times and choked him. Officer received

significant facial/head injuries and was sent to a trauma center.

FCC- COLEMAN USP 1- FEBRUARY 8, 2009

At approximately 3:30 p.m., an officer called for medical emergency for an inmate who was bleeding profusely from the groin area. The inmate kept stating he was not a man that he was a woman. When questioned who cut his penis off, he stated he cut it off and that it was in the toilet. He stated he had been a woman for 10 years with a penis, so he cut it off. He continued to say that he was a woman and that women do not have penis. Responding staff start was securing the inmate in the cells and the inmate was placed on an guerney. Once the inmate was on the gurney, the cell was secured. The inmate was escorted to medical and he stated to an officer that he used four razor blade to remove his penis. Photo was taken of the cell and four razor blades were on and in the sink.

USP- HAZELTON- FEBRUARY 8, 2009

At 7:50pm an Officer was seriously assaulted by an inmate in an unit . The officer was conducting a random shakedown of a cell and the inmate came into the cell and attacked this officer. The officer sustained a broken nose, jaw and has some damage to his teeth. He is being transported to Ruby
Memorial Hospital. The Lieutenant was in the unit beside where the incident occurred signing books, so when the body alarm was activated it was a quick response with oc gas. If it wouldn't have been for the response with gas, it could've been a lot worse. The institution is on lock down...for now.

MCFP- SPRINGFIRLED- FEBRUARY 8, 2008

At approximately 5:00pm, an inmate rushed at the nurse during medication line and spit on her. The officers working the unit took the inmate to the floor, who continued to struggle. One officer was taken to the downtown hospital for a hurt wrist. Four staff members got blood on them from the inmate.

FCC- COLEMAN USP 1- FEBRUARY 7, 2009

Two inmates jump another inmate on the compound. Possibly gang related. All three were locked in the special housing
unit. No further incident.

FCC- COLEMAN USP 1- FEBRUARY 7, 2009

At approximately 2:00 pm, an inmate was escorted to the Lieutenant's Office. He stated he was asleep in his bunk and someone came into his cell and stabbed him in the shoulder. The inmate was medically assessed and placed in
Special Housing Pending SIS investigation.

USP- LEWISBURG- FEBRUARY 6, 2009

At approximately 9:30 a.m., two inmates in the recreation cage refused their hand restraints, during recreation in SMU. Staff attempted to place the remaining inmates from the respective recreation cages back into hand restraints, which prompted all of the inmates to refuse. All inmates present in the two recreation cages were suspects, associates or in support of a gang. Four inmates were located in recreation cage #1. Three inmates were located in recreation cage #2. Confrontation avoidance procedures proved ineffective. A final order to submit to restraints was given by the Lieutenant, however the inmates involved refused to comply. Staff introduced chemical agents from pepper ball launchers and an MK-09 OC streamer. The inmates were ordered to lay on the ground, to which they complied.

Following the initial use of force in the recreation cages, seven more inmates also associated or in support of the gang covered their cell windows and barricaded their assigned cells, refusing staff orders to remove the window blocks and submit to restraints. Confrontation avoidance was unsuccessful in each instance. The inmates were given one last opportunity to submit to restraints, to which they refused. Staff introduced chemical agents with the MK-09 OC projector

jet delivery system into each inmate's respective cell, which proved effective. All 14 were placed in ambulatory restraints.

USP- LEE- FEBRUARY 5, 2009

At approximately 7:00 a.m., an inmate exited a Unit during the breakfast meal and reported to staff he had been assaulted. Staff immediately secured the Unit. Upon reviewing recorded video surveillance, staff identified an inmate as being the assailant. The inmate entered the Unit at 6:42 a.m., and began striking an inmate with his closed fists to the head and face area. The assault lasted approximately 20 seconds. Both inmates were medically assessed and admitted into the Special Housing Unit without further incident. The FBI was notified and an investigation continues.
**At 6:23 p.m., while staff conducted rounds on a range in the Special Housing Unit, they observed an inmate striking another inmate with his fists to the head and facial area, in a cell. Staff radioed for assistance and ordered the inmate to cease his actions, in which he complied. Staff ordered both inmates to submit to restraints and they complied. Both inmates were removed from the cell, medically assessed, and placed into different cells without further incident. The FBI was notified and an investigation continues.

USP- HAZELTON- FEBRUARY 4, 2009

At 6:07 p.m., a fight broke out in SMU involving 4 inmates.

USP- LEE- JANUARY 30, 2009

At approximately 12:48 p.m., staff called a fight in the Special Housing Unit. Staff were on the range retrieving food trays when they observed Inmate two inmates striking each other with their fists, to each others head and upper body areas. Staff gave both inmates orders to stop and lay on the floor of the cell. Neither inmate complied. The operations lieutenant ordered the door opened and both inmates were separated and secured with hand restraints. Both inmates were medically assessed, and placed into different cells in the SHU without further incident. An investigation continues.

USP- LEE- JANUARY 29, 2009

At approximately 12:25 p.m., an inmate was being interviewed by the FBI and AUSA in the R&D conference room. During the interview, the inmate attempted to get up out of the chair and leave the conference room. Staff instructed him to remain seated. The inmate began twisting his body and attempted to stand up. Staff ordered him again to cease his actions and remain seated. The inmate continued to be disruptive by attempting to leave the interview. Staff placed the inmate on the floor to regain control of him.

USP- MARION- JANUARY 29, 2009

At 3:10pm the unit officer hit his body alarm when five inmates started striking an inmate with closed fists and kicking him in the head and upper torso. The fight started in the corridor and progressed into an other unit's sallyport. Responding staff restrained the inmates and then took the inmates to the institution hospital and then to the SHU.

FCC- FORREST CITY- MEDIUM- JANUARY 29, 2009

At 07:00am, a fight on the compound broke out. Two inmates jumped on one inmate with weapons. One inmate was taken to local hospital for staples in the head. No staff injuries to report and they were not placed on lockdown.

USP- HAZELTON- JANUARY 28, 2009

At 6:24 p.m. a fight was announced in Corridor. 4 inmates were involved with weapons.

USP- LEE- JANUARY 28, 2009

At approximately 7:12 p.m., the control center announced a fight on the recreation yard. Tower officer activated the Bi-Lingual electronic annunciator for all inmates to get on the ground. Responding staff observed two inmates hitting each other with their fists to the upper torso and head areas. Also observed were inmates four other inmate hitting each other with fists to the torso and upper body areas. Two Tower Officers fired a total of six(6) ALS Bore Thunder rounds in an attempt to stop the inmates actions. The inmates continued to fight. A Tower officer then fired three (3) 12-gauge shotgun rounds in an attempt to get the inmates to stop fighting. The inmates continued to fight and responding staff immediately placed all the inmates on the ground to stop them from fighting and gain control of the situation. The inmates were restrained, medically assessed and escorted to the Special Housing Unit

without further incident. The investigation continues.

USP- BIG SANDY- JANUARY 28, 2009

At 4:56pm, During the count an in inmate assault occurred in a two man cell. One inmate began stabbing another inmate
in the head, neck and back area. Responding staff arrived and the inmate dropped his Homemade Weapon, a shank, and gave up. The Inmate that was stabbed was taken to the local hospital, where he was pronounced dead. No staff injuries to
report. Were locked down but are coming up tomorrow the 2nd of February.

USP- COLEMAN 2- JANUARY 28, 2009

An unit officer activated body alarm because two inmates in were fighting in a cell, one had to be taken to hospital due to injuries. No weapons were involved and no staff members were injuried.

FCI- EDGEFIELD- JANUARY 27, 2009

At approximately 12:15pm during the noon meal, Staff radioed a fight on the compound. Two inmates started fighting at the compound metal detector. A third inmate assaulted a responding staff member trying to break up the fight. The staff member suffered minor injuries. All involved inmates were placed in SHU.

USP- LEE- JANUARY 26, 2009

At approximately 3:08 p.m., staff radioed for assistance upon observing three inmate in the Facilities holding cell striking each other with closed fists to the head and upper torso areas. Staff ordered the inmates to cease their actions and they refused to comply. Upon the arrival of responding staff, the inmates were physically separated, restrained, medically assessed, and admitted into the Special Housing Unit. An investigation continues.

USP- LEE- JANUARY 25, 2009

At approximately 3:10 p.m., as staff were escorted an inmate suspected of being under the influence of intoxicants to the Special Housing Unit, he became belligerent and attempted to pull away from staff. Staff gave the inmate a direct order to cease his actions and he refused to comply. He then continued to aggressively pull away from escorting staff. As a result of his the inmates actions he was placed on the ground to gain control of his disruptive behavior and leg restraints were applied. The inmate was medically assessed and placed in Administrative Detention. An investigation continues.

USP- COLEMAN 2- JANUARY 25, 2009

At approximately 2:45 PM, Staff became aware that two large group of gang member inmates were gathering on the Recreation Yard in preparation for a confrontation. An institutional emergency call was made, and staff began
responded to the recreation yard. The group of inmates circled behind and surrounded the staff who responded. After a number of staff had arrived , the groups clashed into a large riot (about 100 to 120 inmates involved) including weapons, such as Shanks—prison made knives. It is probable that the inmates intentionally waited for staff to arrive on the yard before beginning the brawl, so that the Officer in the Tower overlooking the scene would be reluctant to discharge his firearm on to the Recreation Yard for fear of hitting staff. A staff emergency recall was made to notify employees to report to the institution, and several Special Tactical Teams were called in to respond to the incident. The fighting inmates refused to comply with staff's repeated orders to stop fighting . Staff then had to start separating and restraining inmates. Several staff members were assaulted during this time, but none were seriously injured. Warning shots from the tower officer and non-lethal percussion grenades were also used to disperse the inmates. An inmate brandishing a shank with an apparent intent of using it on another person (possibly a staff member) was shot by the Tower Officer.While staff responded to the Recreation Yard, several brawls broke out in various Housing Units. It's probable that the inmates were aware of the extreme shortage of staff at the institution that day and also counted on the fact that all available staff would be preoccupied with trying to gain control of the Recreation Yard riot. They used these factors as an opportunity to launch attacks on each other, knowing there would be slow staff response. Two inmates were critically injured in the housing units during this time.After some control was gained on the Recreation Yard with inmate disbursed, locked down in their Housing Units , and injured inmates taken to medical, several of the remaining inmates refused to

clear the Recreation Yard when ordered to do so. As numerous staff began to arrive at the institution and report to the Recreation Yard, the remaining inmates complied and the Recreation Yard was clear of all inmates around 6:30PM. Several Tactical teams moved throughout the units, separating the various inmate gang members and moving them into different Housing Units, both to ensure no more violence would occur and to prepare them for interviews . Several inmates refused to move out of their cells, but seeing the tactical teams preparing to use chemical agents and force seemed to change their minds. No further use of force was needed to gain compliance from the inmates. Eight inmates with serious injuries (at least two with critical injuries) were taken to a local hospital, with the numerous armed officers necessary to maintain security. This resulted in a lot of media attention being brought to the incident. USP 2 Remains on Lockdown status. The FBI is investigating the incident to determine why these gangs attacked each other. Also **during this riot one inmate grabbed a staff member by the throat, another inmate used a guitar to hit another staff member, and then another inmate kicked a staff member. All 3 staff members sustaied minor injuries.**

MCFP- SPRINGFIELD- JANUARY 23, 2009

At approximately 8:20am, two inmates begain fighting in the room of a third inmate. The Officer activated his body alarm and responding staff seperated and restrained the two fighting inmates. The two inmates were taken to lock-up. There were no injuries to inmates or staff.

USP- LEWISBURG- JANUARY 21, 2009

At approximately 6:15 am, a fight broke out in a cell in SHU which resulted in the death of an inmate. The inmate was beat to death by the other inmate. The FBI is investigating this incident.

USP- HAZELTON- JANUARY 19, 2009

At 7:45 pm, an inmate assaulted an officer in SHU by throwing a liquid substance in the officer's face. The inmate then set a fire in a cell.

USP- LEE- JANUARY 17, 2009

At approximately 12:42 p.m., staff were picking up trays in the Special housing Unit when an inmate threw a brown liquid substance from the food slot, striking staff in the chest and facial area. Staff immediately secured the food slot and observed the inmate turn toward another inmate and begin striking him with closed fists. Staff called for assistance and ordered the inmate to stop his assault. Upon the arrival of sufficient staff, the Operations Lieutenant ordered the door open and staff entered the cell. Both inmates were placed in hand restraints and escorted out of the cell. As staff were escorting the one inmate off the range he turned his head and spit at staff. He was placed on the ground to control his disruptive behavior. Leg irons were applied and inmate was escorted to the Special Housing recreation yard. A staff member began talking to the inmate in an effort to calm him down and at that time, he spit on the staff member striking her on the left shoulder.

**At 8:36 p.m., staff radioed for assistance upon observing an inmate assaulting, striking another inmate in the back of the head with his fists in a cell. One inmate was also observed inside the cell with blood on the left side of his head. Staff ordered the inmates to cease their actions and they complied. Upon the arrival of responding staff, the inmates were restrained, medically assessed, and admitted into the Special Housing Unit. The FBI was notified and an investigation continues.

USP- HAZELTON- JANUARY 16, 2009

At 10:16 p.m., an inmate sets his own cell of fire in SHU.

USP- LEE- JANUARY 15, 2009

At approximately 6:36 a.m., Special Housing Unit staff while serving the morning meal had secured the food tray slot of a cell when, they heard loud noises coming from within a cell. Staff then observed two inmates striking one another in the head and facial areas with their fists. Staff radioed for assistance and ordered both inmates to cease their actions, in which they refused to comply. Upon arrival of sufficient staff, both inmates were again ordered to cease their actions, in which they complied. The cell door was opened and staff assumed physical control of both inmates. Both inmates were restrained and medically assessed without further incident. Two staff members were medically assessed and completed their assigned shift. An investigation continues.

**At 2:25 p.m., Special Housing Unit staff attempted to place an inmate into a cell. The inmate refused staff orders to step to the door to remove the hand restraints. Staff entered the cell to place him in another cell. The inmate became non-compliant by lowering his head and stepping toward staff. The inmate was placed on the ground to gain control and then escorted to the holding cell. An incident report was written.
***At 5:37, p.m., two inmates approached an inmate from behind as he was walking from a building towards the metal detector building. One inmate approached another and struck him on the right side of his face with his right hand. The first inmate then chased the other and made a slashing motion with his right hand at the inmate. Staff radioed for assistance as the Tower officer fired one ALS Bore Thunder round in order for the inmates to cease their actions. Responding staff restrained each inmate without further incident. One inmate was escorted to medical and transported to outside hospital due to the injuries he sustained. Each inmate were medically assessed and escorted to the Special Housing Unit. The FBI was notified and an investigation continues.

MCFP- SPRINGFIELD- JANUARY 14. 2009

At approximately 6:30am the nurse was attempting to administer some medication to an inmate in the form of an injection. The inmate spun around and came at the nurse aggressively. She pushed him back and the inmate then attempted to kick her. The inmate then attempted to exit the cell. Officers assigned to the unit placed the inmate on the bed and the injection was given. The officers and nurse exited the cell with no further incident. The inmate was in hand restraints during the entire incident. No staff or the inmate was injured.

USP- LEE- JANUARY 14, 2009

At approximately 2:15 p.m., Food Service radioed for assistance upon observing two inmates involved in a physical altercation in the kitchen area of Food Service. Both inmates were aggressively grabbing one another around the head and body. Staff ordered both inmates to cease their actions and they refused to comply. Upon the arrival of responding staff, both inmates were separated and restrained without further incident. Both inmates were medically assessed and admitted into the Special Housing Unit without further incident. An investigation continues.

USP- LEE- JANUARY 13, 2009

At approximately 9:10 a.m., an inmate was escorted from a housing Unit to the Special Housing Unit after staff observed him apparently under the influence of intoxicants. As staff escorted the inmate to the Special Housing Unit, he became belligerent and threatened staff. As staff attempted to photograph him, due to pre-existing injuries, he attempted to grab the camera and spat towards staff. The inamte was placed on the ground to gain control and restraints were applied. The FBI was notified and the investigation continues.

USP- LEE- JANUARY 11, 2009

At approximately 7:25 p.m., an inmate was instructed to submit to a visual search in the Lieutenant=s Office. The inmate removed his clothing and when staff ordered him to open his mouth, so it could be searched, he refused and then became argumentative with staff and reached for his clothing. Staff again ordered the inmate to submit to a visual search and he attempted to put his clothing back on. At this time, staff attempted to gain control of the inmate when the inmate turned away from staff and attempted to strike staff with his left elbow. The inmate was placed on the wall and staff radioed for assistance. Upon the arrival of responding staff, the inmate was restrained, medically assessed, and admitted into the Special Housing Unit without further incident. The FBI was notified and an investigation continues.

FCC- TUCSON- JANUARY 10, 2009

Assault on Staff

FCC- TUCSON- JANUARY 9, 2009

Assault on Staff

USP- LEE- JANUARY 9, 2009

At approximately 9:45 a.m., Food Service staff radioed for assistance upon observing two inmates striking one another in the head with their fists. Staff ordered both inmates to cease their disruptive behavior, in which they complied. Responding staff separated and restrained both inmates. Both inmates were medically assessed and admitted into the Special Housing Unit without further incident. An investigation continues.

USP- LEE JANUARY 8, 2009

At approximately 3:30 p.m., the a Unit Officer observed an inmate walking into the unit and he appeared to be intoxicated. Staff ordered the inmate to submit to hand restraints, and he refused to comply. As staff attempted to place hand restraints on the inmate he jerked away from staff. Staff used an immediate use of force, placing the inmate on the ground to gain control of his disruptive behavior. The inmate was restrained and escorted to the Lieutenant=s Office for a breathalyzer test. The inmate was ordered to submit to a breathalyzer test, and refused to comply. The inmate was medically assessed and admitted into the Special Housing Unit.

USP- HAZELTON- JANUARY 7, 2009

At 4:02 pm, An inmate assualted a staff member. The inmate had narcotics and pulled knife on officer. 3 inmates to SHU for weapon possession, 1 for weapon/narcotics.

USP- LEE- JANUARY 6, 2009

At approximately 11:14 a.m., Special Housing Unit staff were feeding the noon meal. Staff opened the tray slot on a cell, which was assigned to an inmate, to serve food trays. When the inmate received his second food tray, he threw a brown liquid substance from the food slot, striking staff in the chest and facial area. Staff immediately secured the food slot without further incident. Notifications were made and approval was granted to assemble a Use of Force team. Confrontation avoidance was initiated and proved successful. The inmate complied with staff orders to submit to restraints.

**At 5:42 p.m., staff called for assistance upon observing a physical altercation on the recreation yard. Specifically, Recreation staff observed two inmates striking each other in the face and upper torso with fist. Staff gave an order to cease the actions, in which they refused to comply and continued to fight. The Tower Officer activated the automated voice annunciator ordering the inmates to get down on the ground, in which they refused to comply. Perceiving a threat to the safety responding staff, the Tower Officer fired two ALS hard bang rounds and one Fin Stabilizer round. Both imates were placed on the ground and restrained by responding staff. Both inmates were medically assessed and admitted into the Special Housing Unit without further incident. The FBI was notified and an investigation continues.

USP- HAZELTON- JANUARY 5, 2009

At 3:46 p.m a fight was announced in an unit involving 7 inmates.

USP- LEE- JANUARY 5, 2009

At approximately 12:30 p.m., twenty six (26) members, associates, and suspects, refused to return their food trays from the noon meal. All of them also, covered their cell window obstructing the view inside, not allowing staff to observe the well being of inmates in the cells, as well as placing barricades in front of the cell door. Authorization was granted by the Warden to use less lethal and chemical munitions along with the ambulatory restraints and or hard four point restraints. Confrontational avoidance proved unsuccessful on all 26 inmates. All inmates involved refused to remove the window covering=s, barricade=s and return their food tray=s and submit to hand restraints. A calculated use of force began on January 5, 2009 at 2:15 p.m. and ended on January 6, 2009 at 4:13 a.m., which resulted in several inmates being placed into ambulatory restraints. All inmates involved were medically assessed, decontaminated by Health Services staff and placed back into separate cells without further incident. Incident reports were written, an the investigation continues.

USP- LEE- JANUARY 4, 2009

At approximately 9:14 p.m., an inmate was instructed to submit to a breathalyzer test. The inmate refused to take the test and began to walk away from staff. As staff attempted to gain control of the inmate, he became argumentative and attempted to strike staff with his left elbow. The inmate was placed on the ground and restrained by responding staff. The inmate was medically assessed and admitted into the Special Housing Unit without further incident. Three staff members were medically assessed. The FBI was notified and an investigation continues.

January 09 14 staff assaults

February 09 13 sa

March 09 17 sa

April 09 6 sa

May 09 11 sa

June 09 27 sa

July to 17th 8 sa

1.

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

MAR 12 2008

Philip Fornaci, Director
D.C. Prisoners' Project
Washington Lawyers' Committee
for Civil Rights and Urban Affairs
11 Dupont Circle, N.W.
Washington D.C. 20036

Dear Mr. Fornaci:

This is in response to your communications with Elizabeth Nagy. You raised several issues related to health care received by D.C. Code felony offenders in Bureau facilities. In the future, please direct all such inquiries to the U.S. Attorney's Office representative handling such case(s), as you represent inmates currently in litigation with the Bureau regarding health care issues.

While we appreciate your concerns and your offer to be an intermediary, there is a mechanism already in place. Specific concerns for the welfare of D.C. Code felony offenders in Bureau facilities can be brought to the attention of the Corrections Information Council (CIC). This body was created by the D.C. Government for that purpose, and enjoys broad access to Bureau facilities and information. See D.C. Code, §24-101(h). In addition, all Bureau facilities, including health care units, are accredited by the American Correctional Association, and many Bureau facilities are accredited by the Joint Commission on the Accreditation of Healthcare Organizations.

I understand that you are currently using the interview instrument you provided to Ms. Nagy in your interviews with BOP inmates. Apparently you are collecting such information under 28 C.F.R. §543.13, Visits by attorneys, which authorizes attorney interviews of an inmate as a witness. While attorney visits to interview witnesses may be authorized, your desire to have the BOP facilitate your interviews by calling group meetings will not be granted.

If, however, you desire to conduct such interviews for research purposes, please be aware that survey research of Bureau inmates outside active litigation discovery may only be conducted through approved means, meeting specific statutory and policy requirements. Bureau Program Statement 1070.07, Research, and 28 C.F.R. §§512.10, et seq., require that all research projects be submitted to the Bureau's Chief, Office of Research and Evaluation, for review and ultimate approval of the Director.

The allegations you raised with Ms. Nagy concerning medical care at a contract facility, have been referred to the appropriate Bureau of Prisons oversight staff.

Thank you for bringing these matters to our attention. I hope you find this information useful.

Sincerely,

Kathleen M. Kenney

Kathleen M. Kenney
Assistant Director/General Counsel

Private Corrections Institute, Inc.

QUICK FACTS ABOUT PRISON PRIVATIZATION

The private prison industry has a sordid past, dating from the turn of the 20th century when inmates were handed over to private businesses under the "convict lease" system, primarily in the South. Abuses by private prison companies that used inmates for forced labor, including a high rate of prisoner deaths, led government agencies to abandon the concept of for-profit incarceration.

The industry revived in the early 1980s due largely to tough-on-crime sentencing laws and the war on drugs, which resulted in a large increase in the prison population. A number of companies were formed to capitalize on the developing market for housing inmates, including the industry leader, Corrections Corp. of America (CCA), the industry's second-largest firm, GEO Group (previously known as Wackenhut Corrections), and Cornell Corrections, MTC, Civigenics and various other smaller companies. The industry expanded in the 1990s due to a crackdown on illegal immigration, and is fairly static today.

Today, approximately 8% of state and federal prisoners are held in privately-operated facilities, totaling over 126,000 inmates. Government agencies contract with private prison companies for several reasons, primarily anticipated cost savings and a need for additional bed space. However, there are a number of negative factors related to private prisons that should be considered, including the following:

Staff Turnover Rate

Staffing costs account for about 80% of operational expenses for prisons whether they are public or private. Thus, one of the main ways that private prison companies reduce costs to increase their profit margins is by cutting staffing expenses. This is typically done by staffing private prisons with fewer employees than in the public sector, paying lower wages, offering fewer or less costly benefits, providing less training, and leaving unfilled positions vacant for extended periods of time. Due to these factors, privatized prisons tend to have much higher staff turnover rates. According to the last self-reported industry statistics from 2000, the public prison turnover rate was 16% while the private prison staff turnover rate was 53%. Higher turnover rates mean less experienced staff and thus greater instability in privately-operated prisons.

Higher Rates of Violence

Several studies have shown that privately-operated prisons experience higher rates of inmate-on-inmate violence, including a 2004 article in the Federal Probation Journal that found private prisons had more than twice as many inmate-on-inmate assaults than in public prisons, and a 2001 Bureau of Justice Assistance report that found private prisons had 50% more inmate-on-inmate assaults and almost 50% more inmate-on-staff assaults than in public prisons with comparable security levels.

1114 Brandt Drive - Tallahassee, FL 32308
850-980-0887 - www.PrivateCI.org

Lack of Public Accountability

Private prison firms are accountable to their shareholders, not to the public, and add a layer of secrecy when citizens want to learn about problems or misconduct at privately-operated facilities. In 2008, CCA general counsel Gus Puryear admitted that CCA did not disclose detailed audit reports to contracting government agencies. In response to a question from Senator Dianne Feinstein he stated, "we did not make customers aware of these documents." A CCA whistleblower had accused the company of keeping two sets of audit reports and providing less detailed reports to government agencies. Because companies like CCA and GEO Group are private entities, they are not covered by the federal Freedom of Information Act (FOIA) or most state public records statutes. Private prison companies have a documented history of concealing information from the public, including, in some cases, internal prison policies that are available to inmates in private prisons but not to members of the general public.

Alleged Cost Savings

Although private prison companies claim they can save government agencies up to 30%, only minimal savings if any have been documented. According to a comprehensive 1996 General Accounting Office (GAO) report that reviewed five private prison studies, cost savings resulting from prison privatization were inconclusive. It is difficult to obtain an "apples to apples" comparison of public and private facilities due to a number of factors. For example, public prison systems have higher costs because they house maximum security, death row and female prisoners, who cost more to incarcerate. Few private prisons house such inmates. Also, private prison companies have a record of "cherry picking" prisoners with few medical or mental health problems, which passes the costs associated with housing such inmates to the public prison system. Further, in some cases private prison companies have a cap on the medical expenses they must pay for prisoners, with medical costs above the cap paid by the public prison system. These factors, as well as other costs such as monitoring and oversight of private prisons by public prison officials, make it hard to determine the costs savings, if any, that are achieved through privatization.

Dubious Research & Politics

The private prison industry relies on a number of allies and research studies to justify its claims of cost savings and proficiency; however, most of these sources have industry connections or vested financial interests. For example, the Reason Foundation, a strong proponent of prison privatization, has received funding from private prison firms. The American Correctional Association (ACA) receives sponsorship money from CCA and other private prison companies for its bi-annual conferences, and receives additional payments for accrediting private prisons. Former University of Florida Prof. Charles Thomas conducted supposedly impartial research on private prisons until it was learned that he owned stock in private prison companies, had been paid $3 million for consulting for a private prison firm and served on the board of the Prison Realty Trust (a CCA spin-off). Thomas was fined $20,000 by the Florida Commission on Ethics and stepped down from his University position. The private prison industry has worked to influence public policy through its association with the American Legislative Exchange Council (ALEC), and by expending funds on political lobbying (e.g., CCA spent $2.5 million in lobbying on the federal level alone in 2007).

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850-980-0887 - www.PrivateCI.org

"Linden Sites." The United States retains the right to seek relief against the reorganized G–I for CERCLA response costs and/or natural resource damages at these three sites, and if G–I is found liable at the Linden Sites after confirmation of G–I's Plan of Reorganization, the claims will be paid at 8.6 cents on the dollar.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In Re: G–I Holdings, Inc., et al.*, D.J. Ref. 90–11–3–07425.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $33.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–16309 Filed 7–9–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2008 was $25,895. The average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2008 was $23,862.

DATES: *Effective Date:* July 10, 2009.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2008 data, the fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2008 was $25,895. In addition, the average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2008 was $23,862.

Harley G. Lappin,

Director, Bureau of Prisons.

[FR Doc. E9–16304 Filed 7–9–09; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

[Docket No. OSHA–2009–0020]

Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Group; Meetings

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Announcement of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Group meetings.

SUMMARY: ACCSH will meet July 30 and 31, 2009, in Washington, DC. In conjunction with ACCSH's meeting its Work Groups will meet July 28 and 29, 2009.

DATES: *ACCSH:* ACCSH will meet from 8:30 a.m. to 4:30 p.m., Thursday, July 30, 2009, and from 8:30 a.m. to Noon, Friday, July 31, 2009.

ACCSH Work Groups: ACCSH Work Groups will meet Tuesday, July 28, and Wednesday, July 29, 2009. (For the Work Group meeting times, see the Work Group Schedule in the **SUPPLEMENTARY INFORMATION** section of this notice.)

Submission of comments, requests to speak and requests for special accommodation: Comments, requests to speak at the ACCSH meeting and requests for special accommodations for the ACCSH and ACCSH Work Group meetings must be submitted (postmarked, sent, transmitted) by July 17, 2009.

Submission of speaker presentations: Persons who request to speak at the ACCSH meeting must submit materials, written or electronic (*e.g.*, PowerPoint), that they will present at the ACCSH meeting by July 23, 2009.

ADDRESSES:

ACCSH and ACCSH Work Group Meetings: ACCSH and ACCSH Work Group meetings will be held in Rooms N–3437 A–C of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: Interested persons may submit comments, requests to speak at the ACCSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the on-line instructions for making submissions.

Facsimile (FAX): If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand deliveries, express mail, messenger, and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., E.T., weekdays.

Requests for special accommodations: Submit requests for special accommodations to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov*.

Instructions: All submissions, requests to speak, speaker presentations, and requests for special accommodations must include the Agency name (Occupational Safety and

DENNIS A. CARDOZA
18TH DISTRICT, CALIFORNIA

COMMITTEE ON RULES

COMMITTEE ON AGRICULTURE

CHAIRMAN, SUBCOMMITTEE ON
HORTICULTURE AND ORGANIC AGRICULTURE

SUBCOMMITTEE ON LIVESTOCK, DAIRY AND POULTRY

SUBCOMMITTEE ON
CONSERVATION, CREDIT, ENERGY AND RESEARCH

Congress of the United States
House of Representatives
Washington, DC 20515–0518

WASHINGTON OFFICE:
435 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6131

DISTRICT OFFICES:
2222 M STREET, SUITE 305
MERCED, CA 95340
(209) 383-4455

1010 10TH STREET, SUITE 5600
MODESTO, CA 95354
(209) 527-1914

137 EAST WEBER AVENUE
STOCKTON, CA 95202
(209) 946-0351

April 23, 2008

Mr. Harley Lappin
Director
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

Dear Director Lappin:

According to the most recent numbers available, the federal prison population continues to grow. The Bureau of Justice Statistics reports that the number of prisoners under federal jurisdiction increased by 2.9% in 2006, reaching a total of 193,046 inmates at the end of the year. According to the most recent figures, there are 200,663 inmates currently under federal control.

Given the exploding growth in the prison population, I am concerned about ensuring that California's federal institutions have adequate resources and staff to operate safely. Given the size of our state, we are home to 18 federal facilities that house inmates. While the overcrowding problem in our state prisons is well known, I am told by prison personnel that similar problems are occurring in our federal prisons. Though the problems are not as acute as in the state system, personnel are worried that they simply do not have the resources necessary to cope with the scope of the problem.

Given this, I respectfully request that you provide me with answers to the following questions forthwith.

1. Are federal institutions in California overcrowded? Specifically:

   a. For each federal institution in California, please provide the average daily population and the design capacity of each institution.
   b. For each federal institution in California, please state the percent by which average daily population exceeds (or falls below) the design capacity of the institution.
   c. Please identify any federal institutions in California where overcrowding is forcing the institution to use rooms for inmate sleeping that were designed for other uses, such as recreation rooms.
   d. Please identify any federal institutions in California where overcrowding is forcing the prison to place more inmates in sleeping rooms than the number of inmates that those rooms were designed to accommodate.

2. Are current staffing levels at California federal institutions adequate in light of current inmate populations? Specifically:

   a. For each federal institution in California, what percentages of authorized full time equivalent (FTE) positions are actually filled?
   b. For each federal institution in California, what percentage of authorized FTE correctional officer positions are actually filled?
   c. For each federal institution in California, what percentage of authorized FTE managerial and supervisory positions are actually filled?
   d. For each federal institution in California, what is the average weekly percentage of correctional officer shifts that, due to short staffing, are worked by non-correctional employees?
   e. Does the Bureau of Prisons (BOP) have any staffing model that project the FTE employees required for the safe operation of each federal institution with the specific inmate population levels described in your response to question 1? If so, for each institution, state whether the institution employs the number of FTEs recommended by the staffing model.

3. For each federal institution in California, please state the rate of (a) inmate assaults by other inmates; and (b) inmate injuries inflicted by other inmates in each of the past five years for which records are available.

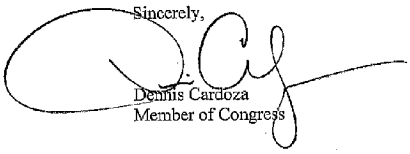
4. For each federal institution in California, please state the rate of (a) staff assaults by inmates and (b) staff injuries inflicted by inmates in each of the past five years for which records are available.

5. Are staff members in segregation units at any California institutions equipped with vests or clothing to protect against inmate stabbing assaults?

6. Has the BOP completed any assessment or evaluation, within the past two years, of the infrastructure of any federal institution in California? If so, I request that you share with me the results of such assessment or evaluation of all California institutions.

I know you share my desire to ensure that all federal correctional facilities in California are fully staffed, supported, and equipped. Prison personnel have a difficult and dangerous job and we must ensure they have the tools they need to perform the task at hand. I look forward to your prompt response. If you have any questions, please contact Matt Pennington of my staff at 202-225-6131.

Sincerely,



Dennis Cardoza
Member of Congress

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

January 8, 2010

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Attention: Veronica Eligan

Dear Mr. Chairman:

This is in reply to your letter dated October 5, 2009, asking for a response to follow-up questions from my testimony on July 21, 2009, concerning the Oversight of the Federal Bureau of Prisons (BOP).

The first question, from Representative Louis Gohmert, concerns how the BOP calculates Good Conduct Time for inmates. Representative Gohmert has asked that we address Stephen Sady's assertion that Good Conduct Time should be counted against the sentence imposed, which would result in inmates serving 85 percent of their sentence, not the 87.2 percent that inmates serve under the BOP's formula.

The BOP's process for computing inmates' good conduct sentence credit is derived from an interpretation of the wording of the statute itself, 18 U.S.C. § 3624. The statute provides that a prisoner shall receive credit "beyond the time served... at the end of each year of the prisoner's term of imprisonment, ...subject to a determination... that, during that year, the prisoner has displayed exemplary compliance..." As a result, the BOP calculates Good Conduct Time by awarding credit on time <u>actually served</u>, as opposed to the <u>sentence imposed</u>.

Alternative calculation methods have been considered by federal courts in almost all circuits. Each Circuit Court to consider the issue (1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th) has upheld the BOP's interpretation and implementation of

the Good Time Statute. Additionally, Congress has amended the statute (which the BOP has always applied in the same manner) six times since it was originally passed, but has not addressed or altered the BOP's computation method. Please note that despite a lack of splits among the circuits, the Unites States Supreme Court has agreed to hear a case on this very issue (Barber v. Thomas, case number 09-5201).

The second question, from Representative Bob Goodlatte, addresses a statistical inconsistency between my testimony and a Bureau of Justice Statistics (BJS) report entitled *Prison Inmates at Midyear 2007*. Specifically, I testified that approximately 25 percent of the inmate population are non-U.S. citizens, while the BJS report from 2007 stated that about 16 percent of inmates housed by the BOP were non-U.S. citizens. Representative Goodlatte asked if he was interpreting the data in the BJS report correctly or if the non-U.S. citizen population had actually grown from 16 percent to 25 percent.

The apparent discrepancy in figures results from the use of different population bases used to calculate the percentages. The BJS report did not include federal inmates housed at privately managed facilities, while the BOP included all offenders in BOP custody regardless of where they were housed. This omission is especially significant in regards to the particular question, because the BOP relies on the private sector extensively to house low security non-U.S. citizens. Looking at the total number of non-U.S. citizens in BOP custody, the number of non-US citizens in mid-2007 was actually 51,554 (not 31,469 as reported by BJS), which translates to approximately 25 percent.

I appreciate the opportunity to answer any follow-up questions or clarify my testimony. I trust I have done so here, however if there are any other concerns, please feel free to contact me.

Sincerely,

Harley G. Lappin
Director

Questions
of the
Honorable Maxine Waters, D-35th CA

Judiciary Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on
Federal Bureau of Prisons Oversight

July 21, 2009
2237 Rayburn Building
10:00 a.m.

QUESTIONS FOR THE RECORD
The Honorable Maxine Waters (CA-35)

General Questions for the Bureau of Prisons:

1. How many prisoners are within federal penitentiaries as a result of mandatory minimum sentencing for any federal offense carrying a minimum prison term? (Please provide numbers and percentage comparisons between group and general federal prison population)

2. How many prisoners are within the federal prison system as a result of drug offenses? (Please provide numbers and percentage comparisons between group and general federal prison population)

3. How many of those drug offenders within federal prisons are there as a result of mandatory minimum sentences related to drugs? (Please provide numbers and percentage comparisons between group and general federal prison population)

4. How many of those drug offenders within federal prisons are there as a result of mandatory minimum sentences specifically concerning crack and powder cocaine offenses? (Please provide numbers and percentage comparisons between group and general federal prison population)

5. Then broken down, what percentage of cocaine drug offenders in federal prisons are crack cocaine offenses? And then, what percentage of drug offenders are within federal prisons for powder cocaine offenses?

6. How many of the federal prisoners sentenced under mandatory minimum sentences for drug offenses were major drug traffickers? (Please provide numbers and percentage comparisons between group and general federal prison population)

7. How many of those (from question above) were low level drug abusers? (Please provide numbers and percentage comparisons between group and general federal prison population)

8. How many veterans are within the federal prison population? (Please provide numbers and percentage comparisons between group and general federal prison population)

9. How many of the veterans within the federal prison population were sentenced under a mandatory minimum statute? (Please provide numbers and percentage comparisons between group and general federal prison population)

10. How many of the veteran offenders within the federal prison population suffer from mental illness or disability? (Please provide numbers and percentage comparisons between group and general federal prison population)

11. What were the top five offenses committed by veterans within federal prisons?

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

June 1, 2010

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Attention: Veronica Eligan

Dear Mr. Chairman:

This is in response to your letter dated August 3, 2009, regarding follow-up questions from my testimony concerning oversight of the Federal Bureau of Prisons (BOP). First, I would like to address the general questions from the Committee. The Committee requested additional information concerning the following:

1. The Bureau of Prisons' plan to increase the number of correctional officers in its facilities.

   One of the BOP's highest priorities in recent years, and for the foreseeable future, is adding staff at existing institutions and adding bedspace to address severe crowding. The continued professionalism and dedication of our staff have been critical to the BOP's ability to operate safe and secure facilities, managing many more inmates than our prisons were designed to house, and preparing inmates to transition back into their communities. Continuing increases in the inmate population pose substantial ongoing challenges for our agency. In FY 2009, a net growth of 7,091 inmates was realized, and we are expecting nearly that many inmates this year.

Beginning with FY 2009, the BOP's goal was to achieve a net staffing increase of at least 3,000 employees at existing facilities by the end of fiscal year 2011, contingent upon the availability of resources. The BOP was able to realize a net increase of 775 staff on board at the end of FY 2009, and expects to hire an additional 575 staff through FY 2010, not including new prison activations. The President's FY 2011 Budget Request includes half year funding for an additional 1,200 staff.

2. Information on prisoner education and work opportunities.

The BOP is committed to having inmates involved in meaningful correctional programs that assist them in successful reentry. We know firsthand the value of such programs. Rigorous research has found that inmates who participate in educational, vocational, and Federal Prison Industries (FPI) programs are less likely to commit future crimes. Inmates who participate in FPI or vocational and occupational training programs are 24 percent and 33 percent less likely to recidivate for as long as 8 to 12 years post release, respectively. Similarly, inmates who participate in education programs are 16 percent less likely to recidivate within three years after release.

Unfortunately, increased inmate crowding has made it very difficult for the BOP to keep all inmates working in full-day job assignments, and the waiting lists for other inmate programs continue to increase as BOP staffing levels remain lower than necessary to maintain adequate program opportunities for inmates.

Federal Prison Industries

As of March 31, 2010, 16,945 inmates were working in the FPI program. This is approximately 10 percent of the population in BOP-operated facilities, and reflects a reduction in inmate FPI work opportunities of over 30 percent since 2002. While all sentenced inmates are eligible to work in the FPI program (except those inmates who are currently under an order of deportation, exclusion,

or removal), work opportunities are limited by the facility in which an inmate is confined; not all BOP facilities have a FPI factory.

Work in an FPI factory is a highly desirable work assignment. In most BOP facilities, there are significantly more inmates interested in FPI work than there are positions available. Therefore, BOP institutions maintain waiting lists, which vary by facility in number of inmates waiting and length of time on the waiting list.

The BOP would like to increase inmate participation in FPI due to the program's significant impact on public safety, recidivism reduction, and on operating safe and secure Federal prisons. In order to increase inmate opportunities to work in FPI, new legal authorities are required to expand market opportunities. Absent any expansion of FPI, which is self-sustaining and does not use any appropriated funds for its operations, the BOP would need additional resources to create inmate work and training programs to prepare inmates for a successful reentry into the community.

Institution Work Assignments

Sentenced inmates in Federal correctional institutions are required to work (with the exception of those who for security, educational, or medical reasons are unable to do so). Work assignments keep inmates productively occupied and provide an opportunity for them to develop a work ethic. Most inmates are assigned to an institution job such as food service worker, orderly, painter, warehouse worker, or groundskeeper. These inmates help maintain the institution in its day-to-day operations by providing work that does not pose a security risk.

Education Programs

The BOP emphasizes inmate education opportunities to target the deficits that many inmates have and to assist with

reentry. Education programs include Literacy (GED), English as a Second Language, Occupational Training, and Adult Continuing Education. With a few exceptions, inmates without a GED or high school diploma must attend GED for a minimum of 240 hours, or until a GED is obtained, whichever occurs first. A high school diploma or GED, or concurrent enrollment in the GED program, is required for enrollment in occupational training.

Following are the number and percent of inmates involved in education programs on a typical day.

Program	Number	Percent
Literacy (GED)	21,033	14%
English-as-a-Second-Language	2,658	2%
Occupational Training	11,960	8%
Adult Continuing Education	15,247	10%

As of April 2010, 35 percent of sentenced inmates were involved in at least one education or recreation program and 13 percent of the inmate population were on the waiting list for literacy programming; 5,981 inmates passed the GED test since the beginning of fiscal year 2010.

The BOP's goals are to increase the percent of inmates involved in one or more education or recreation programs to 40 percent by the end of the year and to ensure that every inmate who needs and desires literacy training has the opportunity to complete the literacy program.

3. The percentage of the inmate population in BOP institutions that are diagnosed with mental illnesses.

Using a conservative measure, a study of BOP admissions cohorts from 2002 and 2003 revealed that 15.2 percent of newly-committed offenders require some level of mental health services during incarceration. When pre-incarceration use of psychotropic medication was expanded to a more-liberal measure that included antidepressants (which are often prescribed for purposes unrelated to mental illness, such as smoking cessation and pain

management) the percent of incoming inmates with mental health care needs increased to 19 percent.

4. Information on Guantanamo Bay detainees currently in BOP institutions and whether these detainees will be given additional constitutional rights relative to other inmates.

   There is one individual in BOP custody who is a former detainee at the facility in Guantanamo Bay. He is being detained at the Metropolitan Correctional Center in New York, New York, awaiting trial in Federal court. He has the same constitutional rights that are afforded to all Federal prisoners in BOP custody.

5. The percentage of inmates in BOP facilities that are illegal immigrants.

   The immigration status of many Federal inmates is not determined by Immigration and Customs Enforcement until close to the end of an inmate's sentence or even after the sentence is completed. Currently, 26 percent of BOP inmates are not citizens of the United States and some portion are likely to be determined to be deportable after their sentence has been satisfied.

6. Information regarding barriers to higher education for Federal inmates.

   The largest barrier to higher education inmates face is financial in nature. The BOP does not have the resources to fund true higher education programs and Federal inmates lost Pell Grant eligibility in 1994, which could subsidize their education.

   Advanced Occupational Education (AOE) funding replaced Pell Grants in 1995. AOE programs afford inmates the opportunity to obtain certificates from accredited providers or industry recognized sources, but there are significant limitations. AOE programming must be occupationally oriented and cannot go beyond a two-year degree. If an inmate wishes to pursue a four-year degree, he must pay for it himself. The BOP allocated $9.2 million from the Salaries and Expenses budget for AOE programs in

FY 2010, which is significantly more than the previous fiscal year ($5.3 million), however even at that level, only 8% of the inmate population is able to participate in AOE funded programs.

Additionally, if an inmate is able to pay for his own education, the institution's location is often another barrier. Many of our institutions are located in remote areas of the country, and as a result, access to post-secondary education providers can be limited. While many post-secondary education providers offer internet-based classes, inmate access to the internet is prohibited by BOP policy for security reasons.

7. The Obama Administration's policy on Federal Prison Industries ("FPI") programs.

The Administration supports FPI as one of the BOP's most important correctional programs, as illustrated by Attorney General Holder's statement during the House Judiciary Committee Oversight Hearing of the Department of Justice on May 13, 2010. The Attorney General stated, "It [FPI] is a critical part... of our effort to make our prisons more than places that simply warehouse people... What people have to focus on is that the vast majority of people who go into prisons are going to come out at some point. And to the extent that we can provide rehabilitative services to them through the vocational opportunities that the Federal Prison Industries program provides, I think those should be supported. I'm a big, big supporter of that program."

The Administration would be very interested in reviewing any legislative initiatives that might impact FPI, and would like to work with Congress on ways to support this critical inmate reentry program.

8. Information and documentation concerning the percentage of U.S. population that are non-citizens.

According to the U.S. Census conducted in 2000, approximately 6.6 percent of the U.S. population was non-citizens. Approximately 26% of BOP inmates are non-U.S. citizens.

9. The Bureau of Prisons' method of calculating good time credit under 18 USC § 3624(b).

The statute that governs good time for Federal inmates states that, subject to conditions related to behavior in prison and participation in the General Educational Development (GED) program, a prisoner who is serving a term of imprisonment of more than 1 year (other than a term of life imprisonment) may receive credit toward the service of the prisoner's sentence of up to 54 days at the end of each year served of the prisoner's term of imprisonment (beginning at the end of the first year of the term). 18 USC § 3624(b) also states that credit for the last year or portion of a year shall be prorated and credited within the last 6 weeks of the sentence.

An inmate with a sentence of more than 1 year earns good conduct time at a rate of 54 days per year served. At the end of each year served on the sentence, the good conduct time is awarded and the remaining amount of time to serve is reduced (by 54 days). This process continues until there is a portion of a year remaining, and the amount of good conduct time that can be earned is prorated for the remaining portion of the time to be served.

For example, an inmate with a 10-year sentence (and no disallowance of good conduct time throughout the time served in prison) earns 54 days per year for the first 8 years. At the end of 8 years, there are 298 days remaining to be served. The amount of good conduct time that can be earned on 298 days is 38 days (the proration for this portion of a year). The inmate has earned 54 days per year for 8 years, which results in 432 days of good conduct time, and has earned 38 days for the remaining portion of the 9th year of incarceration. The total amount of good conduct time (432 days + 38 days) equals 470 days.

Your correspondence included eleven questions posed by Congresswomen Waters. Regrettably, we are unable to address the majority of her questions. In particular, those involving mandatory minimum sentences; the number of inmates in BOP custody due to a specific drug offense (crack vs. powder cocaine); and the number of inmates that are veterans in BOP

custody, their prevalence of mental disorders, and their specific offense conduct. The BOP does not collect data involving the number of inmates convicted under a particular statute, the specific drug involved in an offense, or an inmate's status as a veteran.

Congresswomen Waters asked how many inmates are in BOP custody as a result of committing a drug offense. There are approximately 109,000 (or 52%) inmates in federal custody that were involved in a drug related offense.

I appreciate the opportunity to answer any follow-up questions or clarify my testimony. Again, I regret that I was not able to provide more information to Congresswomen Waters, but trust I have addressed the Committee's questions. However, if there are any other concerns, please feel free to contact me.

Sincerely,

Harley G. Lappin
Director