As I said at the beginning, this is the second day of two day's of hearings. And today's hearing are, in fact, going to be devoted to one general but one very, very vital subject in terms of the ultimate success of the Commission's efforts and, indeed, the entire incarceration industry in the United States. I call
it an industry in the benign sense of
that word.

We're now welcoming our
first witness. She is a renowned
scholar and researcher in the area of
incarceration generally, but in
particular in the area of oversight of
internal and external.

We welcome Professor Michele
Deitch, professor of the University of
Austin, LBJ School of Public Affairs.

Her current research is focused on the
issue of independent prison oversights
to provide an overview of the various
models and the functionality.

On behalf of the Commission,
I welcome you. And I ask you to stand
and raise your right hand to be sworn.

(One witness sworn.)

MS. DEITCH:

Good morning, Commissioners.

I'm honored to be here with you today
and provide you with an overview of the
prison oversight issue.

As many of you know, last
year I organized a major international conference on the subject of prison oversight. That conference, which was held in Austin, Texas, brought together 115 of the world's top experts on this issue. We had a wide range of stakeholders. We had 20 percent of the nation's corrections directors. We had prisoners rights attorneys, human rights advocates, policymakers, judges, academics, journalists.

The draft proceeding at that conference is now available. I believe they've been made available to you either in electronic or hard copy form, and I encourage you to read that when you have a chance. It was quite an extraordinary conference.

I come to you today with a strong message that came out of that, and that is that prison oversight is absolutely essential to the safe operations of prison. It's the key strategy in any campaign to find solutions to problems of sexual abuse.
in prisons. Oversight is a means of achieving three goals. The objective of transparency of public institutions and accountability for the operation of safe and humane facilities. Every public agency must have effective systems of accountability. That's even more critical when we're talking about correctional institutions, in the correctional context, because the stakes are so much higher.

In closed institutions, such as prisons and jails that have total control over the lives of human beings, in those kinds of environment you need oversight and external scrutiny and transparency.

An effective and robust system of prison oversight is a combination of two things. First, you need sound internal accountability measures. And number two, you need credible and effective forms of external scrutiny. The two go hand in hand. Neither is a replacement for the
You're going to be hearing two panels after I present today. The first is on systems of internal review. These kinds of systems, when they're well done, offer a valuable management information tool for administrators. It allows them to identify and address operational problems at a very early stage. It's critical. The second issue that your panel will be hearing is on external scrutiny. And the goal of external scrutiny is shining a light on what happens in correctional institutions. Transparency provides a form of protection from harm as well as an assurance that rights are going to be vindicated in response to the public need for information, and it provides a credible objective assessment of conditions that are in correctional facilities. It's especially critical to have outside involvement whenever staff
or inmate behavior crosses the line from the administrative misconduct to criminal behavior, as in the case of prison rape. We need the involvement of state institutions outside of the correctional agency.

So what is oversight anyway? It's a term that's used a lot, and we don't always understand it. I believe that oversight is an umbrella concept. It incorporates several discrete functions. The function of regulation, audit, accreditation, reporting, investigation, and monitoring. I think that there need to be many separate mechanisms in place to fulfill each of those discrete functions to make sure that they are served effectively.

Now, in the limited time that I have before you today, I'm going to focus on external oversight and primarily on the investigation and the monitoring functions. And that's because those two functions are the most critical and the most immediately
relevant when we're talking about issues of sexual assault.

Investigation is reactive. It's a means of providing accountability for past wrongdoing.

Monitoring, on the other hand, is prevented look. How do we prevent these kinds of incidents from occurring in the future?

In my written testimony, I detailed a range of models that have been developed both domestically and internationally to fulfill both those kinds of functions. My research has shown that in the United States -- well, the United States lags behind the rest of the world when it comes to having independent oversight structures in place to routinely monitor prison conditions.

Those external modules that do exist tend to fall into several categories. First, they're independent monitoring bodies. Perhaps the best example of that is in England, the
British prison inspector. But you will also today on the panel be hearing from Matthew Cate, who runs the California inspector general's office. That is also an example of independent monitoring body. Number two, are specially created legislative bodies such as what they have in Ohio. Number three, ombudsman. We'll be hearing from Will Harrell, who's the ombudsman for the Texas Youth Commission. The fourth category are inspector generals specialized in the prosecution units. Despite Matt Cate's title, I actually put him in the category of independent monitoring bodies. But you previously heard from John Moriarty (phonetic) who is the inspector general of Texas Criminal Justice System. That's an example of that. There are non-governmental organizations. You'll being hearing from Jack Beck, from the Correctional Association of New York. That, for example, is non-governmental oversight. There's also lay citizen
oversight boards, and then there's court oversight. And you'll be hearing from Margo Schlanger about the ways court involvement has provided oversight in correctional facilities.

One of the key messages that I want to leave with you today is, is that it doesn't matter what an oversight body is called or even whether every jurisdiction has the same kind of oversight body. There are many, many different ways to accomplish purposes of oversight.

What does matter is whether the mechanisms that are put in place have the essential element for an effective oversight body. Those elements, and I want to spend a little time on that now, are as follows:

They must be independent of the correctional agency that they're monitoring and able to do their work without interference or pressure from the agency or from any other body.

That's number one.
Number two, they must have a mandate to conduct regular routine inspections.

Number three, they must have golden key access, meaning that they could go into any part of any facility at anytime without prior notice and have confidential access to both inmates and to staff to review documents.

Number four, an oversight body must be adequately resourced. It must have adequate staff, adequate funding, office space, et cetera.

Number five, it must have the duty to report its findings publicly. That's an order to fulfill the goal of transparency. And only the oversight body should control the release of its reports. It shouldn't depend on someone else to say, okay, we'll permit that.

Number six, the oversight body must take a holistic approach to its work to evaluating the treatment of
prisoners. It can look at statistics and perform its measures, but it also needs to conduct interviews, have observations, and have other methods of gathering information, not just one -- one single methodology.

The seventh essential element. Over -- there must be a means of fulfilling both the investigation function and the monitoring function, even if it isn't in the same body. It could be different bodies that fulfill the investigation and monitoring functions, but both of those functions have to be fulfilled.

And finally, the correctional agencies must be required to cooperate fully with the oversight body and to respond promptly and publicly to its findings.

Whatever model oversight is adopted in a specific jurisdiction should contain those elements. Now, it might make sense to have multiple forms of oversight in a jurisdiction because
no one agency is going to be able to
fulfill all the purpose for which
oversight is needed. Meaningful
correctional oversight calls for a
layered approach that involves
complimentary models.

I want to end today on a
note of caution. Even the most
effective oversight body on -- the most
effective oversight mechanism will not
solve the problem of sexual abuse in
prison. It's an important piece of the
puzzle, but, ultimately, the task of
providing effective and safe
administration of prisons fall squarely
at the feet of correctional officials.

Oversight is not going to
prevent sexual abuse in a correctional
facility where leadership is lacking
and the culture, the policy, and the
practicing do not support safe
operations. That's obviously part of
your goal, is to come up with which of
that policy and practices be.

Oversight may not be a magic
bullet but it is, undoubtedly, able to
help prisons, make them better by
forcing questions about how and why
things were done certain ways. And as
I believe one of you commented
yesterday, when outsiders routinely
come into a -- a institution, the act
is a deterrent of misconduct. It's an
informal of social control over the
staff and inmate's behavior. If
external oversight help improve the
level of safety in prisons in these
ways, then it must be looked as the key
part of the solution, to eliminate
sexual assault in prison.

And consequently, I very
strongly encourage you to develop
standards that speak to the issue of
oversight, and that calls for having
very effective strong measures put in
place that fulfill both internal
accountability needs and the need for
external scrutiny. Thank you.

CHAIRMAN KANEB:

Thank you, Professor Deitch.
And I'm sure we're going to have a number of questions for you. You are a great source for us and, hopefully, will continue to be.

As you very well know, we are in the process of developing standards which when, and I don't say it, but when adopted by the Attorney General of the United States will become mandatory behavior, so to speak, for the federal system.

Now, the federal system has a -- an oversight agency within the Department of Justice, the inspector general. Indeed Glenn Fine (phonetic) testified before us in our second hearing sometime spring two years ago.

I could do it myself, but I -- I'm interested in how you would classify a federal oversight. You have your eight points in terms of adequacy, more than adequate. Let's say in terms of a model because, hopefully, the federal system will be a model of -- in many ways.
MS. DEITCH:

In my written testimony, I put the inspector general for the justice department in the category of independent oversight body, which is where I think it belongs.

In terms of how well it fulfills those functions that I described, I think in many ways it fulfills them quite well. On the other hand, what's lacking is that they don't do routine inspections of -- of correctional facilities. They tend to go to facilities or to investigate issues that have been problematic or whether have been scandalous of some sort.

Also, the scale -- the scope of their responsibility is much broader, of course, than correctional agencies. And so that's not the sole purpose of what they do. So I think that it provides an important model but it's not the only one.

CHAIRMAN KANEK:
So I'm talking again about the federal system and what it is and maybe what it might be. Do you have some thoughts as to whether the role of the inspector general's office could be expanded to include some of the activities you're talking about, such as regular inspections, proactive rather than reactive? Or do you think we should consider suggesting some sort of special division in the inspector general's office to deal with sexual abuse or --

MS. DEITCH:

I think it will be a very interesting possibility to expand their task to require routine inspections. I think that's certainly feasible. I wouldn't limit their role to doing just sexual abuse, because I think it's --

CHAIRMAN KANEK:

No, no. I wasn't suggesting limited. I was suggesting do you think a special unit ought to be created for sexual abuse?
MS. DEITCH:

I don't think that. And the reason is because I think that it's setting up a false distinction to look at just sexual abuse when you talk about oversight. It's a very hard separation for sexual abuse when issues apply just generally or lack of staffing, for example, or overcrowding. All of those things go hand in hand. And to say that a unit would only look at one of those issues doesn't make sense to me. But -- but I like the idea of potentially expanding their role to acquire routine monitoring.

On the other hand, one of the things I want to make clear is that I don't think the sole focus of your recommendation should be limited to the federal system. I hope very much that you will be looking at forms of oversight at the state level and at the local level as well, because that's where oversight is much more lacking in the United States.
CHAIRMAN KANE:

We understand that and we fully intend to. Other people are going to ask you questions. We haven't parceled out subjects. I'm doing this for a reason.

MS. DEITCH:

Okay.

CHAIRMAN KANE:

There are other elements of your eight points that are not present as far as I need to know, and I don't know everything about it, in terms of inspector general's role and how it relates to bureau prisons and other things. I think we need to do some research. You probably know these answers. I'm not going to take more time with this now.

I will thank you and ask, starting on my right, with Commissioner Aiken whether he has a question.

COMMISSIONER AIKEN:

No, sir.

CHAIRMAN KANE:
Commissioner Fellner?

COMMISSIONER FELLNER:

Actually, I have several which I think will be flushed out in the course of it.

But just in terms of the inspector general, Michele, my understanding is that both the federal inspector general and the California inspector general only focus on possible criminal matters. Is that not --

MS. DEITCH:

That's not accurate --

COMMISSIONER FELLNER:

No?

MS. DEITCH:

-- certainly with regards to the California inspector general. I don't want to speak for Matt because he'll be able to talk about that much more clearly. But in his role, they've got dual responsibilities. One piece of which is going to be criminal investigations, but another piece has
to do with routine inspections and routine monitoring.

COMMISSIONER FELLNER:

'Cause I think the federal is primarily, if not solely, criminal. Or I think that may be -- and I would just want to make sure that we need -- I think there are questions also independent, John, with the -- the inspector Glenn Fine has done a good job at trying to maintain independence. And yet it is -- he is part of the Bureau of Justice and he's responsible for -- he's also the boss of Bureau of Prison.

And I think it's something I would want -- we're going to need to consider whether that provides sufficient -- and I wondered if you could say something about the role of the press and the media as, not a formal body, but as part of the -- the mechanisms for oversight and accountability. There's been a huge effort to reduce the ability of the
media to understand what's going on inside prison limit access through various means. And I wonder what you think about that in terms of furthering any goals of the accountability of transparency.

MS. DEITCH:

I think that the press plays a very, very important role. When I listed the various elements of what's under the umbrella of oversight, I mentioned the reporting function, which I think includes both role of the press in informing the public about what's going on as well as the role of the watch dog groups, such as Human Rights Watch initiating reports on these kinds of subject. So I think the role of the media is absolutely critical, and it's very important that their access not be cut off.

That doesn't mean that they necessarily should have the kind of access that I'm talking about an independent oversight body have. But I
think that it plays a very critical role in keeping facilities transparent.

COMMISSIONER FELLNER:

Have you given any thought to -- you know, for example, in a lot of places now press cannot interview inmates directly, which, obviously, limits their access to finding out what's going on. And there have been various arguments if that's going to glamorize the inmates, and some victim rights groups have opposed. But it also has cut down their access considerably.

Do you think this Commission should look into those questions, and whether or not we should be recommending, as part of our standards, that the press has more access to inmates?

MS. DEITCH:

Absolutely. I think that -- that doesn't mean there's not a balancing act that has to go on there. I fully appreciate that. Our issues of
what constitutes the press, for example, legitimate media. And those are questions to resolve. And clearly, it's not that they can have access to every inmate. Inmates should have control over who they talk to. On the other hand, they are very much hampered in their responsibilities if they cannot have access to inmates, if they cannot get into certain facilities and such, so, yes, I would agree with your suggestion. And I would also suggest -- as this group may be aware, the American Bar Association is currently considering proposed standards on the legal treatment of prisoners, which expands on a wide, wide range of issues. But one of the issues that does deal with issues of oversight and media access to prisoners is one of the proposed standards, and that may be something worth looking at.

COMMISSIONER FELLNER:

Well, I suppose in the
interest of transparency, I should say,
among the task force -- ACA Task Force
on -- also on external oversight. So
I -- something in this -- one final
question, Michele.

Why do you think the
corrections field by and large, and I'm
speaking first generality, has been
quite resistant to external oversight
that goes beyond their own internal
mechanisms or ACA? And I don't
consider ACA to meet many of the
criteria that you set out with the
previous association anyway, although
its accreditation, obviously, has
certain functions.

If you can say something
about why the resistance, and do you
have any advice to the Commission for
ways that we might respond to and see
to overcome that resistance?

MS. DEITCH:

That is a really, really
interesting question. I think it's a
natural human instinct to be concerned
about people looking at your work,
whether you're a -- a professor that's,
you know, getting evaluations or -- or
an agency that for someone from the
outside coming in and looking at you.
So I see that as a -- not an expected
reaction.
On the other hand, it is
part of being a professional
organization, to be evaluated and to
have someone looking at you and giving
you objective feedback about your
performance. I do think that there's a
lot of fear on the part of correction
officials about people who are not in
the profession coming in and not
understanding what they're seeing.
That's one concern. And I think
there's also, perhaps, some
misunderstanding that oversight bodies
necessarily have upon enforceability.
And my own view is that they're not --
they should not have enforceability.
You can have regulatory bodies that has
enforcement responsibilities. But an
inspection monitoring entity is there to identify problems, report on them. They can use the powers of persuasion to encourage certain changes, but they're not there to order changes. And I think that maybe that's a distinction that a lot of corrections people don't -- don't necessarily make.

On the other hand, I want to take a little bit of issue with what you're saying. And that is one of the lessons of this conference was that that is not necessarily the view of many correction officials. There was tremendous support at this conference that 20 percent of the nation's corrections directors was at it, in which they really understood this and understood the importance of oversight, helping them be a more professional agency.

In answer to your question about how can we help them overcome some of these fears, I think it will be very useful to talk about the ways in
which external oversight benefits correctional agencies. And it does in many, many ways in addition to helping them to become more professional. One of the most significant benefits is that it provides a lot of leverage for correctional agencies as they, for example, need to go before the legislature and ask for more resources or increase staffing or improved conditions or better medical care. It helps them to say, we have this outside body that has come in and told us we have these problems. We need to fix this. It also provides more credibility to their findings. If a -- if a correctional agency does its own internal investigation about sexual assault incidents or any other form of misconduct, it's not going to carry as much credibility as an outside investigative body.

CHAIRMAN KANEK: Thank you.

COMMISSIONER FELLNER:
Chairman Kanep:

Commissioner Puryear.

Commissioner Puryear:

Morning. Just a -- I

usually only ask questions and try to
refrain from making too many comments,
but I want to pick up on Jamie's line
of questioning for a minute.

It's just a fine observation
in seven years around. Corrections, in
many ways, is one of few systems that
still sometimes prison is a most futile
system in our country. I mean, the
warden -- the model of corrections is
the warden. He is CEO/king of all that
he surveys. He controls most of the
functions within the facility. He's
risen up through a hierarchal structure
to become the overseer of all that he
surveys. And when people have gone up
through a hierarchy like that and have
reached a pinnacle, they may not
necessarily want other people
attempting to tell them how they should
manage their facility. It's a natural reluctance to do that.

Another observation, just because -- I guess that may underscore why I think oversight is so important. Coming from an affiliation with a private corrections company, we have a structure in place where I have, as a general counsel, two teams that perform audits annually at all of our facilities. They have golden access, their surprised audits. They're coming unannounced in advance. They can go throughout the facility and then they report back on their findings. And that's outside of the operational structure of oversight. So we have an internal function. But then nearly every one of our facilities has a contract monitor or contract monitors from the agencies that we're contracting with, some of whom I might characterize as reluctant customers who may not terribly like the fact that we're doing this stuff; however, I want
to say it's a general proposition. But that's -- that's true for some, which provides an additional level of oversight.

Some of those agencies, in turn, may have a inspector general or something which can provide yet another layer of oversight. And because of the controversy in the private corrections industry, the press attention is, with the exception of AB system that are in crisis, is -- I would submit substantially greater. And rather than just responding to it about complaining about it, you can do better. And I think that's what the sunlight does, and I that's why oversight is so important.

Let me ask you a couple of questions on the bureau oversight, since we've been talking federal oversight. The inspector general does not perform routine audits of the facility, correct?

MS. DEITCH:
Uh-huh.

COMMISSIONER PURYEAR:
But they do have an office
of program review within the Bureau of
Prisons. Do you know anything about
that office or --

MS. DEITCH:
I'm not familiar with it.

That would be a form of an internal
system of accountability.

COMMISSIONER PURYEAR:
Right. But as I understand
it, those are not unannounced audits.
They tell them when they're coming so
that they can be prepared when the
auditor comes in. And of course,
that's being performed by BOP personnel
as opposed to people who have an
alternative career path outside of BOP
at some point.

Is that an area you think we
should look at in terms of their
internal review procedures?

MS. DEITCH:
I think that as much as can
be done to improve internal accountability measures ought to be done. They ought to be as strong as possible. You're going to be hearing some wonderful examples of it in the next -- in the next panel.

You know, I think that surprised inspections are critically important. But I also think that announced inspections are important, because you may not be catching problems that exist, or you're getting them to improve the quality of their facility in the meantime, and ultimately that's the goal.

COMMISSIONER PURYEAR:

Let me ask you one other question about court oversight. I think you mentioned in your materials both the strength and some of the disadvantages of it. One thing we talked about yesterday was some of the court orders that were in place in Texas and Georgia, and the possibility that the legislature would pay less
attention to certain areas over time once systems are relieved of those court orders. But the court, you know, there are current model of external oversight, and in some sense is a court oversight model that results in these vicious cycle where you have a crisis, you manage to the crisis, then the order gets taken away, eventually old -- old patterns emerge. We lapse back into private practices and then you have another crisis.

MS. DEITCH:

Yes.

COMMISSIONER PURYEAR:

Is oversight a way -- is the oversight proposals you're talking about a way to avoid the sort of vicious cycle of crisis management?

MS. DEITCH:

Absolutely. To me, court oversight is the last resort. It's because other forms of oversight have failed. And if you have these kinds of what I called preventive oversight in
place, preventive monitoring mechanisms, you're going to catch those problems before they turn into lawsuits. It's a liability prevention strategy, which is also another way to responding to Commissioner Fellner's question about why should corrections folks like this. It does reduce liability.

COMMISSIONER PURYEAR:
Okay. Thank you.

CHAIRMAN KANEB:
Yes, ma'am.

COMMISSIONER SMITH:
One question, Professor Deitch. One of the, it seems to me, areas or sort of agencies that hasn't been utilized very much. And as I listen -- look at your eight points, it seems like it might fit somewhere. Is the special litigation section -- I mean, where do they fall in there? And is there any prospect of sort of strengthening what they do or expanding what they do so that they could provide
another model?

MS. DEITCH:

I actually have them listed as a form of court oversight, because it's in the stage right before court oversight, and because they've got the power of the court behind them if agencies fail to comply with settlements.

I do think that that could be strengthen. Of course, they're limited to how many facilities they can go into. They got the entire country to look at. And they can probably be doing more than they are.

CHAIRMAN KANE:

We're running somewhat behind in --

COMMISSIONER AIKEN:

Mr. Chairman.

CHAIRMAN KANE:

Yes?

COMMISSIONER AIKEN:

I beg your pardon, sir. I do have two questions. I was trying to
formulate them.

CHAIRMAN KANEB:

Sorry.

COMMISSIONER SMITH:

Can I --

CHAIRMAN KANEB:

Yes.

COMMISSIONER SMITH:

-- get her to finish answering my question?

CHAIRMAN KANEB:

I'm sorry. I thought --

please.

MS. DEITCH:

I don't have much more to add. I'm sure that Margo Schlanger will be able to answer that question.

COMMISSIONER SMITH:

All right. So you think I should hold it and ask Margo if there's some way to include special lit?

MS. DEITCH:

I think she would be a great person to answer that question.

COMMISSIONER SMITH:
All right. Thanks.

CHAIRMAN KANE:

Commissioner Aiken.

COMMISSIONER AIKEN:

Thank you, sir.

Good morning.

MS. DEITCH:

Good morning.

COMMISSIONER AIKEN:

I just have two quick questions. I looked over your forms and, of course, I read the documents that you submitted. And I do appreciate the information.

First question, how do you assess culture?

MS. DEITCH:

It's actually a really, really interesting question. And I've, in fact, been called on to do cultural audits of facilities in some of my consulting work. And it is not at all an easy thing to do. It's not like it has some checklist to check off if a culture is a certain way.
Cultures is something you identify through being on-site and on a facility over a period of time talking to tons of staff, tons of prisoners, observing interactions between staff and prisoners, looking at policies that are in place, and seeing that actual practices support those policies, or if there's gaps between policies and practice. That's how you get a handle on what -- what life is like in that facility. And you also get a sense of a degree of which there's real leadership of that facility.

If there is leadership, effective leadership, and a mission and a vision that is communicated to the staff, they're going to all know that. And everything they do reflects that leadership. The lack of leadership is also very important as well. And that's attributed to cultural issues.

COMMISSIONER AIKEN:

And that was my next question, and how do you assess
leadership.

One final question. You've listed seven or eight issues, and I certainly understand that. Do you think it goes far enough?

MS. DEITCH:

I could write a much longer piece and expand on each of those issues, but those are the ones that I think are absolutely critical. Each one of those issues could be parcelled and talked about in more detail, because I don't think they're necessarily straightforward.

One issue that I did not talk about that I think is worth discussing are issues of standards and against what criteria should inspections be conducted. That's not an easy question to answer. But I -- but I do think that it provides a pretty good starting point.

COMMISSIONER AIKEN:

Okay. So you're saying -- I want to make sure I understand it. If
we address or adopt these particular
issues that you've discussed briefly
today and, obviously, they have some
more to do with a comprehensive
approach, and you need to expound upon
it, that this will -- will address the
transparency and oversight requirements
that would ensure that we meet the
mandate to set forth in the statutes?

MS. DEITCH:
I'm not positive I
understand your question. This does
not solve the problems. It's a piece
of the puzzle.

COMMISSIONER AIKEN:
I'm saying the transparency
aspect of it.

MS. DEITCH:
Aspect of it.

COMMISSIONER AIKEN:
If we adopt and incorporate
these particular things that you
discussed, would it satisfy the needs,
in your expert opinion, as to -- to
address the transparency needs in the
spirit it mandates other statutes?

MS. DEITCH:

I think so, in terms of what
would constitute effective, independent
oversight entity. That doesn't go to
questions such as what Commissioner
Fellner was asking about media access.
Because I was only looking at questions
of investigation and monitoring and not
talking, for example, about reporting
functions. I didn't get into issues of
the media which, obviously, affects
issues of transparency quite a great
deal. But, yes, I do think that these
issues, if they are addressed in your
standards, will contribute tremendously
to the issue of transparency of
correctional institutions.

COMMISSIONER AIKEN:

Thank you.

Thank you, Mr. Chair.

CHAIRMAN KANE:

Thank you, Professor Deitch.

MS. DEITCH:

Thank you very much for
inviting me.