(Off the record.)

CHAIRMAN KANE:

Ladies and gentlemen, we're
slightly behind. We are due to start our final panel at 11:00. And it's close enough, but the clock is ticking.

This panel is External Oversight: The Outside World's Responsibility to Prevent and Respond to Sexual Violence.

I think we're all here, so would you all rise and be sworn in, please.

(Four witnesses sworn.)

CHAIRMAN KANE:

We welcome Matthew Cate, Will Harrell, Jack Beck, and Margo Schlanger.

The safety and security of detention centers, lockup is compromised by sexual violence in -- within the institutions. External oversight agencies provide an option to assess internal controls in order to determine if those procedures are effective to promote accountability and ensure safety.

The panelist will discuss
examples of external oversight, both formal and informal, highlights their advantages and disadvantages, the methods by which they improve complement internal oversight systems.

Our first witness is Matthew Cate, who is the inspector general and chairman of California Rehabilitation Oversight Board. Mr. Cate is accountable to reporting to the California legislature for progress made in the Department of Corrections.

Mr. Cate.

MR. CATE:

Thank you. And I'd like to thank all the Commissioners for having me here today and to speak on this important area.

I'm -- before becoming a California inspector general, I was a prosecutor. And in particular, I recall multiple occasions sending individuals to prison for 25 years to life for offenses, such as drug offenses and property crimes, and
thought nothing other. And thought nothing of where they went for those 25 years to life after I did my job in the courtroom. Then I became an inspector general. And now I spend all of my time thinking about how these men and women are spending their time in California's prisons. And frankly, as I tour the prisons in California, I was struck by the fact that those prisons are diverse in some ways and homogenous in some ways.

We have remote and urban locations. We have new and old facilities. Progressive and old style warden, programming prisons, prisons that are locked down. Every different kind of problem that you can think of, we have it at one prison or another. Some work extraordinarily well, others do not. But some things they have in common, they are insular, opaque places.

They're restricted access by their very nature, communications
restricted in some respects. There's a professional code of silence among correctional officers just as there is among individuals in any stressful profession, the military, officers on the street, physicians in an operating room, or nurses in an operating room. And there's a culture of might makes right. And so that makes it very difficult to know exactly what's happening in these institutions, and it's difficult to fix it.

Sexual abuse issues makes that job even harder for inspector generals. Victims rarely report. Victim's and witnesses' credibility is inherently suspect because they're in prison for committing crimes, and so we need cooperation, typically, to prove up these offenses. Moreover, those -- that cooperation and evidence is difficult to, in some occasions, to properly handle and store. It's time sensitive, biological evidence quickly degrades. It requires sophisticated
investigative techniques that aren't always present. And oftentimes, perpetrators are judgment prove. You're doing life in prison already, what more can happen to you? And so that makes this issue, in particular, difficult.

Those observations have impacted the way my office conducts business. I'd like to highlight a few aspects of the California model, and then I'd like to talk about -- a little bit about what we do, and then finally a few things that I think we can do better.

We do routine audits every four years. We're required by law to audit facilities. We also audit facilities one year after a warden has been appointed to check on that warden's performance. We do investigations both criminal and administrative. We do -- we conduct special reviews on statewide issues.
inspections. And we review the entire 
officer discipline process with a group 
of attorneys with the Civil Rights 
Employment Law and Criminal Law 
background. What's new in my office 
are beginning of project to conduct 
medical inspections. We're -- we're 
working on inmate questionnaires to try 
to get to these issues of sexual 
assault. And we're working more 
closely with community stakeholders on 
these issues.

Why we can do this is that 
I -- and I think the reason we're 
typically effective is highly -- I 
believe highly in our model. I think 
that the California inspector general's 
office model is very effective for the 
following reasons:

One, it's -- I'm 
independent. I have a six-year fixed 
term. My term runs after this 
governor's term. So when Governor 
Schwarzenegger's term's out, it will be 
the next governor who decides whether I
stay or go. I have a budget that gives me some modicum of independence in that it's caseload base. So I show the legislature my caseload and then they fund it. That's what -- that's the way it's supposed to work, and that's what the penal code provides. And I don't work for CDCR. We're also transparent. All of our audits and reviews are published on our website. A summary of our investigations are published and on no accountable on the court public opinion as a result. We have full access, the golden key. We can go anywhere at anytime. We have subpoena powers, we have arrest powers, and we have a professionally trained staff.

I say that -- in closing, I say the California model, I think, is a terrific model for a standalone oversight agency. The only problem is that I don't recommend that you have a standalone oversight agency in that I think it's only one piece of effective oversight of prisons. I think you need
something like the California inspector
general's office, but you also need
ombudsman and that you also need
community volunteers walking those
prisons. You also need internal audits
and reviews. You need all those
things, I believe, a multi-disciplinary
approach to try to get at these issues.
With that, I'll take your
questions. Thank you.

CHAIRMAN KANE:
Because we have four panels,
I'm going to suggest questions be asked
after each person's testimony. We will
avoid -- I fell into with the last
panel with reading a previous witness'
testimony to a witness who was not
responsible for that testimony.
I'll start out with this.
It is our impression, from multiple
sources, that the State of California
is making great progress by leaps and
bounds in reforming and generally
improving the safety of prisoners,
hopefully, eventually the safety of the
public because of that. And in particular, their safety from sexual abuse. It is our hope to work with your state. And I believe we will have that opportunity in learning from you and maybe giving you a few things by which the California model can become a model for other states and even for the federal system.

So speaking for myself and, I think, several commissioners, we are impressed.

MR. CATE:

I'd have to say I didn't think of it. We had a -- there was a -- a few key legislators who put this -- who put this model together in cooperation with myself and in cooperation with Governor Schwarzenegger. So it really was a effort by all branches of government, including Judge Henderson in Madrid in a lot of cases, also was an active participant in that, so. That's all that happened. And you're right.
Thank you.

COMMISSIONER FELLNER:

What -- what -- is there anything that's not working, or any part of it that needs to be significantly either re-thought or re-tinkered with and that we should know about as we think about models of external oversight?

MR. CATE:

I think that at one time -- funding is -- is an important issue. Right now all the penal code says in California is that I have to have a caseload budget, but no one knows what that means exactly. And no one knows exactly how that would be enforced. You know, would I sue the legislature if it didn't happen at the governors office? I don't think so. And so instead, I think the -- a better idea is to have the inspector general's office or the -- the oversight office funded by a certain percentage of the corrections budget.
So for example, a quarter of one percent of corrections budget, whatever that is, would be the inspection general's budget every year. And I think that would provide just some additional modicum of independence. I think that -- otherwise, I think that it's -- it's working fairly well.

COMMISSIONER FELLNER:

Let me just ask one other follow-up.

California has an astonishing overcrowded situation. I was actually just reading the expert testimony that's -- that have been provided to the -- will be provided to the three court panels -- the three judge panel that's been set up about how overcrowding makes it impossible to provide medical care, mental healthcare. And basically, everything suffers. Every aspect of prisons is suffering because of the overcrowding. And I'm sure in your work you are seen
as two. And the impact of overcrowding, including the impact of overcrowding and on sexual violence, or any kind of staff violence it may cause. And I wonder if you have something to say about that to us in the connection between overcrowding and your ability to do your work and the prisons' ability to do their work are being safe and humane.

MR. CATE:

It provides a challenge in several respects. One is the sheer volume of complaints concerning living conditions. We, you know, we have 4,000 complaints a year in the inspector general's office. Obviously, that's way too many to address. And when I go and walk the tiers, or when I go to the gymnasiums that have been converted to dorms -- or for example, I was at a women's facility last month that converted a storage area into a bunk room where 30 women shared one toilet. And it's just -- it can't
continue. I think everyone recognizes that. On the other hand, it makes it challenging. Because as I audit that institution, I have to couch every recommendation and every finding, you know, with the preface that under current conditions we recommend the following. And so I like to recommend ideal reforms, but instead I find myself recommending reforms under the circumstances.

COMMISSIONER FELLNER:
Okay.

CHAIRMAN KANE:
Mr. Nolan.

COMMISSIONER NOLAN:
Yes. Mr. Cate, you -- my compliments to you for your accomplishment in California. You mentioned that volunteers is an important aspect because, despite the fact you have a golden key, when you walk around the yard everybody in the -- the whole
prison knows it, where you are and when. Whereas, volunteers they're pretty much under the radar. My impression is thought that most volunteers don't know you exist, or -- be that you're independent. And so it occurs to me that it might be part of the training and explanation of your office, you know, that would bring the packet that they're given an explanation of your office, how to contact you. And the fact that you are independent, that would give you more eyes and ears of folks that -- because, frankly, in my experience, most of the volunteers are troubled sometimes by things they see and aren't sure to whom to turn.

MR. CATE:

Commissioner Nolan, I think that was a good suggestion. I should -- I should note that I think California is improving in general. And the credit obviously goes to the administrators. I think that an
oversight agency can point out problems, but we don't fix anything. The correctional administrators fix things, and deserve all the credit for that.

We have signs that we post in visiting rooms and the entrance of each facility to let people know who we are. But I think those get overlooked often. And I'd like -- for example, in the -- in the British model or in the English model, the British inspector and the citizens who independently walk through those prisons, they work really closely together. And I think that's an area that the -- in California that I can improve upon.

CHAIRMAN KANE:

Commissioner Smith.

COMMISSIONER SMITH:

One of the things that I'm very interested in, Mr. Cate, is your past history as a prosecutor. And I wonder if you could reflect a bit on the impact of having an OIG -- OIG's
office has on prosecution of sexual
assault incidents in the State of
California.

MR. CATE:

Well, one thing that's, I think, unique to the inspector
general's office in California is that it -- it came to exist during a course of a major federal lawsuit called Madrid that dealt with officer discipline process in California in that officers weren't being effectively investigated or disciplined, and so that led to obvious abuse. And as a fix, the court, in cooperation with the governor, created the Bureau of Independent Review within my office. And so I have professionally trained lawyers who are experts in civil rights, criminal law, and employment law who oversee corrections' internal affairs process, and report on it publicly on its health and on its failings.

And as a result, the
internal -- those investigators are doing a much better job, I think, of handling those internal kind of investigations and ensuring that the relationships with the local D.A. has improved as a result. The investigations are better, the relationship with the D.A.'s office is better. So I think it helps. Ultimately, it's county by county because those D.A.'s face a lot of pressure from powerful labor union about any misconduct by officers. You know, if you have a small voting block, a D.A. can feel pressured not to file a case that may be on the border line. So it's county by county in some respects.

COMMISSIONER SMITH:
I wasn't sure from your testimony. But are investigations handled through your office, or are they handled at the facility's level?

MR. CATE:
They're -- corrections has
its own internal affairs department and
they have their own investigators,
criminal investigators. I have all
those same powers, but I typically
don't exercise them in situations where
corrections is able to do so in a -- in
a timely and professional manner.
Instead, I use my oversight abilities
to do that. I would be overwhelmed if
I try to do those kind of
investigations.
And so we limit our work to
investigations of correctional -- high
level correctional administrators,
investigations of internal affairs, the
officers themselves, and -- and
investigations that I think involve
particular notoriety, those kinds of
areas where we use our investigative
powers. Otherwise, we expect the
department to do their own
investigations.

COMMISSIONER SMITH:
But you talk about in your
testimony about sort of doing oversight
real-time. So if there's sort of a
standard investigation that the
offset -- various internal affairs is
carrying on, are you also monitoring
that as it goes along, or is it after
the fact of -- of doing an audit
process?

MR. CATE:

Yeah. We -- you're correct,
Commissioner Smith. We do -- I
wouldn't call them a standard
investigation. But all investigations
related to sexual misconduct, code of
silence, criminal conduct -- my lawyers
are doing real-time oversight of those
investigations. Meaning that from the
time that case gets to the warden,
we're tracking it to make sure it's --
it was professionally and timely
conveyed to internal affairs. And then
we meet with that officer and say, tell
me about your investigative plan. And
we critique that investigative plan in
a collaborative manner. And then we
work with the employment attorney for
the department that's going to handle
the case administratively, or the D.A.
who is going to be prosecuting them.
We don't have oversight of the D.A. but
we still butt our nose in there and
provide what we think is counseled
about these cases. And then we watch
what happens to them and we publicly
report.

CHAIRMAN KANEK:
Commissioner Puryear.

COMMISSIONER PURYEAR:
One question for you.

Indulge me in alternative history for a
second as we look at trying to prevent
the sort of -- we're obviously looking
to prevent sexual violence, but that
has a strong overlay with general
systemic problems.

If your office had existed
for the last 25 years and have been
funded the way you suggest, as percent
of the corrections' budget, do you
think that California's system would
have gotten into the shape that it's
got into?

MR. CATE:

I don't think -- well, I don't believe so. I think much of what happened is that we -- we expanded our system so fast in the 80s and 90s that oversight couldn't keep up. And it was a -- and it was in its infancy anyway. And so those problems, I think, built up over time.

And one of the things I tell -- I've told both the secretary of corrections and Governor Schwarzenegger that I thought they did wrong when the governor started was not to yell and scream about the conditions at that time. I think that there's been a lot of improvement over the last four or five years, but I think that those improvements would have happened sooner had there been, again, effective oversight back then.

COMMISSIONER PURYEAR:

Thank you.

CHAIRMAN KANE: 
Mr. Cate, getting back to California doing it as a model, reading your statement, it appears to me that you don't report to anybody except the public; is that correct?

MR. CATE:

Well, it's interesting because, technically, that's true. The governor can't fire me except for cause. I consider the governor to be my client as well as I do the public. And so I serve the public and I consider the governor and the legislature and the department to be clients who need this information.

The governor is a very important client of mine. And when he request that I do an investigation, I always do that investigation. Now -- but the point is, is that if -- if a different governor wanted to send me one wild goose chase after another to prevent me from being able to do the investigations that were really important, I would have the ability to
say no.

CHAIRMAN KANEK:

Okay. That's what I thought. And you give an example of sexual abuse situations, egregious one if that. And this complaint came into your intake unit, I assume through this hotline procedure. Does that come directly to you rather than through a prison's administrative structure so you -- and do you take, apparently, some 4500 such complaints a year directly?

MR. CATE:

Correct.

CHAIRMAN KANEK:

So this is sort of a parallel system for an inmate. I mean, they can call your 800 number, whatever it is, or they can go to the administration in their particular facility?

MR. CATE:

Right. And most of those 4,000 cases, I send a letter back that
says, you should utilize the internal processes, especially if they haven't done that. That's -- that's almost always my answer unless it's an emergency situation.

In the case you're referring to, my recollection is it was a tip from a correctional professional -- a correctional officer and not the inmate that started that whole process. But my -- I'm -- obviously, I don't do the investigations myself. My staff does it, so my memory about exactly how that started is a little vague.

CHAIRMAN KANE:  

I'm not trying to dwell with it. One last thing. I notice though about this example. You referred this complaint to U.S. Attorney rather than a district attorney. Do you remember why you would do that? Why it would be taken to the federal court system?

Were you put there?

MR. CATE:  

That's just discretion on my
part. I can send it to -- I can ask
the U.S. Attorney's office to look at
it, the D.A., or the State Attorney
General's office. All three
prosecuting agencies have jurisdiction.
In this case I chose it because I
thought it had civil right overturns.

CHAIRMAN KANE:
Just for my education. I
mean, aren't most sexual violence
matters governed by state law rather
than federal law, unless there is some
civil rights aspect to it?

MR. CATE:
That's correct.

CHAIRMAN KANE:
Okay. That's all I have.

Thank you.

COMMISSIONER FELLNER:
John, I wanted to follow-up
on that just to make it clear.
You -- Mr. Cate, you
mentioned earlier that, you know, it's
hard sometimes to get D.A.'s to take
cases because they are in areas where
they're not going to get political points when they run for office, and it may have a lot of members in that area. And I wondered, separate from using the federal courts which don't have -- they may have the same problems with juries, but at least the prosecutor is not being elected. So that's one solution. Another solution that some people talk about is that there should be some kind of like, you know, a statewide prosecutor for sexual offenses or for cases that involve correctional officers as a way to avoid some of these problems which happened all across the country.

And I'm wondering in your experience as a prosecutor -- this is one of the other -- you know, it's one of the issues we've been wrestling with, how to ensure effective, timely prosecution of cases. And I just -- if we can't do it now, I think staff would like to follow-up with you. If you have words about it, it would be great. But
I would like to get your insights on that. You're experienced on both sides of that bar.

CHAIRMAN KANE:

May I suggest that might be better just in the interest of time.

MR. CATE:

I could address at least one portion of Commissioner Fellner's question in about ten seconds. And that is, when I was a state prosecutor I lobbied the legislature to make the state attorney general's office the primary place for prison crimes to be prosecuted because of that very issue. It didn't -- it didn't get passed, but it is an interesting idea. And I'd be happy to talk to staff at a later time about that.

COMMISSIONER FELLNER:

Great. Thank you.

CHAIRMAN KANE:

Thank you. Thank you, Mr. Cate. We need to move on.

Will Harrell is appointed
governor -- by the governor conservator
for the State of Texas Youth
Commission -- that's right. There is a
conservator for the -- in May of 2007
to serve as independent ombudsman.

Mr. Harrell.

MR. HARRELL:
Thank you, Chairman. It's
certainly an honor to be here. I'm
kind of the new kid on the block as
Michele Deitch, in her testimony,
pointed out the office of Independent
of Ombudsman in Texas is in its stage
of infancy. But I can assure you that
we want to be just like Matt Cate when
we grow up. And Matt is too humble to
acknowledge that. When he started -- I
think you only had seven people on
staff?

MR. CATE:

About seven professional
staff.

MR. HARRELL:

Right. And threw in
something that's remarkable -- it's the
aspiration of other states, including
my own.

I have a background in
prison investigations and I consider
myself a disciple of the great Al
Braun's team, my first job out of the
American University of Law School, with
the ACA's vast project. And I've done
prison investigations in Latin America
and the United Nations. And as an
attorney have been involved with prison
reform. But I can assure you that in
the position of an independent
ombudsman, I think that I can have a
greater impact on the rights and the
dignity of youth incarcerated in Texas
Youth Commission, that in any other
role, certainly there's a problem.
And the way that the structure of my
office is -- almost meets all the, what
I call the Deitch eight essential
elements, except for three. And I'll
get into that.

But by way of background,
you all were in Austin, Texas, I
I believe, last March. And so you're fully aware of the crisis that were afoot involving the Texas Youth Commission. And to answer the question that was posed to Mr. Cate is, had the ombudsman office existed at that time, I think it could have been avoided.

I think the West Texas State School sexual misconduct case demonstrates a complete failure in oversight and -- and the importance of a transparent system. The sexual abuse of West Texas State School was going on for years. And until the media exposed it -- and Commissioner Fellner was discussing the importance of the media in this oversight context. I don't think that can be overstated. I do have some concerns about your responsible media, however, especially in the juvenile justice context.

Sometimes the -- the motives of the media is to get headlines to sell newspapers, not to protect the interest of -- of juveniles. And to
the extent that they would be willing
to waive the confidentiality of these
youth, could ultimately be very
damaging to the youth. And I would say
the same for adults, that I do think
there is a role in the media in this
process. And were it not for the
media, I wouldn't be sitting here today
because the West Texas State School
scandal wouldn't have been exposed and
the legislature wouldn't have come to
their feet and address the failures of
the -- of the Texas Youth Commission
through this.

Three of the elements of
the, again what I call the Deitch
essential elements that are lacking in
my office here is, one, independence.
I think we're independent on paper, but
it's difficult to be truly independent
when you are appointed by the governor
and answer, essentially, to the
governor, which is the same master of
the Texas Youth Commission.

Fortunately in my case, the
governor staffed Mr. Alfonso Royal, who
is as much as a child advocate as I
will ever be. And there's been no
conflict. There's been no attempt to
downdate some of the -- the problems
that I identified. But structurally,
that could happen.

And so as to the extent this
Commission is going to be looking at
perfect models, some alternatives to
that structure might be considered.
And I hope this is just the beginning
of a conversation, 'cause there's far
too much to really get into in the
short period of time. But I would
personally volunteer Michele Deitch to
continue to advise the Commission, and
I would be happy to help that as well.

Resources are a current
problem. I was grossly under-funded,
but I think that will over time be
addressed. But one critically positive
aspect of Senate Bill 103, was
created -- ombudsman. It gives me the
authority to consult without external
experts, and I have done so. And they have been proven to be critically important. In fact, I have a -- an example of the work that was provided in support of my office by the center of -- Dana Schroederburg and Mark Philmar drafted a memo to an analysis of youth support policy that goes well beyond the sophistication that my office probably can provide. So while I'm out there investigating the field, I'm getting expert research done by external entities. And so I'm meeting the -- the inadequacy of my current -- by reaching out in forming relationships also with academic institutions and others.

Another element that's missing from the construction of my office is a requirement that the agency responds and addresses my critique. Fortunately, however, I have been met with -- with supportive and collaborative staff people at the Texas Youth Commission. There's some
superintendents who are genuinely receptive and supportive of my mission and appreciative of what I'm able to identify and address and bring to their attention. That isn't always the case, of course. But in many instances, it has been. And I think if you take anything from my testimony it would be this, is that the -- any ombudsman or any external monitoring entity is only as good as the administration of the agency monitors.

We don't have the authority, and probably shouldn't have the authority, to force change. But to the extent that the agency is willing and receptive as oppose to defensive and dismissive of our recommendations, progress can be had.

I want to allow more time for questions. I know I'm out of time. But again, it's an honor to be here and I look forward to any questions. And I happily will continue to collaborate with the office -- with this
And I just want to mention that the -- the testimony of the earlier packet is not the update. I added and have elaborated significantly, and I'll submit that to you, to the Commission.

One more note about -- something that Ms. Deitch brought up is there -- it's critical to address individual complaints as well as systemic issues. And, you know, I'll write a memorandum on the details of the systemic problems and try to address that with the highest levels of the agency.

But if there is a missing toothbrush, I want to bring that to the attention of the case workers at the very local level, dorm by dorm. But the case of the missing toothbrush is a great analogy of what I do. If a kid is missing a toothbrush, it could be simply that that kid lost his toothbrush, but it could mean that
there's a problem with the vendor. It means that there's a statewide problem involving. But I want to get that kid's toothbrush, meanwhile dig deeper, peel the onion to figure out what is underlying the absence of that kid's missing toothbrush. Could it be that he's a young entrepreneurial and missing many toothbrushes because he's providing those shanks for other inmates, or does it mean that somebody is stealing from the warehouse, or does it mean that the vendor isn't coming through on their end of the deal?

And so any -- any complaint that an individual child bring to my attention could actually represent a much more systemic problem that needs to be addressed. Thank you.

CHAIRMAN KANEB:

Mr. Harrell, you've given examples of what -- what your office has done in its infant months. And what I'm trying to understand is -- I understand it's -- your in the
beginning of -- of the evolution of
your office. But you -- you accept and
review complaints, appeals, whatever,
from parents and family of inmates,
efficacy groups. And inmates
themselves, what direct access, if any,
do they have to your office?

MR. HARRELL:

At the moment, I go
personally to -- I've been to every TYC
facility, 13 in the state, and all the
halfway houses. Now that I'm going to
have staff, we're going to make it more
easy for kids to contact our office. I
have intentionally avoided that up
until now, because the last thing I'd
like to see happen is for a kid to call
my office and I can't get back to that
kid in five, six, seven, ten days. And
there will be further disillusion and
lose confidence in my office. But now
that I have staff, I can adequately
respond to complaints that come in
through the telephone. We'll -- we'll
make ourselves available that way.
CHAIRMAN KANEK:

So there will be, when you're ready, an ability for an inmate to directly contact your office?

MR. HARRELL:

That's correct. And right now actually we have just finished drafting a -- a pamphlet to distribute to kids. The first one of a series addressing, actually, sexual assault and what your kids need to know. The myths related to that and what they need to know, and then the way to contact their office.

With that said, my office is -- is one -- the one thing restricted in the legislation is that I cannot investigate what could be criminal activity. I immediately refer those cases to the inspector general who actually was also an entity created by Senate Bill 103 that didn't exist before this legislation was passed. I referred about 15 cases to the inspector general.
The fact that I can't investigate criminal behavior doesn't mean I don't look for it. And I do look for -- for allegations of crime, particularly sexual abuse. But I refer that over to the law enforcement for the entity -- within the entity to investigate it and prosecute.

CHAIRMAN KANE:

Maybe Doug in his statement answered my question. So to whom does the IG report to?

MR. HARRELL:

Well, they are -- Senate Bill 103 does not give them independence. They're actually supposed to report to the executive director or acting executive director of the agency; however, they are operating with independence. And that's just a choice that's been made by the agencies and by the governor. So at this moment, essentially, they report to the governor's office. But we all also report to the legislature.
CHAIRMAN KANE:  
We all meaning your office?  

MR. HARRELL:  
My office as well as the inspector general as well as the Texas Youth Commission.  

CHAIRMAN KANE:  
Regular reports are required or --  

MR. HARRELL:  
Regular reports are required, but I get legislative inquiries regular -- often. I just got one on the email today. So, I mean, regular contact with the legislative staffs who are focused on the issue.  

CHAIRMAN KANE:  
Thank you.  
Questions? Yes, Commissioner Smith.  

COMMISSIONER SMITH:  
You actually refer to a number of interesting documents that I think will be useful in terms of our work. I think one was the draft of a
handbook and also a report on youth enforcement. Will you be willing to provide those to the Commission?

MR. HARRELL:

Yeah. I'd be happy -- this is a memorandum that was drafted by -- I drafted it for a senator to give him an analysis of current Texas Youth Commission Youth Support Policy, an analysis, and a recommendation related to pose revision of that policy. I have that. And this is just a memorandum I wrote. It's basically a red flag memo that talks about my concerns related to an increased reliance of the agency on isolation programs. I'd be happy to give them to you, and neither of them identifies juveniles by name. I'd be happy to do that, yes.

COMMISSIONER SMITH:

Please attach them to your testimony and give them to -- your advice testimony that you give to the staff.
MR. HARRELL:

That'd be fine. Sure.

COMMISSIONER SMITH:

Thank you.

COMMISSIONER FELLNER:

Do your reports, are they usually public? It wasn't clear to me to what extent information such as that or others disseminated to the public when you report quarterly to the governor, the lieutenant -- I mean, how much are you -- how transparent are you allowed to be?

MR. HARRELL:

Well, I'm required to report quarterly to the legislature. That will be an open record. And frankly, all of this is open record.

What -- through a lot of the reports that I do are sort of -- I do what's called the preliminary site report. I don't have any of that today, but I can provide you with that as well, if you'd like. That is a useful report for the public or for the
legislature. It's useful for me and
the agency. And it's -- what I'll do
is go to a facility and document things
that I see in sort of general
conclusions analysis of the culture but
also individual cases with youth
specific instances, complaints that
have come to my attention.

And it's really more of a --
of a tool to document, bring it to the
agency, and address the individual
problems. But the quarterly report
will be something different than that.
The site visit reports are just really
an instrument to negotiate resolution
of individual problems as well as
inform the agency of general comments
and observations I have with regards to
a specific facility.

COMMISSIONER FELLNER:

But if people wanted to see
those, obviously deleting the names of
the youth for their confidentiality, do
you not think there's also a public
purpose to be served in having even
those however -- you know, with all the caveats as to what they are, do people know what's going on in these places?

MR. HARRELL:

It could be unfortunately misleading. I mean, it's -- it's really a snapshot of what I saw on any particular day. And some of the information that I get might not pan out. So I think what would be useful is if I would provide that report to the agency, the agency would -- within a reasonable period of time, is going to respond and address that. And then we can negotiate a corrective action plan. And then that would become, you know, a document that would be useful for the legislature and for the public in general.

COMMISSIONER SMITH:

Just one comment that I'd like to make in general, and I didn't make it for the last panel, and I thought about it after the last panel. Which is the degree -- because it seems
like these oversight structures operate at a fairly high level. And I wonder if what you find out actually were, even in the other panel, actually gets back to line -- gets back to line staff so they understand really what the status of the agency -- you know, what is the agency of the state -- the status of the agency?

MR. HARRELL:
Right.

COMMISSIONER SMITH:
You know, so it's fine to make the reports to the legislature and to the executive and to the inspector general. But in terms of changing the culture of an agency, it seems like there needs to be some sort of way to funnel that information back down to staff so that they get a snapshot. Sometimes it's useful to have that come from someone other than who's running the facility.

MR. HARRELL:
That's right. And the way
that it works -- and we're going through some transition because -- the agency is going through a profound restructuring transformation. People have been reassigned through the agency, the organizational chart is changing, things are very much in flux right now. But thus far -- Stan DeGerolami is a director of residential services, which means that he is in charge of all superintendents. And so I would have a report and I will address it with him, and he will address it with his staff.

But often, I will, depending on the receptiveness, I am more than happy to debrief on the way out of the facility while I'm there and have a conversation about this, you know, the things that I observed. And they often fill in the missing information that I'm not getting or clarify certain things or just didn't know about it. You know, sometimes we miss things.

If you walk by a problem
every single day, you begin to think
that's just the way that it is. To
bring in external fresh eyes is usually
helpful to a local administrator to
bring something that was right in their
face but they never noticed it being a
problem. I've actually been told that
by some of these administrators in the
field.

CHAIRMAN KANEK:

Other questions of Mr. Harrell?

MR. HARRELL:

I just -- a couple of things
that ya'll mentioned about the
prosecution issue. That's a --
Commissioner Fellner raised this very
important issue.

In the West Texas State
School there was a failure in so many
levels. The sexual abuse was happening
in far rural areas. The prosecutor's
constituents were not there, those
children nor their parents are the
prosecutor's constituents. The
prosecutor in -- in the West Texas State School has a very well documented detailed report from a Texas ranger regarding the sexual abuse that was happening in that facility and sat on it for over two years. To address that, the Senate Bill 103 does two things.

It provides money for rural prosecutors who often claim that they will be willing to prosecute cases but don't have the resource. So there is available state money at the attorney general's office that can be afforded local prosecution. Also, the Texas -- the adult system faced that issue years ago and created a special prosecutor unit in Austin, Texas and had the jurisdiction prosecute crimes committed in TDCJ facility pending with the state. That jurisdiction by way of Senate Bill 103 was expanded to include jurisdiction over Texas Youth Commission facility. And the Appropriations Bill created six new
prosecutor positions in the special
prosecutor's unit with crimes committed
in the Texas Youth Commission.

CHAIRMAN KANEB:
Well, if that -- if a system
is now in place, when you just
described having existed, would the --
the rangers report have gone to the
IG's office?

MR. HARRELL:
Yes. Yes. And the rangers
actually now do collaborate very
closely with the -- with the inspector
general's office.

CHAIRMAN KANEB:
Because of practice or
because they -- they are required to by
the new organization?

MR. HARRELL:
In the beginning there was a
multi-agency agreement. And in fact,
that -- before the legislation
passed -- before the Appropriations
Bill passed and became effective in
this fiscal year, which started in
September, there was multi-agency agreement with the TDCJ, inspector general's office, the Attorney General, and the Texas ranger. And they did a massive blitz throughout the state --

CHAIRMAN KANE:
We read --

MR. HARRELL:
-- in -- in every facility.

And now the A.G. and rangers are winding down from that process now that the inspector general is hiring, I think, about 16 new police officers to work in the Texas Youth Commission.

CHAIRMAN KANE:
I don't want to take the time. I guess my question answered off line. I'll leave it at that.

Are there other questions of Mr. Harrell?

Yes, Commissioner Smith.

COMMISSIONER SMITH:
Nothing that we can get into probably now. But certainly one of the things is sort of, how does all of your
office link to medical care? We had a conversation -- you can't answer it now. -- with Dr. Raimer yesterday about the system for adults. And I'd be interested, particularly since we're talking about victimization of youth, right, sort of what are those medical procedures and how is your office involved in that? And our staff will get back in contact with you.

MR. HARRELL:

I can just say one brief thing. Is that the Senate Bill 103 creates the office -- in the statement you'll see that it requires -- it was created for the purpose of investigating, evaluating, security rights of the children committed to commission, including a child release under supervision of court final discharge.

Those services, even though Texas Youth Commission contracts with UTMB, those are services provided to those kids. So I do have jurisdiction
to inspect and investigate delivery of
those services. Personally, I do not
have the expertise to do that. But
again, the statute gives me the
authority to contract with experts, and
I do plan to do that.

COMMISSIONER SMITH:

Particularly because the
issues of sexual victimization around
youths have such a broad impact
downstream, so. We'd be very
interested in receiving any information
that you get in that area.

MR. HARRELL:

Certainly.

CHAIRMAN KANE:

Thank you, Mr. Harrell.

MR. HARRELL:

Thank you.

CHAIRMAN KANE:

Our next witness is Jack
Beck. He's going to testify in his
capacity as director of the Prison
Visiting Project Correctional
Association of New York. As I read his
statement, I became aware that New York has a -- a truly unique organization and system with a long history. I mean unique in the real sense of that word, one of a kind.

We're most interested to hear from you, Mr. Beck.

MR. JACK BECK:

Well, thank you very much. And thanks to the Commission for inviting me. And I am not going to go through all my -- my testimony. I want to highlight a few -- a few items and then I'll -- we might have a chance for some discussion.

What I really wanted to focus on, one of the barriers and opportunities about investigating sexual violence in the prisons, you need from -- from other aspects. I -- for all the other aspects, I basically 100 percent endorse Michele's statement of the elements that I think are necessary, and we don't necessarily have all those elements. And if you
want to talk about that, we can.

But I think her model is the correct model.

I do want to note though, there's been some discussion about enforcement versus what is the role of a monitor. And I -- I believe it's very important that it is a -- a monitor's role is one to bring facts to light, to make recommendation, but not be an enforcer for two reasons.

One is that I believe a monitor should be talking about best practices. If you have an enforcement role, that almost always turns out to be minimal standards. What are the minimum standards that you have to comply with? And I think a monitor should be looking beyond that and looking at recommendations that go with best practices. And I also think that -- I agree with several people that talk about unless the agency is going to buy into recommendation, it's not going to happen. I think even
as -- I'm an attorney, and for 23 years
I litigated for the Prison's Right
Project Legal Aid Society, and I know
about enforcement. And it's a very
long and difficult task even when you
have the court. And so I believe the
role of the monitor is to try to
identify problems and try to develop
ideas and work with an agency to try to
get them implemented.

What are the barriers? One
thing that I want to talk about is the
issue of confidentiality, and even the
gold key. We don't have the gold key
in the sense that we are -- we are --
when we go -- I can go anywhere in the
prison where I want to go to, but
there's going to be security staff with
me in some respects. They might not
hear all the conversations because they
are aware.

And I want to get to this
particular point when you're looking at
sexual violence. The very fact that an
individual is talking to someone about
that topic, even if the agency doesn't know what the substance of it is, has ramifications and implications. And that's -- and what I mean by that is that they know that there's -- if you -- if they know the exact substance of what you're talking about in the sense of the topic, not the words, that there are -- there are complications that result from that. And that's why I would also endorse Michele's notion that you want an agency that investigates much broadly than just sexual issues. I think that if you do have sexual issues, there's going to be such barriers for people coming forward.

And that gets to my point of what the -- what I think one of the greatest advantage of an outside agency is that an individual can come forward to an outside agency without having the negative sides that often come with talking about an allegation of sexual abuse. And what I mean by that is
there's a huge downside for anybody to allege sexual abuse inside. There's issues of, will they be adequately protected if there's a formal investigation? Will they receive services? Will they be isolated? Will they be denied programs in that isolation, even if it's extensively for their protection? Will they be transferred and, therefore, lose their home? And that's what -- for a lot of these people this is their home. There's a huge downside. And also when you have the fact that few of these cases are substantiated, you know, an allegation that is non-substantiated, there's a lot of baggage that that person is going to carry. So there's a lot of risk associated that. The advantage of an outside monitor is that they can at least start that dialogue with us without necessarily invoking the formal process. That does put a burden on the outside agency of advising them about
what is the consequences, and I think
you have to do that realistically and
fairly. But I believe there's an
opportunity for people to come forward
to an outside agency that they might be
very reluctant to do with the formal
inside mechanisms that can
automatically evoke that.

On the other hand, that also
puts us in that very difficult role of
what is -- what is the role of a
monitor. Is that an agent or an
advocate, or is that someone that's
just being objective? And I think we
have to realize that it's a little
complicated. I believe that you have
to, and I hope the standards might
address some of these, you have to be
concerned about a number of aspects.
You have to be concerned about the
protection of that individual. You
have to be concerned about whether that
individual is going to get needed
services, medical and psychiatric
services. And I think, in some sense
of that, the investigation is going to be a fair and complete investigation.

On the other hand, I think a monitor's role is not to be the advocate to be pushing that investigation, not to be doing the investigation. I think it is to -- is to have the limit of advising a person of how to proceed and then turning it over to others. It is very useful. And I can say in New York we have this, that there are other entities that we can -- if we get somebody that raises this issue, we can refer them to -- there are -- there are legal entities in the state that can represent people, and there are some other advisory groups that don't have the complicated hat of monitor and can be a pure advocate. And so I think that's important.

I also want to stress the notion of -- so this is about confidentiality and being able to protect people coming forward in a way
that it's not going to immediately appear that they're raising a complaint. It could be more general. And then they can decide whether or not they want to pursue it.

I think it's very important that anybody investigating this has adequate training and expertise to do this job more appropriately. There is so many issues here, posttraumatic stress disorder. A lot of these people have had issues of violence in their life even before they got incarcerated. And I have to say this is a very real problem though I've had the National Commission Correctional Healthcare.

I do IRB work and other -- and somebody who's describing some -- you know, college students that's wanting to come in and study violence inside the prison and talk to a bunch of women. And they had no concept of -- you know, you open the Pandora's box, but what do you do? Do you have any follow-up? And to abandon these
people after they kind of told their
story, I think is irresponsible. You
have to be able at least think about
what are the consequences of -- of
someone revealing to you this very
sensitive information and how they can
be protected.

And obviously, an outside
agency can take that on, but you have
to at least thought about that. And
that's another one where you have
responsibility with information.
And -- and hopefully, you can establish
some relationship with the department
that -- that if you see something going
on, you can assure -- you can at least
make contact to assure that they're
getting the services that they need.
But you need expertise and training to
do this.

Also, there are issues of
transgender in the view of inmates
about homosexuality. These are all --
I think fall into if you're involving
and you're looking at sexual violence.
And then finally, you have to look at -- and I read a comment earlier. Sexual violence is also a subset of just violence inside the prison, and you have to be sensitive to that. So there's a lot of training that I think is necessary.

And finally, I want to talk about the issue of access to adequate information. I have presented some preliminary results we have. I'm not going to talk about them unless you have questions about it. But the bottom line of that is, you know, garbage in, garbage out. If you don't really get accurate information, how do you know that you're measuring anything? And actually, you're misleading yourselves in thinking that you -- that you have a handle on the problem. And what I attempted to present there is that you can -- if you look at this element from different ends, you see very different results.

I mean, we have almost a
thousand misbehavior reports about
something that's related to sexual
misbehavior, and yet in the PREA
reports they're reporting one or two
incidents of inmate on inmate violence.

What is the reality?

Similarly, with officer
misbehavior and misconduct. There's a
huge number of open investigations in
New York. And I wish that -- I hope
that as PREA goes along, that they will
not just do their annual snapshot. At
least in New York, you're talking about
200 cases and 100 -- I mean, 70 open
investigations. Well, what happened to
all those open investigations? So I
think there really needs to be access
to data.

I'm wondering whether the
information that gets to PREA could be
shared more broadly in trying to really
find out a way to get liable
documentation. That goes in many
different ways. And I would urge for
you to kind of think about looking at,
not only just getting their -- their
data through their questionnaires, but
also looking at more generically, like
inmate discipline and officer
discipline independently so that they
can kind of try to cross correlate and
have some accountability. Certainly,
from an outside entity where I'm all
about data, it'd be great if that could
also be made public so that we could
have a better sense. Because --
finally, I want to end with the notion
that somebody -- you talked early,
Commissioner, about the system.

Now, if you talk only about
systems in New York, we have 70
different facilities. If you're
talking about systems, you're really
missing the story. The story is not
about systems as much as what is
happening at a prison. There are
different cultures, as I tried to
emphasize. You know, one place we get
two percent of sexual violence, and
other place we have 50 percent of
people reporting it in a very broad
definition. So you can't really -- if
you put that data together, you're
really not seeing the picture. And
that's another area where -- the way
PREA is being reported. If it's on the
system wide basis, I think you're
really missing the story. You have to
get down on a facility basis.

And so I welcome comments
and questions. Thank you.

COMMISSIONER AIKEN:

Just a follow-up, Mr. Beck.
Your comments in relationship to
culture and leadership, et cetera,
on -- I mean, I'm making sure I
understand. -- it can be institution
aid with the same level of security of
inmate populations, the same type of
behavior patterns of inmate population
as it relates to classification and
public endangerment. And then
institution B, with the same type of
institution, maybe the same design of
institution for that matter. And you
find a difference in the prevalence of this type of behavior pattern, deviant behavior pattern. Is that correct?

MR. JACK BECK:

It is a -- you know, almost every prison is a little different. It's very hard to say that they're exactly the same. And some of this is a self-selecting process. So what I mean by that is -- let me give you an example.

We have a prison, Eastern Correctional Facility, that has -- it's a maximum security prison. If you actually look at the length of sentences, they're even longer. But these are people that are very interested in programs and given a lot more responsibility. The administration believes in communication. And there's almost no violence there.

You get to another prison, Attica, which everybody is pretty familiar with. Older prison, very
problematic there. There's a totally
different culture there. And the
inmate population is not identical, but
I do believe that the culture has a
huge impact on the level of violence
that goes on there. And I believe when
you create a level of violence, it
manifest itself in many different ways.

I found a correlation
between inmate on inmate violence and
staff violence. If people don't feel
empowered, they don't feel where they
can use the informal mechanisms,
they're going to use violence as a
tool. Similarly -- actually, we don't
have a huge gang problem, but gangs are
a lot more prevalence in those prisons
where people don't feel safe and where
they don't feel they have a mechanism
to communicate.

COMMISSIONER AIKEN:

Exactly. And what I'm
saying is they're not identical people
but the same basic classification of
inmate population, the same type of
staff deportment, the same type of rule
and regulation, policy and procedures
that their umbrella agency are
expecting them to operate in these
facilities.

Second point. And -- and
dthis is something I really need your
input on, as if I didn't need to have
the other input. Investigations.

There is allegations. The allegations
is made, the person that has allegedly
been violated has fully cooperated with
dates, times, place, everything. And
then you see on and on and on for a
long period of time under
investigation, under investigation,
under investigation, and it just create
a life of its own.

Do you do any tracking or do
you recommend any remedies, or how do
you balance between being fair and
honest with the investigation or foot
dragging? How -- how do you manage
that?

MR. JACK BECK:
Well, that's a very good question. And -- and I have to say we have not really looked at investigations the way I would have liked to, as a matter of fact. My violence study is recommending that we do a follow-up to look at the investigative side because in New York, there are clear deficiencies in investigations of any misbehavior. The staff is dissatisfied because it takes so long, and the inmates are usually dissatisfied because there are very few instances where staff are ever disciplined. It's a very ineffective system.

And it goes to all the points that we've heard about that the advantage of California that we don't have. There's not independence. The inspector general's office doesn't have any of that level of independence. And it just doesn't work.

And finally, even after when the IG makes a recommendation, there's
a separate administrative hearing. And in New York, it turns out that even those few cases that they find are substantiated to go to prosecution in the administrative role, they often don't succeed at that level, particularly in a sexual violence level. If you don't have physical evidence, you're just never going to win those cases. So it's -- it's a very disturbing process.

And I think there's huge barriers for people coming forward. You don't have people coming forward because, essentially, they never win. And that's -- or it's rare. And that's very difficult. And unless you find ways of showing that there's some benefit. And a rational person doing risk benefit analysis are going to say, what do I gain from this? You know, what am I -- am I going to be safer for it? And that's very hard.

COMMISSIONER AIKEN:

And thus have an impact on
the institutional culture in the ways
of, for example, a person saying, well,
if they can't take care of the
situation, I'll take care of it myself
versus the person's committing
self-mutilation, suicide. Doesn't it
have an impact on these institutional
culture?

MR. JACK BECK:
Absolutely. We have found
where -- where there are mechanisms --
and it go from grievance systems to
communication directly to the
administration to inmate organizations.
If you feel like you have someway of
resolving your problem nonviolently,
most people are going to take that
avenue. If you find that you don't
have that, it drives that whole
violence system. So I agree with you
100 percent. And -- and our prisons
are more violent because we don't deal
with violence appropriately. And
sexual abuse is just a subset of what's
going on.
COMMISSIONER AIKEN:

And whether it's an investigation or whether it's a grievance mechanism, if they are not impartial, fair, and responsive, it has a negative impact on the institution of the culture as well as the leadership; is that correct?

MR. JACK BECK:

I very much agree with that.

CHAIRMAN KANE:

Are there other questions of Mr. Beck?

Yes, Commissioner Smith.

COMMISSIONER SMITH:

Mr. Beck, you referred to two publications that would be very important to the Commission. One, your violence survey. I'd really appreciate it if you could provide it to the Commission. And in your last comments, you talked about information that you had about the impact of grievance and communications on the levels of violence and in institution. And it'd
be good if you share that information as well.

MR. JACK BECK:

Thank you.

CHAIRMAN KANE:

Other Commissioners?

Mr. Beck, we are in admiration of your long career. And I must say I personally am in great sympathy with you and your folks. When I read your statement and contrasted it with what Mr. Cate put before us, I was just blown away by the -- the structural difference. All the goodwill in the world, and now you have a better relationship with the governor than you have with the previous governor. It's the structure that -- that really has to matter in the end, so. I just made that observation.

MR. JACK BECK:

And it's also a resource question. The problem with being an outside entity, we have to raise all our own money. I mean, I have -- you
know, we got 63,000 people. I have one
project associate and then I have a
bunch of interns. And, you know,
that -- and I'm trying to go to all
these institutions and work on six
different topics. It makes it very
difficult. And so it's not a mandate.
We work really hard. But you know, if
you don't have adequate resources, you
really can't cover it. And that's why
we don't do any of the ombudsman sort
of work, which I think is crucially
important. But we don't have time to
do that. We have to really stay on a
much higher level in terms of trying to
look at systemic trends and inform it
that way.

CHAIRMAN KANE:
I love the fact that you
retain visiting --

COMMISSIONER SMITH:
Yes.

CHAIRMAN KANE:
It's so 19th century.

MR. JACK BECK:
Well, it is.

CHAIRMAN KANEB:

I mean that as a compliment.

MR. JACK BECK:

No. I actually appreciate it. And we -- and we really struggle with that. I do very much believe it's important to bring those outside, not just the experts. I mean, I've been doing this a long time, 25 years, and I bring in experts. But it's very important to bring other people. We bring in, you know, the head of the Bar Association but other -- others as well to try to educate. And I think there's nothing more educational than walking inside and walking around.

CHAIRMAN KANEB:

I have an idea. Will Harrell created the division in Texas and --

MR. HARRELL:

I want to -- actually on that point, the Juvenile Detention Alternatives Initiative of the Casey --
Casey's Foundation is an excellent program called self-inspections. And what they do is get staff and, you know, civic community leaders and train them to go and do site inspections. And it's become very effective, and maybe a model ya'll might want to take a look at. And I can also forward you information about the program.

CHAIRMAN KANEK:

We must move on. And we have one more witness, and a very important witness. Margo Schlanger is -- and I have just managed to misplace the page. -- is a professor of law, I believe, university -- Washington University in St. Louis. Ms. Schlanger is the director of the Civil Rights Litigation Clearinghouse and the leading authority on the inmate litigation constitution of law governing prison and jail conditions. We have read your statement with interest and look forward to your testimony.
MS. SCHLANGER:

Thank you. It's a great privilege to be here. So I have really two things that I want to talk about. One, is the ways in which litigation is useful as an accountability and oversight mechanism. And the second is the way in which that usefulness has been undermined in the past decade by the prison litigation format. So I'm going to start with the first and move to the second.

Generally, litigation is enormously important for jails and prisons. Now, part of that is because of the absence of other oversight mechanisms in many, many jurisdictions. Part of it is also because litigation is the way that individuals effectuate their rights, and that's true in jails and prison as well as in other areas. So -- so it's really been a crucial avenue for addressing problems and effectuating reform.

And generally speaking, what
does that -- the way that that's happened is, I talk about in my statement three regulatory paths. One is institution specific regulation, sometimes jurisdiction regulation, by way of injunctive court orders, such as the Madrid court order that we heard about earlier and many, many others that I think probably the Commissioners, and certainly all the witnesses, are familiar with. A second way is that litigation encourages transparency and public accountability not from the regulation that results from it, but from the process of litigation. And the third way is that litigation, and especially damage action litigation, deters unconstitutional behavior. It provides an incentive for the prevention of unconstitutional misconduct on the part of those systems. And those are three quite separate paths. I think that they're separate analysis.

One preface remark is, to
keep in mind, is that the comments
about -- that was made earlier about if
you have enforcement power you end up
doing minimal standards. That's very
much true of litigation. Litigation is
about constitutional minimum. It's not
about best practices. It's not about
achieving the most humane, the most
productive, the most socially --
pro-social -- the most pro-social
correction system possible. It's about
constitutional minimum, and that is
definitely something to bear in mind.
And those constitutional minimums are
low. Let me just be clear. The duty
to avoid deliberate indifference is a
very minimal duty. Nonetheless, it's a
really crucial place in which reform
has happened. Okay.

So litigation, among the
leading topics of litigation, has for
many years been violence and sexual
violence, especially violence more
general which encompasses sexual
violence within. So let me talk just
one second about three lawsuits.

   Injunctive lawsuits that
tend to involve lawyers of different
types that leads to court orders or
settlement agreements that regulate
prison systems or individual prisons.
This is a -- a fairly common
phenomenon. So the last published
account was in 2000 for prisons. The
Bureau of Justice statistic show that
court orders govern 23 percent of our
nation's state prisons. And those 23
percent of state prisons houses between
them about 40 percent of prisoners.
So this is a big deal.

   Now some of those orders are
very minimal. Some of those orders
have to do with, you know, access to
Native American religious
accommodations in all of the prison
system in New York, for example, right?
And so I don't mean to say that these
are deeply regulatory orders. I just
mean to say that court orders touch
a -- a large chunk of the prison and
jails in the country. And a number of
those orders are not about Native
American Religious Act, but are about
the topic that this Commission is most
interested, prison and jail sexual
violence, both prisoner on prisoner
violence and staff on prisoner
violence.

So I pass through my
testimony two sample orders along those
lines just for you all to get a sense
of them. If you want to read more, I'm
happy to provide them. As a matter of
fact, they're publicly acceptable on
the Civil Rights Litigation
Clearinghouse, which I am director of,
and I'd be happy to help your staff
kind of get a whole library of them if
that would be useful to you.

I think it's clear that
these orders have been helpful in
sexual misconduct in prison. And so I
could talk about that if you all ask me
some questions.

Now, individual lawsuits has
had the transparency function that I have talked about. There's nothing like a good juicy lawsuit to get press interested in what goes on in a jail and prison. And so you can get some real public interest and public attention to problems from a lawsuit. They've also been, as I say, deterrent. And I think that -- given that I just saw a sign that I have one minute, I'm going to kind of skip over that. The thing --

CHAIRMAN KANE:

We have a little more than one minute.

MS. SCHRANGER:

Okay. Good. The thing I want to emphasize is talking about the deterrent impact, is that it tends to lessen the availability of lawyers. If there are no lawyers, it's really, really, really hard to bring a lawsuit that ends up with liability. But it's even harder to bring a lawsuit that, even after liability, ends up with any
substantial damages.

Prisoners are just no good at proving damages. They just aren't.

So the -- and 96 percent of the prisoner's docket in federal court at the last count, which is a little out-of-date, was pro se. So the -- I'm going to come back to the PLRA in the way that it undermines the availability of lawyers. But -- but you have to remember that without a lawyer, even if you win your case, you end up winning a thousand, $2,000 $3,000. You don't end up with any real damages. And without real damages, if you're counting on damage action as a deterrent where somebody says, I don't want to pay out big money. Well, without the prospect of real money, that's just not going to work out.

Okay. So how is the prison litigation issue format operated in this system? Well, the first thing is that it's made it much harder to get decree because no longer can -- can
defendants settle cases without basically conceiving liability. That's a big obstacle to settlement and it has made -- it has made decrees, or at least forcible decrees, much harder to come up. That's the first thing.

The second way is it's made old decrees, and even not very old, slightly old decrees, much easier to get rid of. The PLRA says that the plaintiff has this obligation to re-prove their case every two years on motion by the defendant, and so that's an enormous burden. And it means that the plaintiff, instead of working with the defendants to effectuate reform, have to have it ever present in their mind that they might go back to court next month or the month after to re-prove their case. They have to keep doing discovery rather than moving on to remediation, and that's been a big obstacle.

Third, and probably most important -- it's possible I should
have started with this in the
exhaustion of time. The -- the PLRA
requires that -- that if, as certainly
interpreted by the Supreme Court, what
it says is that when prisoners have not
managed to successfully navigate the
often complex systems of administrative
remedies available to them in jails and
prisons that they forfeit their federal
claims, and that's a new
interpretation.
But -- well, new in some -- in some
circuits. And it doesn't look like
that would be so terrible.
I mean, we all know, and you
have heard, that grievance systems are
a terrific accountability mechanism,
and I agree with that. I think
grievance systems are among the most
effective accountability system that
exist. So what's the problem, you
might ask, with the PLRA channeling
things into the administrative system.
And the answer is because that PLRA
encourages prisons and jails to come up
with non-merit reasons to deny claims. Because if there's a non-merit reason to deny the claim, then it can't go to federal court. And so rather than encouraging them to take it seriously, to address it on the merits and deal with it, it encourages -- it encourages the prison system to direct every procedural barriers to full -- gradual with the administrator grievance. Because if there is such a non-merit way to strike that claim, that non-merit way applies in federal court and immunize the system and officers for damage actions later in injunctive suits.

So there's an -- if the prison system elects to deal on the merits with the claim, for example, if it's untimely. Say you got a time limit that says you got to file the administrative grievances within 15 days. You file it on the 18th day, they say, you know, what, this is pretty serious. We're going to deal
with it even though it's untimely.

They're then at risk for damages -- for damages later on in federal court. If instead they say, we're not going to deal with it. It's untimely. You're three days late. You're out of luck.

No damages.

So the PLRA provides this enormous incentive to undercut this inner accountability mechanism, that is administrative grievances. It also, of course, undercuts the external accountability of litigation. And I think it's problematic for both reasons, but equally for the first as for the second. It's a really terrible set of incentive to give to jails and prisons. Okay.

The -- the third way in which the PLRA has problematic -- or maybe it's the fourth. It depends on how you count. -- is the physical injury provision which says that, prisoner plaintiff may not recover damages necessitated from force of
physical injury suffered while in custody without showing physical injury. So -- boy, that covers a lot of ground. You know, that covers a lot of groping, for example. No damages. What's the physical injury?

Many -- several courts. I shouldn't say many. But at least several, and possibly many courts, say that that covers coerced rather than forced rape, because there's no physical injury with coerced. So if a prisoner has sex with an officer because the officer says that otherwise he'll take away her visitation rights, that's coerced. It's not -- it's not forcible. No physical injury.

Now, I don't mean to say that every court interpret this provision has gone that far, but some of them has and it's a deep, deep problem. I have other issues with physical injury positions but doesn't have anything to do with sexual violence. I should just say that given
the subject matter of this Commission,
I thought I'd focus on that one.

And then finally, the PLRA
has undermined the availability of
counsel even for meritorious cases by
undoing the -- the private attorney
general standard in Section 1988 of the
Civil Rights title. I'm saying that
instead of getting reasonable
attorney's fees, you're only entitled
to compensation at the CJA rate, which
is a low rate and a rate that doesn't
include the possibility of not
recovering anything if you lose. And
more important yet, that you only
recover damages up to 150 percent --
I'm sorry, you only recover attorney's
fees up to 150 percent of the -- of the
damages that are proven, which given
that prisoners never have economic
damages. The damages tends to be low.
And so -- and given the Personal Injury
Provision which says, you can't recover
for emotional damages, emotional
injuries, the damages tends to be very
low. And so detained lawyers that --
even when they win, that if the damages
are low, those cases are not going to
be compensated like other civil rights
cases, but are instead going to be
capped off at 150 percent of -- of the
proven damages. That's a very large
incentive.

So those are the ways that
PLRA has undermined litigation. And I
really do think that litigation is a
vital accountability mechanism, so.

CHAIRMAN KANEB:

Thank you. Thank you,
Ms. Schlanger. We have at least one
commissioner who is keenly interested
in talking to you about PLRA. So I
will not preempt his or other
questions, except to this degree.

If you have a suggestion
about how a defendant entity might
settle without admitting liability, I
think we'd be interested in hearing
about this. I mean, I understand if
the SEC doesn't know, it's fine for you
to say, well, okay. We didn't -- we didn't do anything wrong, but we won't do it again --

MS. SCHLANGER:
Right.

CHAIRMAN KANE:
-- type of --

MS. SCHLANGER:
Right. That's a very standard sort of a settlement. And it was prevalence prior to the PLRA. The PLRA, by stating that -- that any court enforceable order, including one entered on consent, needs to rest on a -- a -- on a finding of a violation of a followed right put that ordinary type of settlement beyond the realm of what's allowed in prison cases. And so that's the problem.

CHAIRMAN KANE:
Would you opine as to whether a defendant -- a typical defendant in an institution would, in fact, support at least the concept of being able to settle without admitting
liability?

MS. SCHLANGER:

I think so. I think that what ends up happening is that -- is that you end up with some litigation where the defendant is unable to -- basically this is a -- this is a --

CHAIRMAN KANEK:

The answer is you think so?

MS. SCHLANGER:

Yeah, I do.

CHAIRMAN KANEK:

I think our staff will want to talk to you. But I want to -- I want to recognize Commissioner Nolan right at this time.

COMMISSIONER NOLAN:

Well, actually Dr. Schlanger and I testified before on this to the committee, and she was just excellent. You can see, literally, see members of Congress's mind beginning to change because of her compelling testimony. And she really has been at the forefront of the effort in trying to
CHAIRMAN KANE:

Commissioner Smith.

COMMISSIONER SMITH:

It also sounds like we probably need to get the -- the proceedings from PLRA as part of our stuff.

Professor Schlanger, one of the questions that I asked in the earlier panel that I want to get back to, which was -- you know, is enhancing sort of the power of the special litigation division an option?

MS. SCHLANGER:

Right.

COMMISSIONER SMITH:

Are there ways that you could see that that might be helpful?

MS. SCHLANGER:

Well, you know, the Civil Rights of Institutionalized Persons Act authorize the attorney general to sue local government in incarcerated settings and the unit of the justice
department that does special
litigation, which is where I first got
into the prisons. I used to work
there.

COMMISSIONER SMITH:

Right.

MS. SCHLANGER:

I would say two things.

Number one, CRIPA does not allow the
special lit to enforce statutory
rights. So just sort of know that as
of -- as of preface, right? So that
will include compliance with whatever
standards you all come up with. CRIPA
does not allow the special litigation
section to enforce statutory rights,
only constitutional right in prison.
But put that to one side.

I guess there's an inherent
to limitation, and there's a reason why
CRIPA enforcement has never been what
the members of the civil rights
community had hoped it would be back
when they got CRIPA in 1979. And that
is -- it's just so political, you know.
Those cases have names like -- the first one I recall is United States versus Montana. It's a big deal to sue Montana. It's a very, very big deal. And so I think that -- that it will never be a primary mechanism for the enforcement of civil rights.

Now, could it be better than it is? Absolutely. Absolutely. I do not know how many lawsuits have been brought, or even how many complaints have been brought in the past four years by that section. And the reason I don't know is because they haven't filed their mandated congressional report. But were those -- but were those available, I think what we would see is that there have been very, very little enforcement. Not none. I mean, I don't want to say none. Very little. I don't think that's unique to this administration. I think that, in general, there's always a lot of reasons why prison and jail cases get short shift.
COMMISSIONER SMITH:

But one of the things that I do understand that happens with those investigations is there's a significant amount of oversight, right? And there's a significant amount of sort of, as I understand it, excavating information that is made public --

MS. SCHLANGER:

Right.

COMMISSIONER SMITH:

-- would be very important pushing --

MS. SCHLANGER:

But I think it is made public. They publish their findings letters. I don't think expert reports are published, but the findings letters are pretty comprehensive. They're not published in a way that's terribly easy to get to, but they're all on the web now. So there is -- and there's nothing -- and even apart from the public accountability, there's nothing -- I mean, I was very
interested in Mr. Harrell's testimony because, you know, you walk into a prayer as a -- a lawyer for the justice department and you're there representing the United States. And when you say, gosh, could I see this, this, this, this, this, this, this, and this, and this, and they bring it all to you in a room and you start talking to people and you start figuring out what really goes on. That's a very powerful tool, even before you get to a findings letter, to a -- it's very, very powerful. It's only as effective as the lawyers who do it. But it can be very, very powerful.

So I -- I think CRIPA's enforcement is terrific. I just don't want this Commission to put too heavy a weight. I think it's never going to be more than exemplary in terms of the number of institutions and what it can do. But it could be a good set of examples.

COMMISSIONER SMITH:
John, just one other question.

One of the things that John mentioned earlier is our role vis-a-vis the Federal Bureau of Prisons. My sense, and I'm glad that you included the Lucas settlement here, is that the -- the Bureau of Prison tends to be fairly impenetrable around litigation.

And I would be interested in you talking briefly about, you know, what are the mechanisms to hold the Bureau accountable through litigation.

MS. SCHLANGER:

Well, the Bureau, of course, has, in addition to constitutional causes of actions, has the Federal Torts Claim Act. So it's a slightly different legal setup than -- than other places. Federal judges think very well of the Bureau of Prison. It's not an easy kind of a litigation to persuade a judge meritorious when one sues the Bureau.

Now, I don't have the
experience with the BOP to be able to
tell you that it is the model that many
people say it is, or that it is not the
model that many people say it is.
I don't -- I don't have the expertise
to do that. I will say that I think
litigation has been a little bit less
salient in its operations than in some
systems.

Now, at the same time,
the -- the Bureau takes damage actions
quite seriously, so injunctive
litigation is not a very present threat
at all over the Bureau of Prison.
Damage action, quite a different story.
And there have been a number of large
judgments entered against the Bureau.
And my understanding is that those
large judgments tend to lead to real
institutional change. But that's
probably a little bit vague as -- and
that's much more of an expression than
something that I would want to kind
of --

COMMISSIONER SMITH:
But that's a good direction for us to proceed in, in terms of trying to get some sort of analysis of damage judgment against the Bureau of Prison in this area, and looking at where that has led in terms of change, so. Thank you.

MS. SCHLANGER:

There was some recent litigation in the -- and I got a hold of all of them. And I did have to go to court to get them.

COMMISSIONER SMITH:

Well, do you know who has them?

MS. SCHLANGER:

Oh, sure. I'd be happy to share the details with anyone who asks.

COMMISSIONER SMITH:

Great.

CHAIRMAN KANE:

Commissioner Puryear.

COMMISSIONER PURYEAR:

Just to follow-up. Were some of the large damage judgments against
the BOP result litigation post the
enactment of the prison litigation
format?

MS. SCHLANGER:

That's an interesting
question. The ones that -- that I
actually know about were ones where I
did a set of interview with BOP lawyers
and they were pre-PLRA judgments.

So -- and they were post-PLRA reform as
a result. Some of them were '95. They
were all in 1995. So I'm not going to
be able to answer that question. I
just don't know the answer.

COMMISSIONER PURYEAR:

But you will able to provide
us the --

MS. SCHLANGER:

Oh, absolutely. Now, one
thing that I can say is, if you die in
prison PLRA doesn't cover your losses.

Just to be clear. 'Cause it only
governs prisoners. And if you're dead,
and you're not...
Also, while we're talking about the scope of PLRA. Could you just inform some of the committee members who may not be lawyers as to what actions PLRA applies and to which action it does not?

MS. SCHLANGER:

The PLRA covers -- you may be speaking of something different, so I'd be very interested if I have this wrong according to what you're thinking. But the PLRA covers all action brought in federal court under any federal causes of action, and certain kinds of state -- state law things that are brought in federal court, although it's less common. It also governs any federal causes of action brought in state court, but not state causes of action brought in state Court. Now, I think it's about 35 states that passed their own version of the PLRA, which tends to do basically the same thing in state court, but
that's not the federal system.

COMMISSIONER PURYEAR:

Let me just ask you as a --

I think it was Holmes that once said

that a lawyer's job is to predict

future rulings by judges. It's really

just a game of prediction. And you

know that there are some -- a few cases

that are out there on the physical

injury requirement with respect to

sexual assault. I think there's one in

your materials from the Southern

District of Mississippi that concluded

that sodomy does not account as

physical injury?

MS. SCHLANGER:

Right.

COMMISSIONER PURYEAR:

Would you say that that is

an outlying case? If you're predicting

the trend, what would you say is the

likely finding with respect to whether

sexual assault is a physical injury as

a general rule in this country?

MS. SCHLANGER:
I would say two things. One, I'm aware of one circuit court opinion. It's come out the other way in the second circuit. And the cases I know of that come out the way we're talking about, those are district court cases. I guess what I would say is that it's been ten years. I mean, it's not as if we're only in the first year of this statute. And I would have in 1996 predict that it would take a year or two for this to settle out, and then we all know that, of course, sexual assault is a physical injury.

I mean, I couldn't -- it would never have occurred to me that we could go on ten years without having a definitive answer to that. And that's making me doubt my own capability. But of course, I think it's crazy and, therefore, I don't think circuit courts do crazy things. You know, I would like to tell you, of course, they're going to end up doing the right thing, but it's been ten years.
COMMISSIONER PURYEAR:

Is some of that potentially related -- we talk about the reluctance to report the mere occurrence of a sexual assault. Much less, they go to the next step and file a lawsuit in federal court for a sexual assault might be -- could your explanation have something to do with the paucity cases, in general, around sexual assault?

MS. SCHLANGER:

It could be an paucity of appeal as well, right? The other thing that PLRA does is it says that prisoners do not get the full benefit of the -- of the provision for indigent filing. They have to pay their filing fee even if they don't have any money. They get scammed over time. They have to pay them. It's currently -- in the past it's about -- I can't remember if it was $75 or $85 to file it. It's currently $350 to file a case and $450 to appeal it. Which means that if you have been re-victimized by one of these
decisions in the district court, and
now you have to think about whether
you're going to spend $450 to appeal it
to get it to the court of appeals.
That's a lot of money in prison. It's
a lot of money. So it could be some --
something to do with that.

Let me just say one thing.
I do not have any expectation that
groping is going to become -- groping
and non-penetrative of sexual assaults.
There's not going to be physical
injury.

COMMISSIONER FELLNER:
And there are cases in which
female staff have forced male inmates
to masturbate in front of them. And
again --

MS. SCHLANGER:
Not going to be a physical
injury.

COMMISSIONER FELLNER:
-- it's not a physical
injury. Humiliation is not a physical
injury.
MS. SCHLANGER:

Right. Right.

COMMISSIONER FELLNER:

And it's very clear.

COMMISSIONER PURYEAR:

One last question. You mentioned that one of the possible outcomes is that grievance systems would not be taken seriously if there's non-merit denials. And I was just -- the number sort of struck me. I just happened to asked the prior panel, I don't know if you were here, about the number of inmates sustained grievances -- or grievances were sustained by the inmate. We had the Montgomery County --

MS. SCHLANGER:

Right.

COMMISSIONER PURYEAR:

-- official say it's 45 percent. He knew that right off the top of his head. I think the other two guessed at around 25 --

MS. SCHLANGER:
Right.

COMMISSIONER PURYEAR:

-- percent. Is that consistent with what you're seeing in other jurisdictions, or do you have any comment on that? 'Cause that sounds like -- at least there they're taking some of them seriously.

MS. SCHLANGER:

I think that's true. I guess what I would say it's not -- you have not picked at random which correctional administrator you're testifying -- or testifying to you. And there are an awful lot of systems where an awful lot of grievances get dismissed for non-merit reasons. And you read them, and your mouth drops open sometimes. Now, how common is that? You know, I don't know. I just know that you read them and they're the ones where the guy miss the deadline because he was in the hospital after the assault.

COMMISSIONER FELLNER:
We also don't know from the testimony which kinds of grievances tend to get validated or sustained versus not, which will also be a breakdown we will want to know to assess that 25 or 40 percent.

MR. JACK BECK:

If I could just jump in that. I really urge -- unless you start going into category, that's not really reliable data. I have some data just in our -- it's not about sustainable, 'cause they actually don't answer that question. It's only on appeal, but. You know, there's a huge difference in the way staff misconduct grievances are handled versus other more administrative matters. And I would really suspect that these numbers would tinker tremendously, at least on those categories.

COMMISSIONER FELLNER:

Can I ask you -- if sometimes one of the things that were then -- I think it was in Doug Dretke's
presentation on Texas, was the first level of investigative unit. And my understanding, and maybe kind of more because you're the expert, is that in some cases -- in some prison systems to file an grievance the first step is that you have to complain directly to the person who you think have treated you badly.

MS. SCHLANGER:

        You know, what I have heard about Texas, in particular --

COMMISSIONER FELLNER:

        I don't know if that's the case in Texas, but I agree.

MS. SCHLANGER:

        Right. So -- so is it -- in many, many systems, a person who have to complain to is the unit manager. So that when the person you're complaining about is the unit manager, then that's happens. Now, I'm not -- there are other systems that require an attempted informal resolution. And I guess that
you go and confront the person with
whom you have the beef with. But I'm
not actually aware of any place that's
specifically says, look, you have to go
complain to the person who -- who
you're complaining about. You have to
go deal with them first.

Now, that doesn't mean it
doesn't happen, but I'm not aware of
them. But I will say that -- that
there are a number system that tells
you who you have to complain to. And
if that person is the person you're
complaining about, they don't have an
exemption. It works out to the same
place, yeah.

COMMISSIONER SMITH:

One last thing is that, it
sounds like in this conversation we
talk a lot about the adult system, but.
Just like Prison Rape Elimination Act
applies to juvenile settings, it also
applies to -- PLRA also applies to
juvenile settings as well, doesn't it?

MS. SCHLANGER:
It does. And it's -- I say the grievance provision, in particular, are especially unfortunate as applied to juvenile settings. Because in some systems when a parent complains about the mistreatment that her child has faced, that complaint is not deemed adequate for exhausted grievances. And the requirement is the child has to complain himself.

COMMISSIONER SMITH:

Do you know of anybody who's -- I mean, have you done an analysis about the impact of PLRA on sort of conditions or litigation in a juvenile context?

MS. SCHLANGER:

You know, the thing about juvenile litigation is that there's very, very little of it. And so what you'd expect to see is even less. It's very hard. I mean, that's a very, very, tricky kind of social science question. And it's certainly not one that I have ever seen any data
available that would facilitate the 
kind of analysis you're talking about. 
So what you can see is when people do 
sue, what happens to their lawsuits if 
those lawsuits resulted in published 
opinions. And the answer is it's not 
pretty. 

But -- and I'd be happy to, 
you know, provide -- although I have a 
feeling that your staff already knows 
about the ones that I know about, but 
I'd be happy to provide a couple of 
completion, as a matter of fact. But a 
real rigorous, empirical analysis? I 
haven't done one. I don't think anyone 
has done one. And I don't think anyone 
has the data to do one, although maybe 
Mr. Harrell does. 

MR. HARRELL: 

I would say, Commissioner 
Smith, that I -- my understanding on -- 
I'm out of the loop. But I think that 
there is a -- there is an effort to 
strip PREA from the -- excuse me, the 
PLRA from the juvenile context in
gathering some momentum, I understand, 
in Washington D.C. But I lost track 
with that.

COMMISSIONER SMITH:

Thank you.

CHAIRMAN KANE:

Yes, Commissioner Puryear.

COMMISSIONER PURYEAR:

Just to follow up on the 
exhaustion requirement. Let's just, 
you know, assume for the sake of 
argument that PLRA continues to be the 
law of the land, and, you know, it 
 isn't overturned in the near future. I 
know that there are different views on 
that. But if you could rewrite the 
exhaustion requirement short of just 
saying there is no requirement to go 
through the grievance process, how 
would you rewrite it?

MS. SCHLANGER:

I would -- I would say that 
prisoners bringing lawsuits are 
required to present their -- before 
they can -- before the lawsuit can be
adjudicated, that the prisoner would be
required to present their grievance to
prison officials. And that a lawsuit
would be stay or held -- I don't know,
something pending the resolution within
the prison system.

I would say that that's --
that, nonetheless, leaves a very large
incentive on the part of prisoners to
file grievances in effective systems,
because they don't have to pay $350 to
file a grievance. And so if they face
any prospect of resolution from filing
a grievance, boy, it's a much better
path for them. It's faster, it's
cheaper, and it actually is closer to
the ground that has the possibility of
fixing the problems more disputed. So
I think that leaves lots of incentives
on their part. But that's the way I
would rewrite it.

COMMISSIONER PURYEAR:

Just to follow up. Would
there be standards -- is something that
the Commission should look at standards
regarding the grievance process in
terms of deadlines and simplicity of
the process?

MS. SCHLANGER:

That's such a good question.

The proceeding statute to
the PLRA. The PLRA amended CRIPA, the
Civil Rights of Institutionalized
Persons Act. And prior to the PLRA,
CRIPA actually had such standards in
place. It's not a mandatory standard
but as, you know, advantageous
standards. And they were singularly
effective.

Now, that doesn't mean that
no such standards could ever work. But
I think that that's -- that would be
better than nothing. I continue to
think that the most important thing is
to have -- have a system that -- that
encourages prisons and jails not to
come up with reasons not to entertain
grievances. I mean, that's the most
important part.

CHAIRMAN KANEK:
Not to entertain what?

MS. SCHLANGER:

Not to come up with reasons not to take the grievances on the merits, right? That's the most important part. But the second most important part, which remains really important, is that access to federal courts is a civil right. And I don't -- civil rights lawsuit don't have administrative exhaustion requirements imposed on them in general. The only area where they do is prisons and jails. And actually, prisons and jails are an area where those requirements are most onerous, most problematic for the would be plaintiffs. And so I'm all in favor of grievance system. I think that good grievance procedures reduce litigation. They reduce liability. They prove that they are good. I am all in favor of grievance system.

But grievance system that function as a bar to civil rights
litigation, I see no real reason for that saying, being the law of the land.

CHAIRMAN KANE:

Well, thank you.

Thank you panel and anybody from previous panels who are still in the room. This two-day session has been most educational for this Commission. And that's what we need, education. Thank you and good look in your work in making prison systems better.

We are adjourned.

(Off the record.)