

16

CHAIRMAN KANEB:

17 As I said at the beginning,
18 this is the second day of two day's of
19 hearings. And today's hearing are, in
20 fact, going to be devoted to one
21 general but one very, very vital
22 subject in terms of the ultimate
23 success of the Commission's efforts
24 and, indeed, the entire incarceration
25 industry in the United States. I call

1 it an industry in the benign sense of
2 that word.

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

9 We welcome Professor Michele
10 Deitch, professor of the University of
11 Austin, LBJ School of Public Affairs.
12 Her current research is focused on the
13 issue of independent prison oversights
14 to provide an overview of the various
15 models and the functionality.

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

19 (One witness sworn.)

20 MS. DEITCH:

21 Good morning, Commissioners.
22 I'm honored to be here with you today
23 and provide you with an overview of the
24 prison oversight issue.

25 As many of you know, last

1 year I organized a major international
2 conference on the subject of prison
3 oversight. That conference, which was
4 held in Austin, Texas, brought together
5 115 of the world's top experts on this
6 issue. We had a wide range of
7 stakeholders. We had 20 percent of the
8 nation's corrections directors. We had
9 prisoners rights attorneys, human
10 rights advocates, policymakers, judges,
11 academics, journalists.
12 The draft proceeding at that conference
13 is now available. I believe they've
14 been made available to you either in
15 electronic or hard copy form, and I
16 encourage you to read that when you
17 have a chance. It was quite an
18 extraordinary conference.

19 I come to you today with a
20 strong message that came out of that,
21 and that is that prison oversight is
22 absolutely essential to the safe
23 operations of prison. It's the key
24 strategy in any campaign to find
25 solutions to problems of sexual abuse

1 in prisons. Oversight is a means of
2 achieving three goals. The objective
3 of transparency of public institutions
4 and accountability for the operation of
5 safe and humane facilities. Every
6 public agency must have effective
7 systems of accountability. That's even
8 more critical when we're talking about
9 correctional institutions, in the
10 correctional context, because the
11 stakes are so much higher.

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

18 An effective and robust
19 system of prison oversight is a
20 combination of two things. First, you
21 need sound internal accountability
22 measures. And number two, you need
23 credible and effective forms of
24 external scrutiny. The two go hand in
25 hand. Neither is a replacement for the

1 other.

2 You're going to be hearing
3 two panels after I present today. The
4 first is on systems of internal review.
5 These kinds of systems, when they're
6 well done, offer a valuable management
7 information tool for administrators.
8 It allows them to identify and address
9 operational problems at a very early
10 stage. It's critical. The second
11 issue that your panel will be hearing
12 is on external scrutiny. And the goal
13 of external scrutiny is shining a light
14 on what happens in correctional
15 institutions.

16 Transparency provides a form
17 of protection from harm as well as an
18 assurance that rights are going to be
19 vindicated in response to the public
20 need for information, and it provides a
21 credible objective assessment of
22 conditions that are in correctional
23 facilities.

24 It's especially critical to
25 have outside involvement whenever staff

1 or inmate behavior crosses the line
2 from the administrative misconduct to
3 criminal behavior, as in the case of
4 prison rape. We need the involvement
5 of state institutions outside of the
6 correctional agency.

7 So what is oversight anyway?

8 It's a term that's used a lot, and we
9 don't always understand it. I believe
10 that oversight is an umbrella concept.
11 It incorporates several discrete
12 functions. The function of regulation,
13 audit, accreditation, reporting,
14 investigation, and monitoring. I think
15 that there need to be many separate
16 mechanisms in place to fulfill each of
17 those discrete functions to make sure
18 that they are served effectively.

19 Now, in the limited time
20 that I have before you today, I'm going
21 to focus on external oversight and
22 primarily on the investigation and the
23 monitoring functions. And that's
24 because those two functions are the
25 most critical and the most immediately

1 relevant when we're talking about
2 issues of sexual assault.

3 Investigation is reactive.
4 It's a means of providing
5 accountability for past wrongdoing.
6 Monitoring, on the other hand, is
7 prevented look. How do we prevent
8 these kinds of incidents from occurring
9 in the future?

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

21 Those external modules that
22 do exist tend to fall into several
23 categories. First, they're independent
24 monitoring bodies. Perhaps the best
25 example of that is in England, the

1 British prison inspector. But you will
2 also today on the panel be hearing from
3 Matthew Cate, who runs the California
4 inspector general's office. That is
5 also an example of independent
6 monitoring body. Number two, are
7 specially created legislative bodies
8 such as what they have in Ohio. Number
9 three, ombudsman. We'll be hearing
10 from Will Harrell, who's the ombudsman
11 for the Texas Youth Commission. The
12 fourth category are inspector generals
13 specialized in the prosecution units.
14 Despite Matt Cate's title, I actually
15 put him in the category of independent
16 monitoring bodies. But you previously
17 heard from John Moriarty (phonetic) who
18 is the inspector general of Texas
19 Criminal Justice System. That's an
20 example of that. There are
21 non-governmental organizations. You'll
22 be hearing from Jack Beck, from the
23 Correctional Association of New York.
24 That, for example, is non-governmental
25 oversight. There's also lay citizen

1 oversight boards, and then there's
2 court oversight. And you'll be hearing
3 from Margo Schlanger about the ways
4 court involvement has provided
5 oversight in correctional facilities.

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

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

20 They must be independent of
21 the correctional agency that they're
22 monitoring and able to do their work
23 without interference or pressure from
24 the agency or from any other body.
25 That's number one.

1 Number two, they must have a
2 mandate to conduct regular routine
3 inspections.

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

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

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

23 Number six, the oversight
24 body must take a holistic approach to
25 its work to evaluating the treatment of

1 prisoners. It can look at statistics
2 and perform its measures, but it also
3 needs to conduct interviews, have
4 observations, and have other methods of
5 gathering information, not just
6 one -- one single methodology.

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

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

21 Whatever model oversight is
22 adopted in a specific jurisdiction
23 should contain those elements. Now, it
24 might make sense to have multiple forms
25 of oversight in a jurisdiction because

1 no one agency is going to be able to
2 fulfill all the purpose for which
3 oversight is needed. Meaningful
4 correctional oversight calls for a
5 layered approach that involves
6 complimentary models.

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

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

25 Oversight may not be a magic

1 bullet but it is, undoubtedly, able to
2 help prisons, make them better by
3 forcing questions about how and why
4 things were done certain ways. And as
5 I believe one of you commented
6 yesterday, when outsiders routinely
7 come into a -- a institution, the act
8 is a deterrent of misconduct. It's an
9 informal of social control over the
10 staff and inmate's behavior. If
11 external oversight help improve the
12 level of safety in prisons in these
13 ways, then it must be looked as the key
14 part of the solution, to eliminate
15 sexual assault in prison.

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

24 CHAIRMAN KANEB:

25 Thank you, Professor Deitch.

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

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

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

18 I could do it myself, but
19 I -- I'm interested in how you would
20 classify a federal oversight. You have
21 your eight points in terms of adequacy,
22 more than adequate. Let's say in terms
23 of a model because, hopefully, the
24 federal system will be a model of -- in
25 many ways.

1 MS. DEITCH:

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

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

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

25 CHAIRMAN KANEB:

1 So I'm talking again about
2 the federal system and what it is and
3 maybe what it might be. Do you have
4 some thoughts as to whether the role of
5 the inspector general's office could be
6 expanded to include some of the
7 activities you're talking about, such
8 as regular inspections, proactive
9 rather than reactive? Or do you think
10 we should consider suggesting some sort
11 of special division in the inspector
12 general's office to deal with sexual
13 abuse or --

14 MS. DEITCH:

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

21 CHAIRMAN KANEB:

22 No, no. I wasn't suggesting
23 limited. I was suggesting do you think
24 a special unit ought to be created for
25 sexual abuse?

1 MS. DEITCH:

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

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

1 CHAIRMAN KANEB:
2 We understand that and we
3 fully intend to. Other people are
4 going to ask you questions. We haven't
5 parceled out subjects. I'm doing this
6 for a reason.

7 MS. DEITCH:
8 Okay.

9 CHAIRMAN KANEB:
10 There are other elements of
11 your eight points that are not present
12 as far as I need to know, and I don't
13 know everything about it, in terms of
14 inspector general's role and how it
15 relates to bureau prisons and other
16 things. I think we need to do some
17 research. You probably know these
18 answers. I'm not going to take more
19 time with this now.

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

23 COMMISSIONER AIKEN:
24 No, sir.

25 CHAIRMAN KANEB:

1 Commissioner Fellner?

2 COMMISSIONER FELLNER:

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

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

13 MS. DEITCH:

14 That's not accurate --

15 COMMISSIONER FELLNER:

16 No?

17 MS. DEITCH:

18 -- certainly with regards to
19 the California inspector general. I
20 don't want to speak for Matt because
21 he'll be able to talk about that much
22 more clearly. But in his role, they've
23 got dual responsibilities. One piece
24 of which is going to be criminal
25 investigations, but another piece has

1 to do with routine inspections and
2 routine monitoring.

3 COMMISSIONER FELLNER:

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

16 And I think it's something I
17 would want -- we're going to need to
18 consider whether that provides
19 sufficient -- and I wondered if you
20 could say something about the role of
21 the press and the media as, not a
22 formal body, but as part of the -- the
23 mechanisms for oversight and
24 accountability. There's been a huge
25 effort to reduce the ability of the

1 media to understand what's going on
2 inside prison limit access through
3 various means. And I wonder what you
4 think about that in terms of furthering
5 any goals of the accountability of
6 transparency.

7 MS. DEITCH:

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

22 That doesn't mean that they
23 necessarily should have the kind of
24 access that I'm talking about an
25 independent oversight body have. But I

1 think that it plays a very critical
2 role in keeping facilities transparent.

3 COMMISSIONER FELLNER:

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

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

21 MS. DEITCH:

22 Absolutely. I think that --
23 that doesn't mean there's not a
24 balancing act that has to go on there.
25 I fully appreciate that. Our issues of

1 what constitutes the press, for
2 example, legitimate media. And those
3 are questions to resolve. And clearly,
4 it's not that they can have access to
5 every inmate. Inmates should have
6 control over who they talk to. On the
7 other hand, they are very much hampered
8 in their responsibilities if they
9 cannot have access to inmates, if they
10 cannot get into certain facilities and
11 such, so, yes, I would agree with your
12 suggestion.

13 And I would also suggest --
14 as this group may be aware, the
15 American Bar Association is currently
16 considering proposed standards on the
17 legal treatment of prisoners, which
18 expands on a wide, wide range of
19 issues. But one of the issues that
20 does deal with issues of oversight and
21 media access to prisoners is one of the
22 proposed standards, and that may be
23 something worth looking at.

24 COMMISSIONER FELLNER:

25 Well, I suppose in the

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

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

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

22 MS. DEITCH:

23 That is a really, really
24 interesting question. I think it's a
25 natural human instinct to be concerned

1 about people looking at your work,
2 whether you're a -- a professor that's,
3 you know, getting evaluations or -- or
4 an agency that for someone from the
5 outside coming in and looking at you.
6 So I see that as a -- not an expected
7 reaction.

8 On the other hand, it is
9 part of being a professional
10 organization, to be evaluated and to
11 have someone looking at you and giving
12 you objective feedback about your
13 performance. I do think that there's a
14 lot of fear on the part of correction
15 officials about people who are not in
16 the profession coming in and not
17 understanding what they're seeing.
18 That's one concern. And I think
19 there's also, perhaps, some
20 misunderstanding that oversight bodies
21 necessarily have upon enforceability.
22 And my own view is that they're not --
23 they should not have enforceability.
24 You can have regulatory bodies that has
25 enforcement responsibilities. But an

1 inspection monitoring entity is there
2 to identify problems, report on them.
3 They can use the powers of persuasion
4 to encourage certain changes, but
5 they're not there to order changes.
6 And I think that maybe that's a
7 distinction that a lot of corrections
8 people don't -- don't necessarily make.

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

22 In answer to your question
23 about how can we help them overcome
24 some of these fears, I think it will be
25 very useful to talk about the ways in

1 which external oversight benefits
2 correctional agencies. And it does in
3 many, many ways in addition to helping
4 them to become more professional. One
5 of the most significant benefits is
6 that it provides a lot of leverage for
7 correctional agencies as they, for
8 example, need to go before the
9 legislature and ask for more resources
10 or increase staffing or improved
11 conditions or better medical care.
12 It helps them to say, we have this
13 outside body that has come in and told
14 us we have these problems. We need to
15 fix this. It also provides more
16 credibility to their findings. If a --
17 if a correctional agency does its own
18 internal investigation about sexual
19 assault incidents or any other form of
20 misconduct, it's not going to carry as
21 much credibility as an outside
22 investigative body.

23 CHAIRMAN KANEB:

24 Thank you.

25 COMMISSIONER FELLNER:

1 Thank you.

2 CHAIRMAN KANEB:

3 Commissioner Puryear.

4 COMMISSIONER PURYEAR:

5 Morning. Just a -- I
6 usually only ask questions and try to
7 refrain from making too many comments,
8 but I want to pick up on Jamie's line
9 of questioning for a minute.

10 It's just a fine observation
11 in seven years around. Corrections, in
12 many ways, is one of few systems that
13 still sometimes prison is a most futile
14 system in our country. I mean, the
15 warden -- the model of corrections is
16 the warden. He is CEO/king of all that
17 he surveys. He controls most of the
18 functions within the facility. He's
19 risen up through a hierarchal structure
20 to become the overseer of all that he
21 surveys. And when people have gone up
22 through a hierarchy like that and have
23 reached a pinnacle, they may not
24 necessarily want other people
25 attempting to tell them how they should

1 manage their facility. It's a natural
2 reluctance to do that.

3 Another observation, just
4 because -- I guess that may underscore
5 why I think oversight is so important.
6 Coming from an affiliation with a
7 private corrections company, we have a
8 structure in place where I have, as a
9 general counsel, two teams that perform
10 audits annually at all of our
11 facilities. They have golden access,
12 their surprised audits. They're coming
13 unannounced in advance. They can go
14 throughout the facility and then they
15 report back on their findings. And
16 that's outside of the operational
17 structure of oversight. So we have an
18 internal function. But then nearly
19 every one of our facilities has a
20 contract monitor or contract monitors
21 from the agencies that we're
22 contracting with, some of whom I might
23 characterize as reluctant customers who
24 may not terribly like the fact that
25 we're doing this stuff; however, I want

1 to say it's a general proposition. But
2 that's -- that's true for some, which
3 provides an additional level of
4 oversight.

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

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

25 MS. DEITCH:

1 Uh-huh.

2 COMMISSIONER PURYEAR:

3 But they do have an office
4 of program review within the Bureau of
5 Prisons. Do you know anything about
6 that office or --

7 MS. DEITCH:

8 I'm not familiar with it.
9 That would be a form of an internal
10 system of accountability.

11 COMMISSIONER PURYEAR:

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

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

24 MS. DEITCH:

25 I think that as much as can

1 be done to improve internal
2 accountability measures ought to be
3 done. They ought to be as strong as
4 possible. You're going to be hearing
5 some wonderful examples of it in the
6 next -- in the next panel.

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

16 COMMISSIONER PURYEAR:

17 Let me ask you one other
18 question about court oversight. I
19 think you mentioned in your materials
20 both the strength and some of the
21 disadvantages of it. One thing we
22 talked about yesterday was some of the
23 court orders that were in place in
24 Texas and Georgia, and the possibility
25 that the legislature would pay less

1 attention to certain areas over time
2 once systems are relieved of those
3 court orders. But the court, you know,
4 there are current model of external
5 oversight, and in some sense is a court
6 oversight model that results in these
7 vicious cycle where you have a crisis,
8 you manage to the crisis, then the
9 order gets taken away, eventually
10 old -- old patterns emerge. We lapse
11 back into private practices and then
12 you have another crisis.

13 MS. DEITCH:

14 Yes.

15 COMMISSIONER PURYEAR:

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

20 MS. DEITCH:

21 Absolutely. To me, court
22 oversight is the last resort. It's
23 because other forms of oversight have
24 failed. And if you have these kinds of
25 what I called preventive oversight in

1 place, preventive monitoring
2 mechanisms, you're going to catch those
3 problems before they turn into
4 lawsuits. It's a liability prevention
5 strategy, which is also another way to
6 responding to Commissioner Fellner's
7 question about why should corrections
8 folks like this. It does reduce
9 liability.

10 COMMISSIONER PURYEAR:

11 Okay. Thank you.

12 CHAIRMAN KANEB:

13 Yes, ma'am.

14 COMMISSIONER SMITH:

15 One question, Professor
16 Deitch. One of the, it seems to me,
17 areas or sort of agencies that hasn't
18 been utilized very much. And as I
19 listen -- look at your eight points, it
20 seems like it might fit somewhere. Is
21 the special litigation section -- I
22 mean, where do they fall in there? And
23 is there any prospect of sort of
24 strengthening what they do or expanding
25 what they do so that they could provide

1 another model?

2 MS. DEITCH:

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

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

16 CHAIRMAN KANEB:

17 We're running somewhat
18 behind in --

19 COMMISSIONER AIKEN:

20 Mr. Chairman.

21 CHAIRMAN KANEB:

22 Yes?

23 COMMISSIONER AIKEN:

24 I beg your pardon, sir. I
25 do have two questions. I was trying to

1 formulate them.

2 CHAIRMAN KANEB:

3 Sorry.

4 COMMISSIONER SMITH:

5 Can I --

6 CHAIRMAN KANEB:

7 Yes.

8 COMMISSIONER SMITH:

9 -- get her to finish

10 answering my question?

11 CHAIRMAN KANEB:

12 I'm sorry. I thought --

13 please.

14 MS. DEITCH:

15 I don't have much more to

16 add. I'm sure that Margo Schlanger

17 will be able to answer that question.

18 COMMISSIONER SMITH:

19 All right. So you think I

20 should hold it and ask Margo if there's

21 some way to include special lit?

22 MS. DEITCH:

23 I think she would be a great

24 person to answer that question.

25 COMMISSIONER SMITH:

1 All right. Thanks.

2 CHAIRMAN KANEB:

3 Commissioner Aiken.

4 COMMISSIONER AIKEN:

5 Thank you, sir.

6 Good morning.

7 MS. DEITCH:

8 Good morning.

9 COMMISSIONER AIKEN:

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

15 First question, how do you
16 assess culture?

17 MS. DEITCH:

18 It's actually a really,
19 really interesting question. And I've,
20 in fact, been called on to do cultural
21 audits of facilities in some of my
22 consulting work. And it is not at all
23 an easy thing to do. It's not like it
24 has some checklist to check off if a
25 culture is a certain way.

1 Cultures is something you
2 identify through being on-site and on a
3 facility over a period of time talking
4 to tons of staff, tons of prisoners,
5 observing interactions between staff
6 and prisoners, looking at policies that
7 are in place, and seeing that actual
8 practices support those policies, or if
9 there's gaps between policies and
10 practice. That's how you get a handle
11 on what -- what life is like in that
12 facility. And you also get a sense of
13 a degree of which there's real
14 leadership of that facility.

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

23 COMMISSIONER AIKEN:

24 And that was my next
25 question, and how do you assess

1 leadership.

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

6 MS. DEITCH:

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

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

23 COMMISSIONER AIKEN:

24 Okay. So you're saying -- I
25 want to make sure I understand it. If

1 we address or adopt these particular
2 issues that you've discussed briefly
3 today and, obviously, they have some
4 more to do with a comprehensive
5 approach, and you need to expound upon
6 it, that this will -- will address the
7 transparency and oversight requirements
8 that would ensure that we meet the
9 mandate to set forth in the statutes?

10 MS. DEITCH:

11 I'm not positive I
12 understand your question. This does
13 not solve the problems. It's a piece
14 of the puzzle.

15 COMMISSIONER AIKEN:

16 I'm saying the transparency
17 aspect of it.

18 MS. DEITCH:

19 Aspect of it.

20 COMMISSIONER AIKEN:

21 If we adopt and incorporate
22 these particular things that you
23 discussed, would it satisfy the needs,
24 in your expert opinion, as to -- to
25 address the transparency needs in the

1 spirit it mandates other statutes?

2 MS. DEITCH:

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

19 COMMISSIONER AIKEN:

20 Thank you.

21 Thank you, Mr. Chair.

22 CHAIRMAN KANEB:

23 Thank you, Professor Deitch.

24 MS. DEITCH:

25 Thank you very much for

1 inviting me.