



Office of the Inspector General
United States Department of Justice

Statement of

Glenn A. Fine

Inspector General
U.S. Department of Justice

before the

Commission on Safety and Abuse in
America's Prisons

April 19, 2005

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I. INTRODUCTION

I appreciate the opportunity to appear before the Commission on Safety and Abuse in America's Prisons (Commission) to discuss the work of the Department of Justice Office of the Inspector General (OIG) in the Federal Bureau of Prisons (BOP), particularly our work relating to safety and abuse issues involving federal prisoners.

My testimony today will address several issues. I will briefly provide background on the structure and authority of the OIG, including the OIG's procedures for receiving and investigating allegations of misconduct. I will then provide statistics on OIG investigations and examples of prison abuse cases that the OIG has investigated. Then I will discuss several systemic reviews the OIG has conducted on issues that relate to prison abuse. Finally, I will offer my observations regarding safety and abuse in federal prisons.

II. OIG STRUCTURE AND AUTHORITY

The OIG is a statutorily created, independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct involving Department of Justice (Department or DOJ) programs and personnel, and to promote economy and efficiency in Department operations.

In addition to oversight of the Federal Bureau of Prisons, the OIG has jurisdiction to review the programs and personnel throughout the entire Department, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the United States Marshals Service, U.S. Attorneys' Offices, and other DOJ components.

The OIG regularly investigates allegations of violations of criminal and civil laws, regulations, and ethical standards arising from the conduct of Department employees and contractors in their numerous and

diverse activities. The OIG also audits and inspects programs in these Department components to promote integrity and effectiveness.

By the terms of the Inspector General Act of 1978, as the Department's Inspector General I am appointed by the President subject to Senate confirmation, and I report to both the Attorney General and Congress. A Presidentially-appointed Inspector General can be removed from his or her position only by the President, and according to the Inspector General Act the President must provide to both houses of Congress the reasons for the removal.

The Inspector General Act gives Inspectors General broad authority to conduct investigations and to issue reports relating to the administration of programs and operations in their agencies. Specifically, the Act gives the OIG authority to obtain access to information and documents within DOJ relating to any program or operation and to subpoena records and documents from any non-federal entity or individual.

In addition, under the Inspector General Act, the Attorney General may not prohibit the Inspector General from initiating or completing any investigation or audit unless the Attorney General determines that such action is necessary to prevent access to sensitive information relating to ongoing civil or criminal investigations, undercover operations, the identity of confidential sources, intelligence or counterintelligence matters, and other matters, the disclosure of which would constitute a serious threat to national security, or to prevent the significant impairment to the national interests of the United States. That authority has been invoked by the Attorney General only once, in 1998, to delay issuance of an OIG report during the pendency of an ongoing undercover operation by the DEA. The OIG report eventually was released, 6 months later, without any changes.

III. OIG INVESTIGATIONS DIVISION AND PROCEDURES FOR INVESTIGATING ALLEGATIONS OF PRISON ABUSE

To perform these important duties, the OIG has a staff of approximately 415 employees, about half of whom are based in Washington, D.C., while the rest work from 16 Investigations Division field and area offices and 7 Audit Division regional offices located throughout the country.

The OIG's Investigations Division is primarily responsible for investigating the allegations received by the OIG of abuse, civil rights violations, bribery, fraud, and violations of other criminal laws by Department employees, contractors, and grantees, including allegations regarding BOP employees and contractors.

In investigating these matters, OIG Special Agents have statutory law enforcement authority to carry firearms, make arrests, serve subpoenas, and seek and execute arrest and search warrants. OIG Special Agents carry out their law enforcement functions in the same manner as other Special Agents within the Department, including FBI and DEA Special Agents.

If the OIG's investigation substantiates a complaint and the conduct is potentially criminal, the OIG consults with the local U.S. Attorney, the DOJ Civil Rights Division, or the DOJ Public Integrity Section to seek prosecution of the offense. If the case is accepted for prosecution, the OIG works with the prosecutor on the criminal case. If declined for prosecution, the OIG completes the case as an administrative matter and sends the report to BOP for appropriate disciplinary action.

It is important to note that the OIG does not have responsibility or authority to investigate violence by one inmate against another, unless it was done with the involvement of a BOP employee. Inmate-on-inmate crimes are normally investigated by the FBI. Rather, OIG investigators – either on their own or sometimes jointly with the FBI – investigate allegations involving staff abuse.

One of the important attributes of an OIG investigation is our ability to pursue a matter either criminally or administratively. Many OIG investigations begin with allegations of criminal activity but, as is the case for any law enforcement agency, may not end in prosecution. When this occurs, however, the OIG is able to continue the investigation and treat the matter as a case for potential administrative discipline. The OIG's ability to handle matters both criminally or administratively helps ensure that a prosecutor's decision to decline to prosecute the matter criminally does not mean that misconduct will go unpunished.

The OIG receives allegations of abuse, civil rights violations, or other misconduct within the BOP or by BOP contractors in various ways. The OIG receives many complaints from inmates and citizens via mail, e-mail, telephone, or facsimile. In addition, every complaint of misconduct received by the BOP's Office of Internal Affairs (OIA) must be referred to the OIG for our review.

In addition, the OIG has developed several initiatives to publicize how inmates can contact us with complaints or allegations of abuse. The OIG has coordinated with the BOP to display at least two OIG posters in each BOP facility. These posters explain that the OIG investigates civil rights and civil liberties abuses by BOP employees, and they contain the OIG's postal address, e-mail address, fax number, and website address.

The OIG also has advertised via the internet, television, radio, and newspaper how to contact the OIG to report potential civil rights abuses. Moreover, the OIG has established a toll-free hotline for inmates to report any allegation. The number for this hotline and the OIG's address also are included in the BOP handbooks that are provided to inmates upon their arrival at BOP institutions.

The OIG tracks every complaint we receive in the OIG's Investigations Division's electronic database. To determine the appropriate handling of each BOP complaint, the Special Agent in Charge (SAC) or an Assistant Special Agent in Charge (ASAC) in the OIG field office in the area in which the alleged misconduct occurred reviews each complaint. Our SACs and ASACs decide whether to open an investigation of the allegations based on the seriousness of the alleged offense, the potential corroborating evidence available, the extent of any injury, and the existence of other complaints involving related conduct.

The OIG normally investigates the more serious allegations that relate to actions of a BOP employee or contractor, such as violence against inmates, sexual abuse of inmates, and introduction of contraband. However, given the large number of complaints and the OIG's limited resources, the OIG cannot investigate all allegations made against BOP employees. Instead, the OIG refers many complaints involving BOP employees to the BOP OIA. The referred complaints generally deal with non-criminal, administrative issues involving BOP employees, such as abusive language, misuse of a credit card, and conducting personal business during work hours. In addition, many of the complaints do not involve misconduct at all, but instead are complaints about matters involving issues such as food selection, bedding assignments, disciplinary actions, or the lack of hygiene products.

IV. OIG INVESTIGATIONS: COMPLAINTS, CASES, AND STATISTICS

The BOP has approximately 35,000 employees and operates 114 institutions, 6 regional offices, 2 staff training centers, and 28 community corrections management offices. In total, the BOP is responsible for the custody and care of approximately 181,000 federal offenders, 160,000 of whom are confined in BOP-operated correctional institutions and detention centers. The remainder are confined in facilities operated by state or local governments or in private facilities under contract to the government.

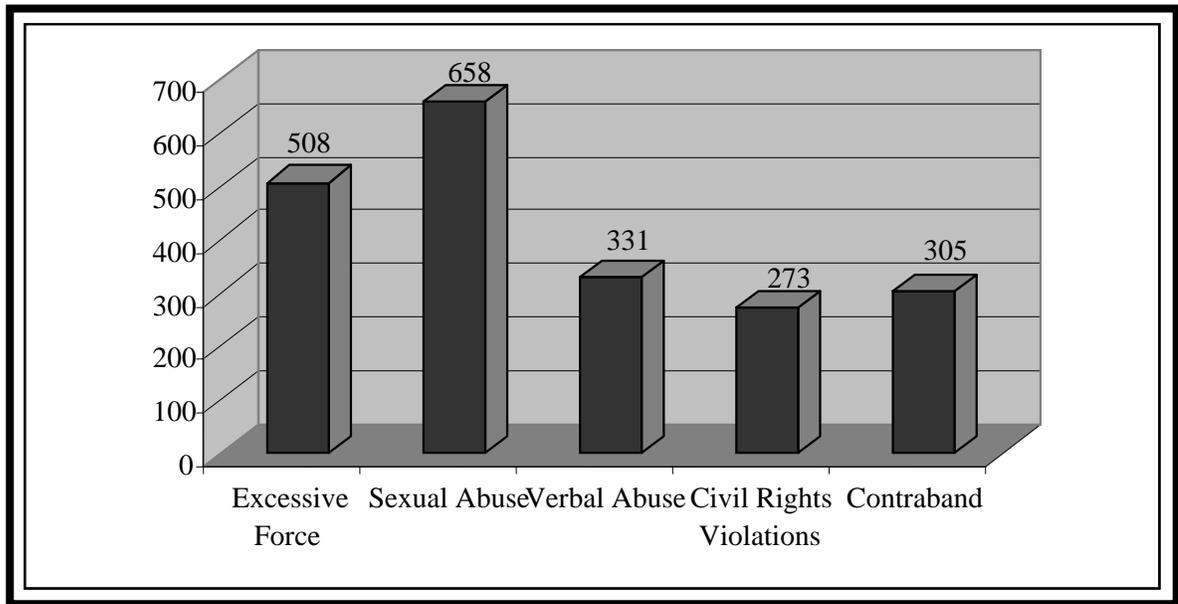
In fiscal years (FY) 2003 and 2004 (from October 1, 2002, to September 30, 2004), the OIG received 16,900 allegations of misconduct throughout the entire Department of Justice (not just the BOP). Of these total allegations, 10,150, or 60 percent, involved BOP employees and

contractors. Of the total complaints, the OIG opened 862 investigations. Approximately 513, or 60 percent, involved the BOP.

The most common allegations investigated by the OIG involving BOP employees related to sexual abuse of inmates, introduction of contraband, use of unnecessary force, other official misconduct, and off-duty misconduct.

In terms of total numbers of abuse complaints involving the BOP, in FYs 2003 and 2004, the OIG received 508 allegations of unnecessary force or physical abuse of inmates; 658 allegations of inappropriate relationships or sexual abuse of inmates; 331 allegations of threatening behavior or verbal abuse; and 273 allegations of civil rights or civil liberties violations. In addition, the OIG received 305 allegations of introduction of contraband, which includes introduction of drugs, weapons, cell phones, and other contraband. The following graph depicts the number of these types of allegations received by the OIG from FY 2003 to FY 2004.

**BOP Abuse Allegations Received by the OIG
from October 1, 2002, to September 30, 2004**



Of the 1,770 abuse allegations received by the OIG from FY 2003 to FY 2004, 194, or 11 percent, were investigated by the OIG and 36, or 19 percent, of those cases investigated resulted in convictions. The other 158 OIG investigations either resulted in administrative actions or the OIG did not substantiate the allegations.

The following are examples of BOP cases recently substantiated by the OIG:

- An OIG investigation developed evidence that a BOP correctional officer assigned to a United States Penitentiary assaulted an inmate by entering the inmate's cell, punching the inmate several times, and kicking the inmate in the jaw after the inmate fell on the floor, breaking his jaw. The officer pled guilty to an assault charge and was sentenced to 12 months' probation.
- An OIG investigation determined that a correctional officer at a Federal Medical Center had directed inmates to come to his office to place a fictitious phone call. While there, he locked them in the office and raped them. The correctional officer was sentenced to 12 years' incarceration for aggravated sexual abuse, sexual abuse of a ward, abusive sexual contact, and assault with the intent to commit a felony.
- A BOP physician assigned to a Federal Medical Center was sentenced to 14 months' incarceration and 12 months' supervised release on charges of having sex with inmates. An OIG investigation determined that the physician engaged in sexual relations on several occasions with three female inmates in his office. In addition, he smuggled jewelry into the prison for one of the inmates who he sexually abused.

In addition, the OIG investigates many cases involving the introduction of contraband into federal prisons.

- A correctional counselor assigned to a United States Penitentiary attempted to smuggle marijuana and crack cocaine into the prison for an inmate. During the OIG's investigation, the correctional counselor accepted \$5,000 from an undercover police officer to smuggle the narcotics into the prison. The correctional counselor was sentenced to 57 months' incarceration.
- A BOP correctional officer agreed to provide an inmate with 5 pounds of heroin in exchange for \$100,000. The officer was sentenced to 10 years' incarceration and 5 years' supervised release pursuant to his guilty plea of attempting to possess heroin with the intent to distribute.
- A correctional officer assigned to a Federal Correctional Institution was convicted of smuggling a cellular telephone with web browser

capability into the institution for an inmate. The officer was sentenced to 6 months' incarceration and 24 months' probation.

V. OIG SYSTEMIC REVIEWS

In addition to individual investigations of misconduct, the OIG often reviews programs and systemic issues within the Department of Justice and the BOP. Our systemic reviews often are based on a series of complaints received or upon our concern about certain program areas. The following are examples of several of those reviews that relate to or impact safety and abuse in federal prisons.

1. Abuse of September 11 Detainees Held at MDC Brooklyn

After the September 11 attacks, the OIG reviewed the treatment of aliens who were detained in connection with the Department's investigation of the attacks. In June 2003 the OIG released a 198-page report that examined how the Department handled 762 detainees held on immigration charges in connection with the investigation of the September 11 terrorist attacks, including their processing, their bond decisions, the timing of their removal from the United States, their access to counsel, and the conditions of their confinement.

In a supplemental report issued in December 2003, the OIG examined in more detail allegations made by detainees that some correctional staff members at the Metropolitan Detention Center (MDC) in Brooklyn, New York, physically and verbally abused detainees. Our report concluded that certain MDC staff members had abused some of the detainees. Although we did not find evidence that the detainees were brutally beaten, we found evidence that some officers slammed and bounced detainees against the wall, twisted their arms and hands in painful ways, stepped on their leg restraint chains, and punished the detainees by keeping them restrained for long periods of time. We concluded that the way these MDC staff members handled detainees was unprofessional, inappropriate, and in violation of BOP policy.

In addition, we found systemic problems in the way detainees were treated at the MDC, including audio taping of detainees meetings with their attorneys, unnecessary and inappropriate use of strip searches, and banging on detainees' cell doors excessively while they were sleeping.

The OIG developed evidence that approximately 16 to 20 MDC staff members violated BOP policy by physically or verbally abusing detainees. We made several systemic recommendations regarding the issues we found in the report, and we recommended that the individual MDC staff be appropriately disciplined for their conduct. The BOP responded that it

would implement the systemic recommendations, but it still is in the process of determining the appropriate discipline for the individuals.

2. Section 1001 of the USA Patriot Act

Section 1001 of the *USA Patriot Act*, enacted in October 2001, directs the OIG to “receive and review” complaints of civil rights and civil liberties abuses by Department employees, to publicize how people can contact the OIG to file a complaint, and to submit a semiannual report to Congress discussing the OIG’s implementation of these responsibilities.

In furtherance of these responsibilities, the OIG has issued six reports summarizing our Section 1001 activities. These reports describe the number of complaints we receive under this section, the cases we have opened for investigation, and the status of these cases.

In the most recent report, issued in March 2005, we discuss a case involving allegations raised by Muslim inmates at a BOP prison that the prison staff, including the Warden, discriminated against the inmates and engaged in retaliatory actions. The OIG substantiated many of the allegations against the Warden and other BOP staff. The OIG found a disturbing pattern of discriminatory and retaliatory actions against Muslim inmates by BOP officers at this facility.

For example, we found that members of the prison’s executive staff, including the Warden, unfairly punished Muslim inmates who complained about the conditions of confinement or who cooperated with the OIG’s investigation. A Muslim inmate who had filed complaints relating to his treatment at the prison was placed in the Special Housing Unit for 4 months for what we determined were specious reasons. In a separate incident, our review found that 5 days after the OIG interviewed a Muslim inmate, the Warden inappropriately ordered the inmate transferred to the Special Housing Unit for more than 120 days. We provided this report to the BOP for appropriate disciplinary action.

3. The BOP’s Disciplinary System

In September 2004, the OIG issued a report that examined the BOP’s management of its disciplinary system. Specifically, we examined whether BOP employees properly reported all allegations of misconduct; whether BOP internal affairs investigations were thorough; and whether BOP’s disciplinary actions were reasonable, consistent, and timely.

Our review found that the investigative phase of the BOP’s disciplinary process generally was thorough and the case files we reviewed were well documented. We also found no significant differences in how

the BOP treated employees of different races, gender, job series, or grade levels during the disciplinary process. However, we identified several deficiencies in the BOP's disciplinary system. For example we concluded that the independence of the investigative and adjudicative phases could be compromised because the Wardens at each BOP facility have a role in both phases; the BOP did not have written timeliness standards for processing misconduct allegations; and BOP employees did not report all employee misconduct to their supervisors or internal affairs operations.

In our review, we made 10 recommendations to help the BOP address these deficiencies. Among the recommendations were that the BOP establish a review process that ensures the investigative and adjudicative phases function independently and the BOP develop procedures to ensure that discipline is imposed consistently and timely across all of its facilities. The BOP generally concurred with our recommendations and agreed to implement corrective action.

4. BOP Drug Interdiction Activities

An important problem that can threaten the safety of inmates and staff is the introduction of drugs into prisons. Drug smuggling can corrupt staff members and compromises the safety and security of the institution, often leading to serious safety issues. Drug abuse by inmates is often associated with serious inmate misconduct such as assaults and gang violence, and it also interferes with the rehabilitative potential of BOP treatment programs.

In January 2003, the OIG issued a report that examined the issue of drugs in BOP institutions. The OIG found that inmate visitors, staff, and the mail are the three primary ways drugs enter BOP institutions. Although the BOP employs a variety of interdiction activities to intercept smuggling attempts by visitors and through the mail, we concluded that the BOP had not taken sufficient measures to reduce drug smuggling by its staff. For example, we found that interdiction activities common in many state correctional systems, such as searching staff, limiting the personal property staff are permitted to bring into the institution, or conducting random drug tests of staff, are not used by the BOP.

We also found that an insufficient number of BOP inmates received drug treatment, partly because the BOP underestimated and inadequately tracked inmates' treatment needs. In addition, non-residential treatment – an important component of drug treatment – was not adequately provided at BOP institutions due to insufficient staffing, lack of policy guidance, and lack of incentives for inmates to seek drug treatment.

The OIG recommended that the BOP adopt more stringent measures to prevent drugs from entering prisons, including randomly searching staff, which some states had implemented. In general, the BOP responded positively to our recommendations, although it is still considering the recommendation regarding searching of staff.

VI. OBSERVATIONS REGARDING PRISON ABUSE ISSUES

When discussing the issues of safety and abuse in BOP institutions, I believe it is important to note that the number of BOP employees who commit such misconduct represents a very small percentage of all BOP employees, and that most BOP employees perform their duties in a professional and effective manner. They have challenging jobs, often without high pay, and they generally perform their duties well.

Moreover, I believe that, as an entity, the BOP is generally well managed and effective at performing its important responsibilities. During my 10 years at the OIG, we have not encountered widespread abuse of inmates or pervasive staff misconduct at the BOP. While there have been problems of prison abuse in some BOP institutions, my perception is that prison abuse is likely a more serious problem in certain state prison systems than in the BOP.

However, that does not mean that such abuse never occurs in federal facilities or that it is an unimportant issue. I believe that it is a critical issue that should be aggressively addressed. I will provide for the Commission several of my observations on this topic.

First, I believe that one of the most effective ways to detect and deter prison abuse is through an independent, well-funded oversight entity, such as an Inspector General's Office. An independent Inspector General's Office can receive allegations of abuse, investigate those allegations, and seek appropriate criminal prosecutions or administrative actions for employees or contractors who such commit abuses. In my view, an independent office, outside the prison system and not dependent on prison management for its operations, provides a greater likelihood that aggressive and objective investigations of allegations of misconduct will be pursued. Every federal government agency has an Inspector General's office, as do some states and localities. I believe this model has proved successful in addressing problems of abuse, fraud, corruption and other misconduct, and I urge the Commission to consider recommending wider use of this model.

Second, even with an independent Inspector General's Office, prison management itself has an obligation to deal effectively with any allegations of abuse. In our view, the BOP generally takes inmates'

allegations seriously. The BOP consistently reports allegations to the OIG, and when the OIG refers certain matters back to the BOP – normally the less serious allegations – the BOP’s own internal affairs operations handles those investigations. The BOP has investigative offices located in each of its institutions, and its own internal affairs office, BOP OIA, is located at BOP Headquarters.

Third, discipline and prosecution for staff offenders who commit misconduct should be certain and expeditious. If an employee who abuses inmates is not criminally prosecuted or disciplined administratively, the likelihood of abuse escalating is strong. Nothing undermines efforts to prevent prison abuse more than an employee who abuses inmates but goes unpunished.

Fourth, the OIG has found that prison abuse often occurs in facilities in which other, less egregious forms of misconduct are permitted to occur. When lesser forms of misconduct go unchecked, they can lead to breakdowns in security and order, the corruption of staff, and the abuse of inmates. Moreover, physical and sexual abuse often is combined with other misconduct.

For example, we found that nearly half of the subjects in OIG sexual abuse cases also had smuggled contraband into prisons for the inmates with whom they had sexual relationships. The contraband ranged from “soft contraband” such as food, toiletries, cigarettes, cellular telephones, and jewelry to “hard contraband” such as drugs and weapons. Many of these staff members helped inmates conceal contraband by alerting the inmates to unannounced searches or by storing the contraband with the staff’s own possessions.

Without consequences or controls for forms of misconduct other than prison abuse, a corrections system will be ineffective at deterring prison abuse. In the few institutions in which the OIG has seen numerous instances of prison abuse, we also have seen a lack of effective controls from the institution’s executive management down through its correctional supervisors. We believe that prison management must strongly address other misconduct to avoid a lax environment that can lead to abuse.

Fifth, the issue of hiring and training of prison staff is critical to the issue of safety and abuse in prisons. As stated above, we believe that the vast majority of BOP employees are well qualified, hard working, competent employees. However, it is critical to provide adequate training to all employees, but particularly new employees, including effective integrity awareness training. Adequate screening of applicants for employment is also crucial to preventing hiring those who would abuse

inmates, participate in corrupt activities, or betray their position within the prison. A few corrupt employees within an institution can result in incredible damage to the safety and security of both inmates and staff. We have found that when these corrupt individuals within an institution are prosecuted and removed from the institution, the level of misconduct and allegations of abuse decline dramatically.

Finally, the laws criminalizing certain prison abuses are critical to deterring such conduct. If the law does not provide sufficient penalties to punish those who commit such abuses, efforts to deter the abuses are undermined. I make this comment with the federal laws regarding sexual abuse of inmates in mind. The OIG has investigated hundreds of allegations of sexual abuse of inmates by BOP staff. In fact, cases involving staff sexual abuse of BOP inmates annually comprise approximately 12 percent of the OIG's total number of investigations.

However, the current federal laws criminalizing staff sexual relations with federal prisoners are deficient in two critical ways. First, the crime of sexual abuse of an inmate is only a misdemeanor punishable by a maximum sentence of one year, unless the staff member uses force or overt threats to sexually abuse the inmate. See 18 U.S.C. § 2243-44. Because prison employees control many aspects of inmates' lives, in most cases prison employees obtain sex from inmates without resorting to the use of force or overt threats. Misdemeanor penalties do not adequately punish prison employees who commit this crime. In addition, the OIG has found that many federal prosecutors are not interested in prosecuting many sexual abuse cases, regardless of the strength of the evidence, because the crimes are not felonies.

The second deficiency in current federal laws covering sexual abuse of inmates is that they apply only to staff who sexually abuse federal inmates incarcerated in federal prisons and do not cover employees who sexually abuse federal inmates incarcerated in state, local, or contract facilities. This limitation has hampered the OIG's ability to obtain prosecutions for staff who sexually abuse federal inmates incarcerated by the BOP at non-federal facilities. We have found that state prosecutors inconsistently prosecute these cases because many states focus their limited resources on sexual abuse of state, rather than federal, inmates. As a result, sexual abuse of federal inmates held at contractor facilities may go unpunished because of limitations in the law's coverage.

The OIG currently is seeking to have the federal laws criminalizing staff sexual abuse of inmates strengthened to provide greater penalties for sexual abuse of inmates by federal prison employees and to cover employees and contractors who sexually abuse federal inmates housed in

non-federal facilities. I believe the Commission should support these proposals.

In conclusion, abuse and safety within prisons – for both inmates and staff – are critical issues that merit serious attention. I believe the work of this Commission can have an important impact by making recommendations to assist in these areas, and in this testimony I highlighted a few of the issues that I believe are worthy of further exploration. I thank the Commission for inviting me to provide this testimony, and I would be glad to answer any questions you have.