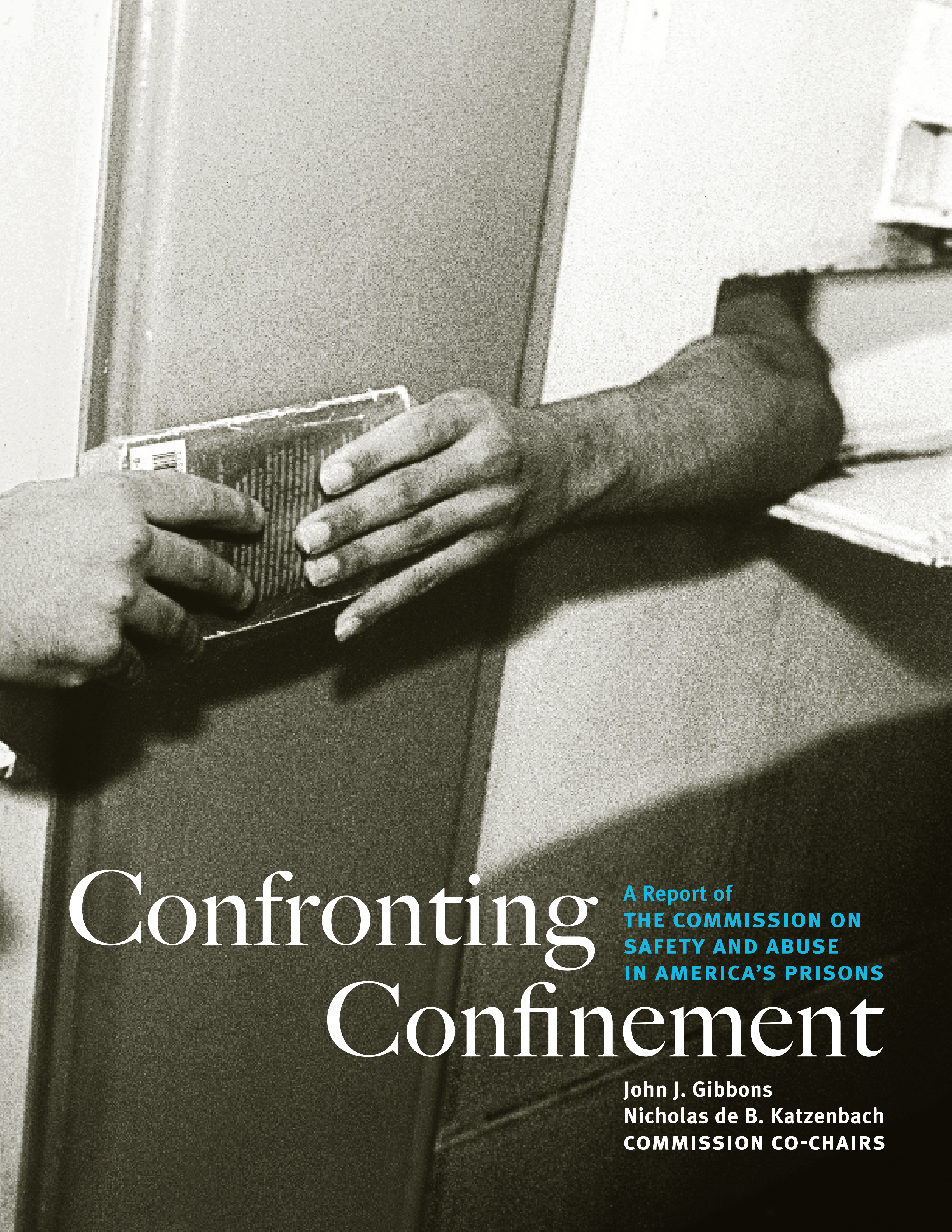

Confronting Confinement

A Report of
THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS

John J. Gibbons
Nicholas de B. Katzenbach
COMMISSION CO-CHAIRS

What happens inside jails and prisons does not stay inside jails and prisons. It comes home with prisoners after they are released and with corrections officers at the end of each day's shift. We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of us all.

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June 2006

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From the Commission Co-Chairs

MOST AMERICANS FEEL THAT LIFE IN PRISON AND JAIL DOES NOT AFFECT THEM. IT TAKES an awful event to remind people that the dangers inside can endanger them: a large-scale riot that threatens to spill over into the community; a corrections officer who is killed on the job leaving a family behind; the spread of infectious disease from cell block to neighborhood block. When the emotional reaction to the awful headline fades, however, we are left only with the sinking feeling that prison is a problem with no solution. The temptation is always to look away, hoping the troubles inside the walls will not affect us.

Every day judges send thousands of men and women to jail or prison, but the public knows very little about the conditions of confinement and whether they are punishing in ways that no judge or jury ever intended; marked by the experience of rape, gang violence, abuse by officers, infectious disease, and never-ending solitary confinement. Unless the experience of incarceration becomes real through the confinement of a loved one or through a family member who works day-to-day in a correctional facility, jails and prisons and the people inside them are far removed from our daily concerns.

Americans share concerns about struggling schools, dangerous hospitals, and corrupt corporations. We now talk openly about domestic violence and child abuse because we know there are terrible consequences for our loved ones, our families, and our communities if we remain silent. Yet there is a shame and a stigma about incarceration that makes it very difficult to have honest, productive conversations about what we are doing and the results.

Over the course of a year, the Commission on Safety and Abuse in America's Prisons tried to change that by bringing life behind bars fully, vividly into focus and by connecting what happens inside with the health and safety of our communities. Our inquiry and this report reveal both grave problems and also good work that fills us with hope. A year ago, a group of individuals with little in common promised to recommend strategies for operating correctional facilities that serve our country's best interests and reflect our highest values. Today, we speak in a single voice about the problems, our nation's ability to overcome them, and the risks for all of us if we fail to act. Our nation has the talent and know-how to transform all of our correctional facilities into institutions that we can be proud of and rely on to serve the public's interests, institutions that we would trust to ensure the safety of someone we love, places of opportunity as well as punishment. We hope you will join us in this important work.

—John J. Gibbons
Nicholas de B. Katzenbach

“The culture of our prisons virtually dictates the level of violence that you will have in them. And if you change that culture, you will reduce the violence.”

Donald Specter, director of the Prison Law Office

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"People are sentenced to prison as punishment, not for punishment…. Corrections staff should be the very best people prisoners encounter."

Kathleen Dennehy, Massachusetts corrections commissioner

Preface

A little more than one year ago, a diverse group of individuals—respected civic leaders, experienced corrections administrators, scholars, advocates for the rights of prisoners, law enforcement professionals, members of the religious community, and former prisoners—joined together as a national commission to examine the safety of America's prisons and jails. What we discovered over months of holding public hearings, talking individually and in small groups with a wide range of experts, and reviewing the available research and data is that the people who think and care most about safety and abuse in America's correctional facilities are concerned about many of the same problems and point to many of the same solutions. This report is the Commission's attempt to reflect that common ground.

America's correctional facilities are less turbulent and deadly violent than they were decades ago. Many corrections administrators have done an admirable job, but steady decreases nationally in riots and homicides do not tell us about the much larger universe of less-than-deadly violence. And beyond physical violence, there are other serious problems that put lives at risk and cause immeasurable suffering.

For all of the hard work and achievements of corrections professionals—most of which the public does not hear about—there is still too much violence in America's prisons and jails, too many facilities that are crowded to the breaking point, too little medical and mental health care, unnecessary uses of solitary confinement and other forms of segregation, a desperate need for the kinds of productive activities that discourage violence and make rehabilitation possible, and a culture in many prisons and jails that pits staff against prisoners and management against staff. There is too little help and hope for the individuals we incarcerate and too little respect and support for the men and women who work in our prisons and jails. And notwithstanding these conclusions, we know less about safety and abuse in America's prisons and jails than we should. It is simply not enough to be better than we were. We must confront and solve today's problems.

At the commission's public hearings in cities around the country, witnesses testified about the realities of life behind bars in America—both good and bad. Lou West recalled a long career in Missouri as a corrections officer trying to do what his job title suggests—"to make right," as he put it. Arthur Wallenstein and Michael Ashe talked about how providing high quality health care in the jails they run benefits the surrounding communities. Former gang member Pernell Brown described his return to prison as a counselor, helping to guide young prisoners away from gangs and violence. Corrections Secretary Theodis Beck portrayed an officer corps in North Carolina that is more diverse, better trained, and more professional than ever before.

Other people who testified before the Commission described devastating events that remain with them far beyond the walls of any jail or prison. Through tears, Pearl Beale told us her son Givon was stabbed nine times by another prisoner in a crowded Washington, D.C., jail. Garrett Cunningham recounted being raped by a Texas corrections officer twice his size and then disbelieved and left unprotected by the prison authorities in whom he confided. And Victoria Wright's world collapsed, she said, when her husband of 33 years died in a California prison, never receiving the heart medication he needed and kept asking for. These are just a few of the moving accounts we heard.

Some people would say these are just stories and would believe the ones that mirror their own views and experiences. Success stories are pitted against tragedies, statistics against anecdotes—as if one must choose between data and personal experiences that can reveal truths hidden in the numbers. Critics of the daily headlines are right when they claim that the most awful events in correctional facilities are unusual given the innumerable encounters that take place there every day, but that does not make them unimportant. Beyond the human loss, an awful event in a correctional facility can be a sign of underlying problems that may be frequent and widespread.

Over the course of the commission's inquiry, we consulted hundreds of experts. They include current and past leaders of state and federal correctional systems and current and former prison wardens and jail administrators. We listened equally to labor, seeking to understand the day-to-day experience of working in prison and jail. We consulted with experts who monitor prisons, those who advocate for the rights of the incarcerated, and with current and former prisoners and their families. We visited jails and prisons across the country. We took advice from scholars and researchers, religious leaders, and government officials responsible for making law and policy. We also sought out personal accounts about life behind bars, receiving more than a thousand letters, e-mails, and phone calls. Listening to all of them, we understood over time how the views they have in common far outnumber their disagreements.

Drawing on that consensus, this report outlines four broad areas where change can and must occur: conditions of confinement that directly affect the safety, health, and well-being of prisoners and staff, the quality of and support for labor and leadership, oversight of and accountability for what happens behind bars, and the state of our knowledge and data. In each of these areas, we offer clear and bold recommendations that have the potential to change the very nature of incarceration in this country. It will require an investment of many dollars to achieve these recommendations, but those dollars will pay dividends for years to come.

Readers looking for a report card on safety and abuse in all the prisons and jails across America will not find it in these pages. The Commission could not walk into every jail and prison, look around, ask questions, and review data. We had neither the time nor the resources for that kind of inquiry, and our work was never primarily about counting and grading. Sometimes the things we could not do loomed larger in our minds than what we were accomplishing. There are entire categories of facilities that we did not examine: juvenile detention centers and facilities housing people facing deportation, as well as facilities run by the military or by Indian tribes. We did not look specifically at differences between prisons run by government and those run by private companies, the impact of an aging prison population, and the consequences of placing juveniles in adult facilities. Women are the fastest-growing segment of the prison population and most of them are primary caregivers of children. We would like to have learned more about how issues of safety and abuse play out differently for women prisoners than they do for men. And finally, the significant differences between prisons and jails deserve much more attention than we have been able to give them.

The people who think and care most about safety and abuse in America's correctional facilities are concerned about many of the same problems and point to many of the same solutions.

There are failing prisons and jails across this country, but the American public is also failing them. As this report makes its way into the world, readers must remember that many of the biggest so-called prison problems are created outside the gates of any correctional facility. Congress and state legislatures have passed laws that dramatically increased prisoner populations without providing the funding or even the encouragement to confine individuals in safe and productive environments where they can be appropriately punished and, for the vast majority who are released, emerge better citizens than when they entered. With deep personal frustration and disappointment, former Mississippi Warden Donald Cabana told the Commission, "In an eight-year period, we doubled our prison population in the poorest state in America." As a society we have focused on putting people away without understanding the reality of life behind bars or the consequences when correctional facilities fail—for the mainly poor and minority communities that live every day with the consequences, and for all of us. We should be astonished by the size of the prisoner population, troubled by the disproportionate incarceration of African-Americans and Latinos, and saddened by the waste of human potential.

It was beyond the scope of our inquiry, and indeed beyond our mission, to explore how states and the federal government might sensibly reduce prisoner populations. Yet all that we studied is touched by, indeed in the grip of, America's unprecedented reliance on incarceration. We incarcerate more people and at a higher rate than any other country in the world. This reliance bleeds correctional systems of the resources that could be used to rehabilitate rather than merely to punish and incapacitate; it crowds whole systems and sometimes individual facilities to the breaking point; and it exacerbates racial and ethnic tensions in America through its disproportionate impact on African-Americans and Latinos.

Corrections managers are caught in the middle: They know that the number of people incarcerated cannot be an excuse for operating dangerous and abusive correctional facilities. Nor can the fact that some of those individuals have committed serious and violent crimes. Approximately half of sentenced prisoners in state facilities are serving time for a violent offense, and the proportion of violent offenders in federal facilities is 11 percent. Managers must overcome the real difficulty of creating safe and productive correctional environments when their systems must accommodate so very many people. In addition to the recommendations in this report, the Commission urges legislators to take full responsibility for tough-on-crime policies that have swelled America's prisons and jails, filling them with poor, undereducated, and unhealthy individuals. Corrections administrators must have the resources and support to operate safe and effective prisons and jails. Better funding will not guarantee better results, but without it too many vital reforms will never be attempted.

Corrections administrators also have obligations. In correctional facilities around the country, there are stark differences and a dehumanizing disconnection between the people who are incarcerated and the men and women sworn to protect and supervise them. Those differences involve race, culture, class, gender, and the difference between rural and urban America. The best corrections leaders are developing cultural competence within their institutions, but unless that practice spreads, America's prisons and jails will do more harm than good.

When we began our inquiry in March, 2005, it felt like the right time for the first national prison commission in three decades. At 2.2 million, the prisoner population was larger than ever and still growing, and there were accumulating doubts about the effectiveness and morality of our country's approach to confinement. We needed and were ready to know the state of safety and abuse in America's prisons and jails. Fifteen months later, as we complete our report, the need for reform feels even more urgent. Millions and millions of lives are at stake. It is time to do what corrections officer Lou West tries to do every day: to make things right. ■

Commissioners

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The Hon. John J. Gibbons: An attorney in private practice who argued the groundbreaking *Rasul v. Bush* case before the U.S. Supreme Court and a former Chief Judge of the U.S. Court of Appeals for the Third Circuit

Nicholas de B. Katzenbach: An attorney in private practice and former Deputy Attorney General and Attorney General of the United States (under Presidents Kennedy and Johnson) who led the federal government's efforts to desegregate the American South and chaired the 1967 Commission on Crime in the United States

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Salvador Balcorta: CEO of Centro de Salud Familiar La Fe in El Paso, Texas; Board Member of the National Council of La Raza; and a nationally respected Chicano activist for social justice

Stephen B. Bright: One of the most well-known advocates in the country for the rights of prisoners and former Director of the Southern Center for Human Rights in Atlanta, Georgia, which provides representation to prisoners in cases involving claims of cruel and unusual conditions of confinement

Richard G. Dudley, Jr., M.D.: A psychiatrist in private practice who is frequently called to provide expert testimony in criminal and civil cases around the country about the lasting psychological damage of violence and abuse in prison

James Gilligan, M.D.: A renowned expert on violence and violence prevention who is currently Visiting Professor of Psychiatry and Social Policy at the University of Pennsylvania and was formerly Director of Mental Health for the Massachusetts prison system

Saul A. Green: Senior Counsel and member of Miller Canfield's Minority Business Practice Group and former U.S. Attorney for the Eastern District of Michigan (1994–2001)

Ray Krone: Former prisoner who spent more than a decade behind bars, some of it on death row, before DNA testing cleared his name

Mark H. Luttrell: Sheriff of Shelby County (Memphis), Tennessee, and former warden at three federal prisons

Gary D. Maynard: Director of the Iowa Department of Corrections and President-Elect of the American Correctional Association

Marc H. Morial: President and CEO of the National Urban League and a former Mayor of New Orleans and Louisiana State Senator

Pat Nolan: President of Prison Fellowship's Justice Fellowship and a member of the National Prison Rape Elimination Commission, and a former Republican leader in the California State Assembly who served 25 months in a federal prison on a racketeering conviction

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Frederick A. O. Schwarz, Jr.: Senior Counsel at Cravath, Swaine & Moore LLP and also at New York University Law School's Brennan Center for Justice

Stephen T. Rippe: Executive Vice President and COO of the Protestant Episcopal Cathedral Foundation and former Major General in the U.S. Army

Laurie O. Robinson: Director of the University of Pennsylvania's Master of Science in Criminology Program and Chair of the Vera Institute of Justice Board of Trustees, and former Assistant Attorney General in charge of the Office of Justice Programs (1993–2000)

Senator Gloria Romero: California Senate Majority Leader and Chair of the Senate Select Committee on the California Correctional System

The Hon. William Sessions: A partner in the Washington, D.C., office of Holland & Knight LLP, former U.S. District Judge in the Western District of Texas, and former Director of the Federal Bureau of Investigation

Hilary O. Shelton: Director of the National Association for the Advancement of Colored People, Washington Bureau

Summary of Findings and Recommendations

WHAT HAPPENS INSIDE JAILS AND PRISONS DOES NOT STAY INSIDE JAILS AND PRISONS. IT comes home with prisoners after they are released and with corrections officers at the end of each day's shift. When people live and work in facilities that are unsafe, unhealthy, unproductive, or inhumane, they carry the effects home with them. We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of us all.

The daily count of prisoners in the United States has surpassed 2.2 million. Over the course of a year, 13.5 million people spend time in jail or prison, and 95 percent of them eventually return to our communities. Approximately 750,000 men and women work in U.S. correctional facilities as line officers or other staff. The United States spends more than 60 billion dollars annually on corrections. Many of those who are incarcerated come from and return to poor African-American and Latino neighborhoods, and the stability of those communities has an effect on the health and safety of whole cities and states. If there was ever a time when the public consequences of confinement did not matter, that time is long gone.

Some of the people confined in our jails and prisons have committed serious and violent crimes. We can legitimately deprive them of liberty, but we cannot allow anyone who is incarcerated to be victimized by other prisoners, abused by officers, or neglected by doctors. We must remember that our prisons and jails are part of the justice system, not apart from it.

There are nearly 5,000 adult prisons and jails in the United States—no two exactly alike. Some of them are unraveling or barely surviving, while others are succeeding and working in the public's interest. To succeed, jail and prison administrators everywhere must confront prisoner rape, gang violence, the use of excessive force by officers, contagious diseases, a lack of reliable data, and a host of other problems. Solving these problems takes dedication and dollars. But there is no reason why health and safety should be limited to only some correctional facilities and no reason why even the best institutions cannot make a larger contribution to public safety and public health. The findings and recommendations outlined below, and explored in detail throughout the pages of this report, address the most pressing problems facing corrections today and the reforms that can and must occur.

I. Conditions of Confinement

1.1. VIOLENCE

Finding: Violence remains a serious problem in America's prisons and jails.

There is disturbing evidence of individual assaults and patterns of violence in some U.S. prisons and jails. Corrections officers told the Commission about a near-constant fear of being assaulted. Former prisoners recounted gang violence, rape, beatings by officers, and in one large jail, a pattern of illegal and humiliating strip-searches. Former Florida Warden Ron McAndrew described small groups of officers operating as "goon squads" to abuse prisoners and intimidate other staff. And in February, 2006, while the Commission was gathered in Los Angeles for a final hearing, more than a thousand prisoners were attacking each other in the Los Angeles County jails, days of violence that the press described as riots. At that hearing, California corrections Secretary Roderick Hickman told the Commission: "Quite frankly, no one denies that violence occurs in prisons and jails in this country."

Finding: We know which conditions in correctional facilities fuel violence and, therefore, how to prevent violence.

Violence and abuse are not inevitable. Every correctional facility can provide a safe environment for prisoners and staff. As Donald Specter, director of the Prison Law Office in California, told the Commission: "Prisons don't have to be as dangerous and as violent as they are. The culture of our prisons virtually dictates the level of violence that you will have in them. And if you change that culture, you will reduce the violence."

The majority of prisons and many jails hold more people than they can deal with safely and effectively, creating a degree of disorder and tension almost certain to erupt into violence. Similarly, few conditions compromise safety more than idleness. But because lawmakers have reduced funding for programming, prisoners today are largely inactive and unproductive. Highly structured programs are proven to reduce misconduct in correctional facilities and also to lower recidivism rates after release. Results from a Zogby International poll released in April, 2006, show the public's support for protecting public safety through better programming: 87 percent of Americans favor rehabilitative services for prisoners as opposed to punishment only.

Decisions about where to house prisoners and how to supervise them also have an enormous impact on safety. A well-developed system to objectively classify prisoners by risk reduces violence among them. So does an approach to supervision in which officers are engaging with prisoners throughout the day. Yet the best classification and supervision systems still are not commonplace around the country.

Teaching and modeling non-forceful ways for officers to resolve conflict is crucial because the unnecessary or excessive use of force and weapons provokes broader violence. Such guidance is especially important given the increasing use of pepper spray, TASER guns, and other weapons that can cause serious injuries if used excessively. Former general counsel of the Texas prison system, Steve Martin, told the Commission that these weapons are often used as a "first strike" response, before other tactics are considered or attempted.

Finally, the ties with family and community that former prisoners depend on after release also promote safety during incarceration. Unfortunately, the distance between home and the correctional facility—and a culture in some facilities that does not welcome visitors—makes it hard to maintain those ties. There are even barriers to maintaining contact by phone when the cost of receiving a collect call from someone in prison—much higher than in the free world—operates like a tax on poor families.

PREVENT VIOLENCE: RECOMMENDATIONS

1. Reduce crowding. States and localities must commit to eliminating the crowded conditions that exist in many of the country's prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house.

2. Promote productivity and rehabilitation. Invest in programs that are proven to reduce violence and to change behavior over the long term.

3. Use objective classification and direct supervision. Incorporate violence prevention in every facility's fundamental classification and supervision procedures.

4. Use force and non-lethal weaponry only as a last resort. Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.

5. Employ surveillance technology. Make good use of recording surveillance cameras to monitor the correctional environment.

6. Support community and family bonds. Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

Finding: We need more reliable measures of violence behind bars than we have today.

Data about deadly violence show decreasing rates nationally of homicide and suicide, but we do not have equally reliable data about the much larger universe of non-lethal violence. There are prisons and jails that are not collecting or reporting information about assaults: For example, Arkansas, North Dakota, and South Dakota each reported zero assaults among prisoners statewide in the year 2000. In-depth studies suggest that actual levels of violence among prisoners are at least five times higher than what even the best administrative records capture. Equally troubling, we have no national measures of non-lethal physical violence perpetrated by staff against prisoners, despite widespread agreement that excessive use of force happens. Chief statistician for the federal Bureau of Justice Statistics Allen Beck told the Commission, "I cannot measure well the level of assaults using administrative records as they exist today."

1.2. MEDICAL CARE

Finding: High rates of disease and illness among prisoners, coupled with inadequate funding for correctional health care, endanger prisoners, staff, and the public.

Much of the public dismisses jails and prisons as sealed institutions, where what happens inside remains inside. In the context of disease and illness, which travel naturally from one environment to another, that view is clearly wrong. Left untreated, staph infections and diseases such as tuberculosis, hepatitis C, and HIV directly affect our families, neighborhoods, and communities.

As a result of poverty, substance abuse, and years of poor health care, prisoners as a group are much less healthy than average Americans. Every year, more than 1.5 million people are released from jail and prison carrying a life-threatening contagious disease. At least 350,000 prisoners have a serious mental illness. Protecting public health and public safety, reducing human suffering, and limiting the financial cost of untreated illness depends on adequately funded, good quality correctional health care.

Unfortunately, most correctional systems are set up to fail. They have to care for a sick population on shoestring budgets and with little support from community health-care providers and public health authorities. Capturing the degree of failure in California, Dr. Joe Goldenson told the Commission, "There are facilities with four or five thousand people that only have two or three doctors." Around the country, some physicians are operating on a license that restricts their work to correctional facilities because they are deemed not qualified to provide care in the community. The public has yet to face the broad and long-term costs of these kinds of failures.

Finding: Medical neglect and the spread of infectious disease are not inevitable; there are solutions to the health-care dilemmas facing corrections.

Correctional facilities have a tremendous opportunity to provide health care to people in jail and prison that also protects the public health. But

PROVIDE HEALTH CARE THAT PROTECTS EVERYONE: RECOMMENDATIONS

1. Partner with health providers from the community. Departments of corrections and health providers from the community should join together in the common project of delivering high-quality health care that protects prisoners and the public.

2. Build real partnerships within facilities. Corrections administrators and officers must develop collaborative working relationships with those who provide health care to prisoners.

3. Commit to caring for persons with mental illness. Legislators and executive branch officials, including corrections administrators, need to commit adequate resources to identify and treat mentally ill prisoners and, simultaneously, to reduce the number of people with mental illness in prisons and jails.

4. Screen, test, and treat for infectious disease. Every U.S. prison and jail should screen, test, and treat for infectious diseases under the oversight of public health authorities and in compliance with national guidelines and ensure continuity of care upon release.

5. End co-payments for medical care. State legislatures should revoke existing laws that authorize prisoner co-payments for medical care.

6. Extend Medicaid and Medicare to eligible prisoners. Congress should change the Medicaid and Medicare rules so that correctional facilities can receive federal funds to help cover the costs of providing health care to eligible prisoners. Until Congress acts, states should ensure that benefits are available to people immediately upon release.

corrections cannot do this alone. Lawmakers must provide adequate funding, and health-care providers from the community must get involved. Together, they can recruit qualified and caring medical staff who are able to manage contagious and costly diseases. Proper screening and treatment of infectious diseases in correctional facilities makes a difference: Between 1992 and 1998, New York City reduced tuberculosis cases citywide by 59 percent, and drug-resistant cases by 91 percent, through this kind of partnership.

Improving correctional health care requires more than partnerships. Many short-term cost-saving measures imposed by local, state, and federal legislatures have long-term negative consequences. To drive down the costs, legislators pressure corrections administrators to require prisoners to make co-payments for their medical care. While co-payments seem reasonable on the surface, they cost more in the long run by discouraging sick prisoners from seeking care early on, when treatment is less expensive and more effective and before disease spreads.

Equally troubling, misguided federal law deprives correctional systems of desperately needed Medicaid and Medicare dollars to fund decent health care. Many people in prison and jail qualify for these federal benefits and lose them when they are incarcerated. Just like any other community health-care provider, correctional agencies should be reimbursed for the cost of providing health services to people who are Medicaid and Medicare eligible. Finally, along with committing more funds to care for mentally ill prisoners, states and counties need to expand treatment in the community. Our jails and prisons should not function as mental institutions.

1.3. SEGREGATION

Finding: The increasing use of high-security segregation is counter-productive, often causing violence inside facilities and contributing to recidivism after release.

Separating dangerous or vulnerable individuals from the general prison population is part of running a safe correctional facility. In some systems around the country, however, the drive for safety, coupled with public demand for tough punishment, has had perverse effects: Prisoners who should be housed at safe distances from particular individuals or groups of prisoners end up locked in their cells 23 hours a day, every day, with little opportunity to be productive and prepare for release. People who pose no real threat to anyone and also those who are mentally ill are languishing for months or years in high-security units and "supermax" prisons. In some places, the environment is so severe that people end up completely isolated, confined in constantly bright or constantly dim spaces without any meaningful human contact—torturous conditions that are proven to cause mental deterioration. Prisoners often are released directly from solitary confinement and other high-security units directly to the streets, despite the clear dangers of doing so.

Between 1995 and 2000, the growth rate in the number of people housed in segregation far outpaced the growth rate of the prison population overall: 40 percent compared to 28 percent. As lawyer, scholar, and prison monitor Fred Cohen told the Commission, segregation is now a "regular part of the rhythm of prison life." There is troubling evidence that the distress of living and working in this environment actually causes violence between staff and prisoners. And the consequences are broader

LIMIT SEGREGATION: RECOMMENDATIONS

1. Make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets. Tighten admissions criteria and safely transition people out of segregation as soon as possible. And go further: To the extent that safety allows, give prisoners in segregation opportunities to fully engage in treatment, work, study, and other productive activities, and to feel part of a community.

2. End conditions of isolation. Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm.

3. Protect mentally ill prisoners. Prisoners with a mental illness that would make them particularly vulnerable to conditions in segregation must be housed in secure therapeutic units. Facilities need rigorous screening and assessment tools to ensure the proper treatment of prisoners who are both mentally ill and difficult to control.

than that: Housing a prisoner in segregation can be twice as costly as other forms of confinement, and the misuse of segregation works against the process of rehabilitating people, thereby threatening public safety.

II. Labor and Leadership

Finding: Better safety inside prisons and jails depends on changing the institutional culture, which cannot be accomplished without enhancing the corrections profession at all levels.

Most corrections professionals work under extremely difficult circumstances to maintain safety and help prisoners improve their lives. But because the exercise of power is a defining characteristic of correctional facilities, there is constant potential for abuse. In the worst cases, the institutional culture can devolve into one where, in the words of prison chaplain Sister Antonia Maguire, prisoners are treated like "animals, without souls, who deserve whatever they get." Cultivating a positive culture inside our correctional facilities is more than a "feel good" idea. As former Minnesota Warden James Bruton wrote, "Security and control—given necessities in a prison environment—only become a reality when dignity and respect are inherent in the process."

Today there are efforts to improve the underlying culture of prisons and jails in places as far apart as Oregon, Arizona, Massachusetts, and Maryland. Corrections administrators leading those reforms understand that an "us versus them" mentality endangers prisoners and staff and, over time, harms the families and communities to which prisoners and staff belong. "We're moving away from having that feeling of being safe when offenders are all locked up, to one where we're actually safer because we have inmates out of their cells, involved in something hopeful and productive," explained Mary Livers, Maryland's deputy secretary for operations.

Efforts at culture change cannot succeed and bear fruit, however, without recruiting and retaining a highly qualified officer corps and great corrections leaders. All too often, that is not the case. The rate of turnover among officers averages 16 percent annually—and is higher where the pay is lower. Directors of systems remain on the job for no more than three years on average, and their rapid turnover destabilizes entire systems.

State and local governments must improve pay for officers and find other ways to develop the labor force at all levels. Training for officers must improve so that they are better prepared to interact effectively with prisoners from diverse backgrounds. The skills and capacities of lieutenants, captains, and wardens—staff who have the greatest influence on the culture of prisons and jails day to day—must be developed. And governors and local officials must hire the best qualified professionals to lead correctional systems and give them the freedom and resources to do the job well.

CHANGE THE CULTURE AND ENHANCE THE PROFESSION: RECOMMENDATIONS

1. Promote a culture of mutual respect. Create a positive culture in jails and prisons grounded in an ethic of respectful behavior and interpersonal communication that benefits prisoners and staff.

2. Recruit and retain a qualified corps of officers. Enact changes at the state and local levels to advance the recruitment and retention of a high quality, diverse workforce and otherwise further the professionalism of the workforce.

3. Support today's leaders and cultivate the next generation. Governors and local executives must hire the most qualified leaders and support them politically and professionally, and corrections administrators must, in turn, use their positions to promote healthy and safe prisons and jails. Equally important, we must develop the skills and capacities of middle-level managers, who play a large role in running safe facilities and are poised to become the next generation of senior leaders.

III. Oversight and Accountability

Finding: Most correctional facilities are surrounded by more than physical walls; they are walled off from external monitoring and public scrutiny to a degree inconsistent with the responsibility of public institutions.

All public institutions, from hospitals to schools, need and benefit from strong oversight. Citizens demand it because they understand what is at stake if these institutions fail. Prisons and jails should be no exception. They are directly responsible for the health and safety of millions of people every year, and what happens in correctional facilities has a significant impact on the health and safety of our communities.

Corrections leaders work hard to oversee their own institutions and hold themselves accountable, but their vital efforts are not sufficient and cannot substitute for external forms of oversight. Former Oklahoma Warden Jack Cowley cautioned, "When we are not held accountable, the culture inside the prisons becomes a place that is so foreign to the culture of the real world that we develop our own way of doing things." Or as U.S. Department of Justice Inspector General Glenn Fine, who oversees all federal prisons, told the Commission, "There is tremendous pressure within an institution to keep quiet." Despite increased professionalism within the field of corrections, there remains resistance to scrutiny by "outsiders" that must be overcome.

The most important mechanism for overseeing corrections is independent inspection and monitoring. Every U.S. prison and jail should be monitored by an independent government body, sufficiently empowered and funded to regularly inspect conditions of confinement and report findings to lawmakers and the public. Today, this is the case in only a few states and localities. While independence is a crucial feature, the relationship with corrections should be collaborative: insiders and outsiders working together to ensure safe and effective facilities.

The federal courts also have an important role to play. Federal civil rights litigation ushered in life-saving reforms over the past 30 years. Several misguided provisions of the Prison Litigation Reform Act enacted in 1996 must be changed so that the federal courts can deliver justice to individual prisoners who are victims of rape, excessive use of force, and gross medical neglect, and compel reform in facilities where prisoners and staff are in danger. Equally important, the U.S. Department of Justice must step up efforts to monitor correctional facilities and, when appropriate, bring civil or criminal actions in response to abusive conditions. States should develop similar capacities. Finally, every prison and jail should allow the press to do its job; invite lawmakers, judges, and citizens to visit facilities; and work in other ways to inform the public about life behind bars.

INCREASE OVERSIGHT AND ACCOUNTABILITY: RECOMMENDATIONS

1. Demand independent oversight. Every state should create an independent agency to monitor prisons and jails.

2. Build national non-governmental oversight. Create a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators.

3. Reinvigorate investigation and enforcement. Expand the investigation and enforcement activities of the U.S. Department of Justice and build similar capacity in the states.

4. Increase access to the courts by reforming the PLRA. Congress should narrow the scope of the Prison Litigation Reform Act.

5. Monitor practice not just policy. Ensure that American Correctional Association accreditation more accurately reflects practice as well as policy.

6. Strengthen professional standards. Improve and support American Correctional Association standards.

7. Develop meaningful internal complaint systems. Corrections managers should strengthen the systems that allow them to listen to those who live and work in prisons and jails.

8. Encourage visits to facilities. Create opportunities for individual citizens and organized groups, including judges and lawmakers, to visit facilities.

9. Strive for transparency. Ensure media access to facilities, to prisoners, and to correctional data.

Finding: Internal oversight and accountability is no less crucial than monitoring from the outside. We need to strengthen the mechanisms that exist and make more use of them.

The American Correctional Association (ACA) has developed a solid set of standards governing all aspects of correctional operations and provides a process whereby facilities can become accredited by complying with the standards. Yet today only a tiny fraction of the nation's jails and fewer than half of America's prisons are accredited. Every prison and jail should be accredited, and the ACA should raise some standards—pushing institutions to excel beyond acceptable practice to good practice—and continue to strengthen the accreditation process.

Internal oversight also depends on listening to those who are incarcerated and to the officers who work the tiers and pods. No director, warden, or shift commander alone can know all he or she needs to know. In many correctional facilities, there are inadequate, sometimes wholly meaningless, systems for receiving and responding to prisoners'grievances and reports by staff about misconduct, and there are failures to safeguard from retaliation those who speak out. Corrections administrators must encourage prisoners and staff to voice their concerns and then protect them.

IV. Knowledge and Data

Finding: Uniform nationwide reporting on safety and abuse in correctional facilities is essential. Incomplete and unreliable information currently hampers the ability of corrections leaders, legislators, and the public to make sound decisions about prisons and jails.

All correctional facilities should be required to record and report to the federal government essential information about safety and health inside facilities. The data we have today is incomplete and unreliable in ways that make it impossible to get a complete picture of safety and abuse in correctional facilities, compare levels of safety in systems and facilities across the country, or dependably track trends over time within a single state or local system. There must be public demand for more and better information about the health and safety of our correctional facilities. Without it corrections administrators cannot make the best management decisions, legislators cannot make the best policy decisions, and the public has no way to judge whether those decisions protect or hurt the community.

The federal Bureau of Justice Statistics, the Association of State Correctional Administrators, and others are working to standardize the data collection process. Congress should pass legislation that builds on those efforts by funding uniform, nationwide reporting, and state legislatures should mandate compliance with the national reporting requirements. Congress also should enact legislation that provides incentives for states to track the success of former prisoners, using the most sophisticated measures, and then analyze the outcomes alongside conditions of confinement, including levels of violence. This is a tremendously difficult task, but it is work that policymakers should embrace as it will contribute directly to public safety.

Finally, we cannot hold corrections administrators accountable for the safety of prisoners and staff, and for public safety, if we do not provide the resources necessary to effectively manage their facilities. Every criminal statute, every sentencing policy, and every policy related to probation and parole has consequences for the conditions inside our prisons and jails and for the health of communities. Legislators should be required to confront the potential consequences of the laws they are considering and publish impact statements before voting.

IMPROVE KNOWLEDGE AND DATA: RECOMMENDATIONS

1. Develop nationwide reporting. Federal legislation should support meaningful data collection, and states and localities should fully commit to this project.

2. Fund a national effort to learn how prisons and jails can make a larger contribution to public safety. The federal government and states should invest in developing knowledge about the link between safe, well-run correctional facilities and public safety.

3. Require correctional impact statements. The federal government and states should mandate that an impact statement accompany all proposed legislation that would change the size, demographics, or other pertinent characteristics of prison and jail populations.

In Conclusion

We all bear responsibility for creating correctional institutions that are safe, humane, and productive. With so much at stake for our citizens' health and safety, with so many people directly affected by the conditions in our prisons and jails, this is the moment to confront confinement in the United States. ■

“There are offenders who need to be controlled at all times, but they still need contact with other people. They still need to feel like human beings.”

James Bruton, former Minnesota warden

I. Conditions of Confinement

THE CONDITIONS OF CONFINEMENT IN OUR jails and prisons should concern everyone. How we treat the people we incarcerate and whether we protect and support the staff has consequences that reach beyond the walls of every institution. Staff return to their families at the end of a shift, and 95 percent of prisoners are eventually released, most of them to poor and minority communities where crime rates are high and employment rates are low. § We now incarcerate an estimated 13.5 million Americans over the course of a year and employ 750,000 people in our prisons and jails. We may choose to punish criminals through the use of incarceration, but no place of confinement can ever be entirely separate from the larger society. Just as we make choices about appropriate forms of punishment, we must establish appropriate conditions of confinement. Millions and millions

"Quite frankly, no one denies that violence occurs in prisons and jails in this country."

Roderick Hickman, California corrections secretary of people are changed by their experience of prison and jail, and the public has a role in determining whether they return home to their families and their communities and to all of us marked by exposure to violence and abuse, disease and trauma, or whether they are safe and healthy inside the walls, and perhaps changed for the better.

There are many conditions, physical and social, that determine whether correctional facilities are safe and healthy or places where violence, abuse, and degradation reign. Among them, three are particularly influential: the level of violence, the quality of medical and mental health care, and the prevalence and nature of segregation.

Violence and abuse, and an institutional culture that condones abuse, are truly deadly to the purposes of a correctional facility. There are prisons and jails where officers too often use weapons and force instead of words and where prisoners lash out at each other and at officers. But this is not the fate of all correctional facilities. In some institutions, officers maintain safety for everyone—in part by directly engaging with prisoners and, in some cases, bridging race, culture, and class differences to make those connections.

If prisoners are sick and uncared for, they suffer, and so does the public health. Correctional facilities are struggling to meet the many health-care needs of prisoners and to protect staff. In failing institutions, care is entrusted to unqualified medical staff, and officers create barriers to care instead of helping to identify sick prisoners. But in facilities that have the funding and leadership to provide good health care, we see real efforts to help individuals recover from physical and mental illness and to control the spread of communicable disease.

Finally, we cannot promote safety or rehabilitation if we confine prisoners in high-security "segregation" units where they have no opportunity to interact with others or to take responsibility for their lives. There are entire supermax prisons built on this model, where people live in isolation, an environment that is damaging to staff and prisoners, and to the public when prisoners are released. Yet in other facilities, administrators control even dangerous prisoners without stripping them of all human connections and dignity.

There are nearly five thousand adult prisons and jails in the United States—no two exactly alike. Some of them are unraveling or barely surviving, while others are succeeding by preventing violence, promoting health, and using segregation only as a last resort. In this first section of our report, we explore these three crucial struggles and their influence on the nature of confinement in America today and its impact on society. ■

Prevent Violence

The ability of a correctional facility to protect prisoners and staff from physical harm is a fundamental measure of the success or failure of that institution—day to day within the walls, and over time as men and women carry their prison experience home to their families and neighborhoods. While the connections between safety inside correctional facilities and public safety broadly defined are complex, there is no question that efforts to cultivate a nonviolent correctional environment pay off in the community in a multitude of ways.

Corrections administrators do not want to run violent facilities. When individuals under their care are seriously hurt, administrators are likely to experience those breaches in safety as personal and professional failures. The extent of rape, assault, excessive use of force, and other types of violence in America's prisons and jails remains one of the most highly charged and debated aspects of the profession. Emotions run high because lives, careers, and reputations are at stake, and because assessing levels of violence in America's prisons and jails is a very difficult thing to do.

During the Commission's hearings, several corrections professionals, experts working outside the profession, and former prisoners testified about violent acts and patterns of violence in some U.S. prisons and jails. Speaking about the threats staff and administrators face, former Mississippi Warden Donald Cabana said, "I've had to negotiate no fewer than eight hostage situations, deal with riots, et cetera." "I couldn't protect [the women] from being sexually preyed upon," former New York Superintendent Elaine Lord told the Commission. Former New Jersey prisoner Thomas Farrow described nighttime beatings where officers targeted certain prisoners. Ron McAndrew, former warden of the maximum security prison in Florida told the Commission about "goon squads," small groups of violent officers beyond even his control, and commented that the abuse of prisoners was a problem throughout the Florida Department of Corrections. Over the course of the Commission's final hearing in February, 2006, in Los Angeles, while more than a thousand prisoners were attacking each other in the county jails, California corrections Secretary Roderick Hickman told the Commission: "Quite frankly, no one denies that violence occurs in prisons and jails in this country."

RECOMMENDATIONS

1. **Reduce crowding.**
2. **Promote productivity and rehabilitation.**
3. **Use objective classification and direct supervision.**
4. **Use force, non-lethal weaponry, and restraints only as a last resort.**
5. **Employ surveillance technology.**
6. **Support community and family bonds.**

These are just five accounts among many. A look at news headlines published during the first two weeks in April, 2006, reveals 20 stories of violence in 13 different states. The headlines, which are collected daily by the Corrections and Criminal Justice Coalition, a corrections labor group, include “Inmate Attacks Nurse, Two Deputies, in County Jail” (Florida), “Former Fitchburg Prison Guards Charged with Sex Assault” (Wisconsin), “Prisoner Killed in Dona Ana County Jail” (New Mexico), and “Prison System Takes Steps to Crack Down on Inmate Sexual Violence” (Alabama).

The Commission closely examined the research on violence and the data collected nationally. We know that prisons are less deadly than they were decades ago: Nationally, reported rates of homicide and suicide have decreased dramatically over the past three decades (Useem and Piehl 2005). Deaths in custody are relatively easy to count accurately, but to precisely measure the much larger universe of non-lethal violence is practically impossible given how we collect data today. In a section of this chapter, we explore flaws and gaps in the available data in a way that we hope encourages better and more complete measures of violence in the future. Toward the end of this report, on page 101, we begin a larger discussion of how to improve data collection and knowledge.

“If you put poor, underprivileged young men together in a large institution without anything meaningful to do all day, there will be violence. If that institution is overcrowded, there will be more violence. If that institution is badly managed . . . [including] poor mental health care, there will be more violence.”

Donald Specter, director of the Prison Law Office in California

While persistent accounts of violence in U.S. correctional facilities are troubling and its prevalence remains unclear, there is a great deal of agreement about what causes violence and how to prevent it. Donald Specter, Director of the Prison Law Office in California, summarized the driving factors of violence in his testimony to the Commission: “If you put poor, underprivileged young men together in a large institution without anything meaningful to do all day, there will be violence. If that institution is overcrowded, there will be more violence. If that institution is badly managed . . . [including] poor mental health care, there will be more violence. And if there is inadequate supervision of the staff, if there is ineffective discipline, if there is a code of silence, if there are inadequate investigations, there will be even more violence.” In a review of the literature and empirical evidence on the causes of prison violence, Professor James Byrne pointed to staffing levels, ineffective classification and placement decisions, poor facility design, prisoners with histories of violence, and the absence of autonomy among prisoners (Byrne et al. 2005). And Massachusetts Commissioner Kathleen Dennehy told the Commission about the corrosive effects of a code of silence among officers: that it reinforces negative behavior among prisoners and increases violence overall.

Racial, ethnic, and socio-economic differences among prisoners and between prisoners and staff also play a role, albeit a more complex one than many people understand. Jack Beck, an attorney and director of the Prison Visiting Project at the Correctional Association of New York, described preliminary results of a study being conducted by his organization on violence in the New York prison system. He explained that despite the fact that the majority of the prisoners in New York State come from the same New York City neighborhoods, populated mainly by poor African-

Americans and Latinos, prisoners report markedly different levels of gang violence in different facilities. The study's results to date suggest that in facilities where tensions generally run high, gang violence is reported to be a greater problem. Similarly, there appears to be a strong correlation between reported levels of violence by staff against prisoners and violence among prisoners.

This unusual study helps to show how a culture of violence can develop behind bars and how it can be prevented. Beck added that the lowest levels of tension and violence seem to exist in facilities where staff clearly follow policies, where there is meaningful communication between prisoners and staff, and where prisoners feel respected. All of these qualities flow from good leadership. In facilities that are culturally diverse and where there are stark racial, ethnic, and class differences between staff and prisoners, a culture of respect requires having staff who understand and appreciate cultural differences. As former prisoner and City University of New York policy expert Eddie Ellis testified, "The race, class question, I think, underlies many of the tensions that exist in the prisons."

Witness after witness told the Commission that violence in prisons and jails is not inevitable. "Prisons don't have to be as dangerous and as violent as they are," Donald Specter said. "The culture of our prisons virtually dictates the level of violence that you will have in them. And if you change that culture, you will reduce the violence." Every recommendation in this report is offered because of its potential to promote health and safety within the walls and beyond, into the surrounding community. Drawing on research findings and the wisdom of individuals with long experience in corrections, this chapter offers six practical recommendations focused specifically on preventing violence in America's prisons and jails.

1 Reduce crowding. States and localities must commit to eliminating the crowded conditions that exist in many of the country's prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house.

Crowding, and the tremendous increase in the prisoner population that underlies it, fuels violence. Crowding severely limits or eliminates the ability of prisoners to be productive, which can leave them feeling hopeless; pushes officers to rely on forceful means of control rather than communication, and makes it harder to classify and assign prisoners safely and identify the dangerously mentally ill. Services ranging from nutrition to dental and medical care are affected by crowding. Every vital service is diluted or made operationally impossible. And then there is simply the excessive noise, heat, and tension. This is fertile ground for violence. California corrections Secretary Roderick Hickman listed overcrowding first among the significant factors contributing to violence. Little surprise, since he had the burden of managing a prison system that confines twice as many people as the facilities were designed to house (Harrison and Beck 2005).

VIOLENCE: THE NUMBERS AND BEYOND

A Decades-Long Decline in Deadly Violence

Data collected by the Bureau of Justice Statistics of the U.S. Department of Justice (BJS) on deaths in custody show a downward trend nationally in recorded levels of homicide and suicide in state prisons and local jails. This decline occurred even as the U.S. prisoner population increased more than tenfold. Homicide rates in state prisons decreased dramatically from a 20-year high of 54 homicides per 100,000 prisoners in 1980 to 4 per 100,000 in 2002. During the same period, suicide rates decreased from 34 per 100,000 prisoners to 14 per 100,000. In local jails, reported homicide rates declined from 5 per 100,000 prisoners in 1983 to 3 per 100,000 in 2002, and the suicide rate in 2002 was less than half the rate reported in 1983 (47 per 100,000 prisoners compared with 129 per 100,000) (Mumola 2005).

In the most recent published national data, for 2002, there were a total of 68 homicides and 482 suicides in state prisons and local jails, and 84 deaths occurring for "other/unknown" reasons (Mumola 2005). Deaths by "positional asphyxiation," often the result of improper physical force or mechanical restraints, are counted among "other" deaths. The number of fatalities, however, is just a small part of the violence behind bars.

Data on Non-Deadly Violence: Too Flawed to Draw Definitive Conclusions

BJS has made significant progress in improving the validity, reliability, and comprehensiveness of the data on violence, but there are still significant weaknesses and blind spots. National data on assaults, in particular, are considered by BJS's chief statistician, Allen Beck, to be unreliable. "The level of assaults is simply not known. I cannot measure well the level of assaults using administrative records as they exist today," Beck told the Commission.

The imprecision and unreliability of the data on assaults stems in part from the fact that state and local systems have vastly different commitments to recording violence, define assaults differently, and are not consistent over time in what they record and report to the federal government. While there is at least an effort to collect administrative data on assaults in prison, there is no effort to collect parallel data for jails nationwide. Perhaps the biggest blind spot: There are no national measures of physical violence and excessive use of force by staff against prisoners, including the inappropriate use of restraints and non-lethal weapons. And these considerable weaknesses are just part of the problem.

Measuring levels of violence and victimization has always challenged social science researchers. It is particularly difficult to measure violence between prisoners. Administrative records are believed to significantly underrepresent the actual numbers. Studies have found that prisoners dismiss the value of reporting violence or attach stigma to those who do report (Edgar and O'Donnell 1998). Researchers have found large disparities between levels of violence captured in official records compared with reports by prisoners and staff about victimization. To researchers, prisoners report assaults at a rate five times higher than the number recorded by correctional authorities (Fuller and Orsagh 1977, Cooley 1993).

The weaknesses and gaps in administrative data reported to the federal government mean that we cannot pinpoint actual levels of violence in U.S. correctional facilities or reliably assess trends over time. All we have are rough indicators. The most recent data available are from the year 2000. Over the course of a year, there were 34,355 reported assaults among prisoners in state and federal facilities and 17,952 reported assaults by prisoners against staff (Stephan and Karberg 2003). Additionally, the first wave of data collection on sexual assault mandated by the 2003 Prison Rape Elimination Act—a gathering of administrative data from 1,840 adult prisons and jails nationwide in 2004—documented 4,252 recorded allegations of sexual assault, misconduct, and harassment by prisoners and staff (Beck and Hughes 2005).

Arkansas, North Dakota, and South Dakota reported zero assaults among prisoners statewide in 2000. Pennsylvania, with a prisoner population of 36,000, reported just 17 prisoner-on-prisoner assaults.

Looking Beyond National Assault Numbers Reveals Problems in the Data

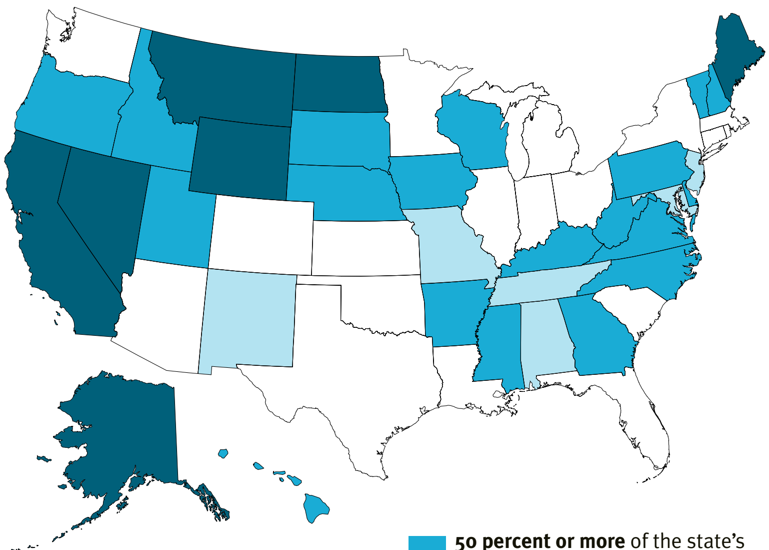
A look beyond national measures of assaults to the 1995 and 2000 state- and facility-level data that inform those aggregate numbers raises serious questions about the reliability of the reported levels of violence in state prisons. There are at least three reasons for doubt: In some states, a number of facilities are not reporting assault data; in some states, the number of assaults reported is improbably low; and looking at the rate of assault, the variation between states and changes within states over time are inexplicably large.

In 13 states, 10 percent or more of the prisons failed to report assaults by prisoners against prisoners or against staff in both 1995 and 2000. Moreover, some states had even higher levels of non-reporting: For example, none of North Dakota's facilities reported prisoner-on-prisoner assaults in 1995, and a quarter of Ohio's facilities did not report that data in 2000. When data is missing, BJS has to estimate the number of assaults. It is generally accepted that estimating more than 10 percent of any single type of data makes the resulting measure unreliable.

Another indicator of unreliability is the extremely small numbers of assaults reported in many prisons. Arkansas, North Dakota, and South Dakota reported zero assaults among prisoners statewide in 2000. In 26 states, 50 percent or more of prisons reported zero assaults against prisoners or staff in 1995 or 2000. And several large state systems reported very low total assault numbers: In 2000, Pennsylvania reported just 17 prisoner-on-prisoner assaults among a prisoner population of 36,000, and Virginia, with 30,000 prisoners, reported 61 assaults against prisoners statewide.

Finally, a look at reported rates of assault in state prisons raises doubts. In 2000, the great variation in reported statewide rates of prisoner-on-prisoner assaults is questionable: For example, Louisiana reported 131 per 1,000 prisoners, California reported 44 per 1,000, and Florida reported only 5 per 1,000. And the change in the reported rates between 1995 and 2000 was also often questionably large: In two states, the rate of prisoner-on-prisoner assault declined by 100 percent, that is to zero. And in nine states the rates increased by more than 100 percent. At the extreme: Georgia's rate went from 0.13 assaults per 1,000 prisoners in 1995 to 57 per 1,000 in 2000; Utah's increased from 6 per 1,000 to 62 per 1,000 over that period. (BJS 2000 Census data set, Beck and Harrison 2001).

Assaults by Prisoners: Questionable Data



10 percent or more of the state's prisons **failed to report data on assaults** by prisoners against prisoners or by prisoners against staff in both 1995 and 2000

50 percent or more of the state's prisons **reported zero assaults** against prisoners or staff in 1995 or 2000

States in which both of the above occurred

SOURCE: BUREAU OF JUSTICE STATISTICS

Better Measures are Needed

We need uniform definitions of non-lethal violence and standardized reporting of it (see Knowledge and Data on p. 101). We also need additional mechanisms for measuring violence and victimization. BJS reaches its conclusions about trends in violence based solely on administrative records of rule violations, even though the agency regularly surveys men and women in prison. BJS should ask more questions about violence and make an effort to ask the same questions every time the agency surveys prisoners in order to capture trends over time. Doubts about the reliability of administrative records to fully capture levels of sexual assault led BJS to carefully construct a survey of current and former prisoners, which it is now testing. This survey should encourage and guide the development of a broader survey that captures other forms of non-lethal violence. ■

The largest jail system in California and the largest nationwide—operated by the Los Angeles County Sheriff's Department—is also extremely crowded. During the week of the Commission's final hearing, in February, 2006, in Los Angeles, there was ongoing violence in the jails that claimed two lives and injured more than 100 prisoners (del Barco 2006). Sheriff Lee Baca and others attributed the violence to racial tensions and gangs in the jails and in the community. Jody Kent, who coordinates a court-directed monitoring program within the jails, disagreed with this limited characterization when she testified before the Commission. She argued that interracial violence was in large part a reaction to institutional problems, particularly crowding, which had created stressful living conditions and a near total absence of programming and productive activities. Similarly, in describing Alabama's Julia Tutwiler Prison for Women, a federal judge said that severe crowding can make a facility a "ticking time bomb," where explosions of violence are inevitable (*Birmingham News* 2002).

Law professor and prison consultant Vincent Nathan described crowded facilities with "broken toilets, compromised heating and ventilation systems, peeling paint, broken windows, mold-covered showers, generally filthy conditions, and other physical breakdowns [that] contribute to tension." Under these conditions, he explained, it is more difficult to maintain order and lawful behavior, and the level of inmate and staff safety "plummets." Nathan concluded that crowded facilities are "inhumane, unsafe, idle, and hopeless, precisely the opposite of what conscientious prison administrators are attempting to accomplish."

Conservative measures show a decline in crowding nationally among state prisons—from 114 percent of their highest, "operational" capacity in 1995 to 99 percent in 2004. A less conservative measure, based on institutional design, shows that facilities were operating at 115 percent of their capacity in 2004 (Harrison and Beck 2005). (For more information about how crowding is measured, see p. 104.) Corrections administrators define the operational capacity of their own facilities by drawing on a number of factors to ensure that living conditions and services at least meet constitutional standards. In reality, corrections administrators are often under pressure from county and state executives and legislators to raise their operational capacity and sometimes to exceed it. Moreover, many corrections

Overcrowding and Violence in Alabama's Prison for Women

The Julia Tutwiler Prison for Women in Wetumpka, Alabama, was built in 1942 to house 364 women. By 2002, it was home to more than 1,000 women. When a federal lawsuit was brought in 2002 to address extreme crowding, violence was one of the primary concerns. The facility did not have the capacity to separate prisoners who were dangerous to one another; it did not have the resources or capacity to safely care for and separately house prisoners with mental illness and those with serious diseases; and it was too crowded and underresourced to provide programming, so prisoners were spending endless idle hours in brutally hot dormitories crammed so full of beds and bodies that officers could not monitor and control them.

In July, 2002, an officer was severely beaten while working alone inside one of the crowded dorms. At that time there were, on average, only 12 officers at any given time responsible for supervising more than 1,000 prisoners—and at one point, there were as few as nine officers on duty. In 2002, 91 assaults had been recorded by December, making Alabama's only women's prison the most violent prison in the state. Prisoners suing the state asked for, among other things, a reduction in crowding and the hiring of more corrections officers (Crowder 2002). The corrections officers' employee association sought to join in the lawsuit because officers felt imperiled by the extraordinarily low staffing levels, especially in such a crowded, unsafe environment (Johnson 2003).

Under pressure by a federal judge, the state reduced the population at Tutwiler. But in a state prison system built for 12,000 that holds more than 26,000 prisoners, the only beds the state could find were in a private prison in Louisiana. The state has paid millions to send hundreds of women—generally those with the best records—500 miles from their children and families, where they now sit in a cleaner, cooler, safer, but equally idle environment (Crowder 2005). By 2005, a year after the settlement of the lawsuit, the population remaining at Tutwiler had been reduced to roughly 700, and some of the unsafe conditions had improved.

administrators believe that running at more than 90 percent of their system's operational capacity deprives them of necessary flexibility. While there is considerable variation among states and localities in levels of crowding, the majority of prisons and many jails are crowded by that standard (Harrison and Beck 2005). "The average American prisoner lives in an environment roughly the size of a king-size bed," psychologist and prison consultant Craig Haney told the Commission. He concluded that when crowding is understood as much more than squeezing more beds into a cell or unit, American prisons are "woefully overcrowded."

How states and localities, legislators, law enforcement officials, and judges should address the broad issue of system-wide crowding is beyond the scope of this Commission's work, but others, notably the Justice Kennedy Commission, have addressed this important issue (American Bar Association 2004). There is a dangerous mismatch between current capacity and the demands of the criminal justice system. Legislators must choose to either increase resources for corrections or reduce the demands placed on our correctional systems. Without action, they will perpetuate a system that too often leads to violence and abuse.

Crowded facilities are "inhumane, unsafe, idle, and hopeless, precisely the opposite of what conscientious prison administrators are attempting to accomplish."

Vincent Nathan,
law professor and prison consultant

2 Promote productivity and rehabilitation. Invest in programs that are proven to reduce violence and to change behavior over the long term.

Few conditions compromise the safety and security of a correctional institution more than idle prisoners. "Every parent, every educator, and, yes, every corrections professional can attest to the veracity of our grandparents' observations and admonishments that idle minds are the devil's workshop," Devon Brown, corrections commissioner in New Jersey told the Commission, lamenting the public's ignorance about the links between programming, safer prisons, and public safety.

Rehabilitation was the organizing principle of the American penal system for much of the twentieth century. But beginning in the 1970s, politicians began to rhetorically devalue rehabilitation. The result was that prisons became, at least from the perspective of tough-on-crime policymakers and much of the public, places that should protect society from criminality by incapacitating and punishing instead of seeking to help and change (Garland 2001). While the prison population grew astronomically, funding for education, vocational training, and rehabilitative programming did not keep pace.

Sergeant Gary Harkins, a 25-year corrections veteran testified, "When I first started at the Oregon State Pen, inmates had a wide range of educational and vocational programs. Inmates had the ability to earn a GED and continue all the way up to obtaining a doctorate. Over the years we've evolved to where we do not have any teachers on staff or even offer a GED program for the inmates at the pen....Today at the pen, out of 24 programs, only three remain."

Nationwide, participation in prison educational and vocational programs declined dramatically between 1991 and 1997 despite increasing lengths of stay (Lynch and Sabol 2001). A 50-state study conducted in 2003 and 2004 found that the numbers of prisoners receiving some post-secondary education had increased since the mid-1990s, when programming was at the height of political disfavor, but that only five percent of prisoners were enrolled in any form of post-secondary education. The bulk of those prisoners—89 percent—were incarcerated in just 15 state prison systems (Erisman and Bayer Contardo 2005).

The Commission heard from expert criminologists, psychologists, corrections professionals, and community advocates about the dangers associated with "warehousing" prisoners. Professor Walter Dickey, former secretary of the Wisconsin Department of Corrections, told the Commission, "If you don't have programs, whether they're schools, jobs, factories… the things again that make up the naturally occurring forces that bring compliance with your rules, you are much more likely to be relying on force and handcuffs." Increasingly, programs tested through research demonstrate that the old pessimism of the 1970s about rehabilitation was misguided. Targeted interventions work. In particular, highly structured programs that help prisoners understand the motivations underlying their actions and the consequences of their behavior can reduce misconduct in correctional facilities and lower recidivism rates by at least 10 percent (Ward and Eccleston 2004). These "cognitive-behavioral" programs are becoming more common. If implemented nationwide, they would reduce the number of people re-incarcerated by tens of thousands. Education—particularly at the college level—also reduces rule-breaking and disorder in prison. Studies show that post-secondary education can cut recidivism rates by nearly half (Erisman and Bayer Contardo 2005).

"If you don't have programs, whether they're schools, jobs, factories… that make up the naturally occurring forces that bring compliance with your rules, you are much more likely to be relying on force and handcuffs."

Walter Dickey, former secretary of the Wisconsin Department of Corrections

In recent years, faith- and character-based programs have been promoted to increase safety and reduce recidivism. These range from individual activities to entire faith-based facilities. According to a report by the National Institute of Corrections, nearly half of state and federal prison systems are operating or developing at least one residential, faith-based program (NIC 2005). These programs cultivate such things as life skills, anger management, personal growth and faith, family relationships, and victim awareness.

Effective programming requires money, effort, and a recommitment to rehabilitation. But it is not only an investment in safe prisons and jails. It is also an investment in safe and healthy communities. Lawmakers have a particular responsibility to fund programs that help prisoners returning to communities with high rates of unemployment. Employment opportunities for young, African-American men are particularly grim, and their persistent unemployment has a devastating effect on already poor communities. In some inner city areas, more than half of all African-American males do not finish high school, and the unemployment rate for African-American males who have dropped out is 72 percent. By their mid-thirties, 60 percent of all African-American men who have dropped out will spend some time in prison. By comparison, the unemployment rates of white and Latino males who drop out of high school are 34 percent and 19 percent respectively (Eckholm 2006). We need a strong investment in education, vocational training, and cognitive behavioral programs that have been demonstrated to promote safety in the short and long term.

3 Use objective classification and direct supervision. Incorporate violence prevention in every facility's fundamental classification and supervision procedures.

Reducing violence among prisoners depends on the decisions corrections administrators make about where to house prisoners and how to supervise them. Perhaps most important are the classification decisions managers make to ensure that housing units do not contain incompatible individuals or groups of people: informants and those they informed about, repeat violent offenders and vulnerable potential victims, and others who might clash with violent consequences. And these classifications should not be made on the basis of race or ethnicity, or their proxies (*Johnson v. California* 2005). Before 1980, most of the nation's prisons and jails used "subjective classification," which relies heavily on the judgment and hunches of line officers. Since then, every prison system has shifted, at least as a matter of policy, to "objective classification." These standardized and automated classification criteria "place greater emphasis on fairness, consistency, and openness in the decision-making process" (NIC 1992).

Numerous studies of both jails and prisons demonstrate that violent acts, escapes, and deaths by violence can all be significantly reduced by using a validated objective classification system (NIC 1992). But currently, the full potential of this tool is not being realized. As James Austin, a leading researcher, reported in 2003: "Although prison classification and other risk assessment instruments are now common, there is a disturbing trend that suggests that many of these systems were implemented without first being properly designed and tested" (Austin 2003). In addition, many jails do not use objective classification at all: In eight of the 21 states surveyed in 2003, fewer than half of local jails reported using objective classification (Clem and Sheanin 2003). Given the benefits, the Commission urges every facility with more than a few beds to develop, test, and implement an objective classification system, drawing on others' experience and relying on the guidance of experts.

Prison and jail architecture, management, and models of supervision combine to create either safe and humane conditions or disruptive and dangerous ones. One extremely promising technique to promote safety is "direct supervision." In a facility that uses direct supervision, prisoners generally spend at least half of their time out of their cells, mingling with each other and with officers in "common areas." The housing units in direct supervision facilities are typically constructed as "pods," with cells or tiers of cells around the perimeter and a common area in the middle. Direct supervision stands in stark contrast to the traditional model of supervision where corrections officers monitor prisoners' living areas from posts enclosed behind glass or bars.

What Americans Believe

When Americans think about someone they know being incarcerated, the vast majority, 84 percent, say they would be **concerned about the person's physical safety.**

And 76 percent say they would be **concerned about the person's health.**

More than half of Americans, 55 percent, are **acquainted with someone who has been incarcerated** or who has **worked in a correctional facility**.

For the majority of Americans, **knowing someone who has spent time or worked in jail or prison** changed their impressions of life behind bars.

SOURCE: SURVEY IN MARCH AND APRIL OF 2006 BY PRINCETON SURVEY RESEARCH ASSOCIATES INTERNATIONAL FOR THE NATIONAL CENTER FOR STATE COURTS AND THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS

First developed by the Federal Bureau of Prisons in the early 1970s and still underutilized, direct supervision "allows, and even requires, continuous personal interaction between corrections officers and inmates by putting them together, face-to-face in the living unit" (NIC 1989). Security in any facility is heavily dependent upon the ability of highly trained staff to detect and defuse potential problems. The difference between the two models of supervision is the difference between interaction and reaction. Since officers in a direct supervision facility are constantly engaging with prisoners, they are better able to recognize signs of a potential problem before it manifests (NIC 1989).

Violent acts, escapes, and deaths by violence can all be significantly reduced by using a validated objective classification system.

The impact on safety is impressive. The National Institute of Corrections conducted the most comprehensive study to date of direct supervision. Its 1989 research showed that those who run direct supervision facilities gave their own facilities higher safety ratings, compared with those who operate facilities that use "indirect" supervision. The in-depth case studies concluded that prisoners appear to feel considerably safer in direct supervision facilities and seem neither to have nor to need weapons to protect themselves. The study's authors noted that using direct supervision carries no greater cost and requires no additional staff yet appears to produce a safer, more livable environment. Another study put some numbers on the improvements: "Compared to traditional jails of similar size, the Metropolitan Correctional Centers and other direct supervision jails report much less conflict among inmates, and between inmates and staff. Violent incidents are reduced 30 to 90 percent" (Wener et al. 1987). Colonel David Parrish, Commander of the jails in Hillsborough County, Florida, agrees: "Direct supervision is recognized by progressive jail administrators as the most practical way to build and operate a detention facility. They are more staff efficient, cost-effective, and safer than traditional jails," he told the Commission.

Surprisingly, only a small minority of correctional facilities in the United States use direct supervision. A 2001 NIC directory listed fewer than 300 jails with any direct supervision units; collectively, those units housed less than a quarter of the nation's total jail population (NIC 2001). A large part of the resistance is attitudinal. "The first reaction to this arrangement by traditional wardens, jail officials, and most visitors is usually astonishment. They think of the public and staff safety in terms of hard barriers between *us* and *them*. The new design seemingly places officers at the mercy of inmates." In reality, however, "Officers in constant and direct contact with inmates get to know them and can recognize and respond to trouble before it escalates into violence. They are no longer forced to wait to respond after trouble starts. Negotiation and communication become more important staff skills than brute strength" (Wener et al. 1987).

For direct supervision to be successful, of course, officers must have the competence to understand and respect persons from different racial, ethnic, and cultural backgrounds. And the opposite is also true: The more natural environment of a direct supervision pod helps to break down some of the differences between officers and staff that can contribute to tension and violence.

Staff who rely on direct supervision prevent violence and model pro-social behavior. While the design of some facilities makes direct supervision impossible, the Commission believes many more facilities could be converted and reap the benefits for prisoners and staff alike.

4 **Use force, non-lethal weaponry, and restraints only as a last resort.** Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.

Professional standards clearly prohibit corrections officers from using more force than necessary and from using force to deter, punish, or retaliate, or to inflict pain and injury. But for many reasons, the standards are not always successful in guiding behavior. There is real disagreement, and no data nationally, about how often force is used, how often it escalates, and how often it rises to the level of abuse. One thing is clear, however: The more frequently force is used, the more chances there are for abuses and injuries. Sergeant Michael Van Patten, a 20-year corrections veteran who specializes in training officers, explained to the Commission that even routine and minimal uses of force are "inherently violent." And a number of experts testified about the difficulty of controlling the amount of force used once it comes into play. The goal at all times should be to address conflicts that arise between staff and prisoners without resorting to force. When force is necessary to prevent serious harm it should be limited in degree and duration and carefully monitored.

Stories of corrections officers resorting to extreme and brutal violence to assert their control stand out among news headlines. Not long ago in Sacramento, California, a federal civil rights lawsuit was filed by a mortgage broker being held in the county jail for public intoxication. The key piece of evidence in the suit, which alleges the sanctioned and ongoing use of excessive force in the jail, is a surveillance tape of the prisoner, who had refused to sit down in the drunk tank, lying in a pool of his own blood after an officer allegedly pushed him to the floor, cracking open his skull (Korber and Jewett 2005).

In the worst cases, people die. Former General Counsel of the Texas prison system Steve Martin told the Commission that within the last five to seven years, he has served as an expert in more than 20 in-custody death cases in which prisoners died from being placed in a restraint chair, a restraint board, or four- or five-point restraints. In most of those cases the prisoners were mentally ill, and most of them died of asphyxia. A federal judge described numerous prisoners being stripped to their underwear and strapped to a mattress at the wrists, ankles, and across the chest for roughly 48 hours with only brief interruptions of mobility. Speaking about one prisoner in particular, the judge recounted evidence that he was in immense pain and hallucinating, and also urinated and vomited on himself: "Inmate Sadler may deserve to be in prison, but he did not deserve to be strapped to a bed for nearly two days" (*Sadler v. Young* 2004).

There are very few instances in which someone should be fully pinned down in a restraint chair or in four- or five-point restraints. All correctional facilities should meet standards set by the American Correctional Association that define the circumstances under which this kind of total restraint is acceptable, require approval from a health authority, and call for visual observation every 15 minutes (ACA Standards 4-4190 and 4-4191). And they should go further: The circumstances under which total restraint is appropriate should be even narrower. Restraints should only be used when absolutely necessary to prevent serious harm to self or others. Equally important, complete physical restraint requires constant monitoring, with a medical staff member present at all times, and should be limited to minutes not hours.

"Officers go from zero to 150 in seconds."

Officer Donald Joseph Baumann, California Department of Corrections

Given the dangers inherent in any use of force, it should always be a last resort. When he began his career as a corrections officer in California, Lance Corcoran felt he "had to be the baddest guy in the valley [but] recognized really quickly that that only made things more difficult as a correctional officer." Corcoran told the Commission that officers' "most important tool… is the ability to communicate." However, Steve Martin testified that pepper spray, TASER guns, and other non-lethal weapons are often used as a "first strike" response before other tactics are considered or attempted. He recounted a situation in which a prisoner had refused to relinquish his dinner tray. The man was unarmed, locked securely in his cell, and weighed only 130 pounds. Before even entering the cell, an "extraction team" of five officers and a sergeant discharged two multiple baton rounds, hitting the prisoner in the groin, dispensed two bursts of mace, and fired two TASER cartridges. The team then entered the cell and forcefully removed the prisoner.

It does not take malice on the part of officers for force to escalate. Sergeant Michael Van Patten explained to the Commission that the fear and adrenaline rush that naturally occurs in the moments prior to a cell extraction or planned use of force can cause officers to lose control and act more violently than necessary. This same phenomenon was explained by Officer Donald Joseph Baumann, a 19-year veteran of the California Department of Corrections. "Officers go from zero to 150 in seconds," he said. And corrections officers feel they work under the constant threat of spontaneous violent outbursts; they literally feel under siege. That feeling can lead officers, especially new and inexperienced ones, to overreact and use force when talking would be more effective, or to use more force than necessary to resolve a situation. And these altercations can start or perpetuate a cycle of strikes and retaliation.

Other factors affect the decision to use force and how much force to use. Patrick McManus, the former Secretary of the Kansas Department of Corrections and an expert monitor in prison and jail systems nationwide, cautioned that although officers are under stress, "I don't know that that is the crux of the problem with the use of force.… It's an institutionalized response that's based on a way of thinking about how people relate to each other in a prison." Officers fail to recognize the individual characteristics

A federal judge described numerous prisoners being stripped to their underwear and strapped to a mattress at the wrists, ankles, and across the chest for roughly 48 hours with only brief interruptions of mobility.

of the person they are confronting and instead see merely an "inmate." Such perceptions can be exacerbated by cultural differences between officers and prisoners. Perceptions of danger, which spur forceful responses, are especially susceptible to cultural misunderstandings and prejudices. As sociologist and former prisoner Douglas Thompkins told the Commission, one must understand that race is often a "proxy for dangerousness." Efforts to understand and avert uses of force must include careful analysis of the role of race, ethnicity, and class in these decisions and events. Careful screening of staff at the time of employment and ongoing, in-depth training are necessary to ensure that an understanding of and respect for cultural differences shapes how staff relate to prisoners.

Training and supervision must emphasize that force can only be considered after non-physical responses to conflict have been exhausted. Officers need to learn how to distinguish between situations that require physical force and those that do not. They also need to learn how to determine what amount of force—if any—is required and when force is no longer necessary. Instruction should be backed up by a clear use-of-force hierarchy that prescribes specific kinds and degrees of force in response to a limited set of specific actions and situations, and it should outline de-escalation techniques to prevent the use of force.

Conflicts between staff and prisoners arise even in the best-run institutions, but nearly all of those situations can be managed without using physical force. While it might be instinctive to respond aggressively to someone who is being aggressive, the safety of both staff and prisoners depends on doing just the opposite. To talk merely of limiting the use of force is to miss a much larger opportunity to reframe the role of corrections officers in resolving and preventing conflict. Officers need guidance, inspiration, and a repertoire of effective, non-forceful responses so that the use of force is naturally limited to those rare situations where it is required to prevent serious harm.

5 **Employ surveillance technology.** Make good use of recording surveillance cameras to monitor the correctional environment.

Pearl Beale's son died after being stabbed nine times by another prisoner while detained in a District of Columbia jail. After describing his death to the Commission, Beale posed these questions: "How could something so devastating happen in a supposedly secure and monitored environment?… Why weren't there any cameras in the area where my son was killed?"

In February, 2006, New York City settled a lawsuit filed on behalf of prisoners who accused officers of unnecessarily using head strikes and other acts of violence in the city's jails. A principal component of the settlement agreement is the installation of hundreds of new wall-mounted video cameras with recording capability—in addition to the 2,000 cameras already in place—providing coverage of large areas of the jails (Preston 2006, *Ingles v. Toro* 2006).

> **"How could something so devastating happen in a supposedly secure and monitored environment?… Why weren't there any cameras in the area where my son was killed?"**
>
> Pearl Beale

Whether violence occurs among prisoners or between staff and prisoners, surveillance cameras and other technologies can help. Their wider use was urged by a range of Commission witnesses. U.S. Department of Justice Inspector General Glenn Fine stressed the value of cameras for prosecutors: "With video surveillance you often can see what happened before or after an incident, so that's very important, and we have relied upon that kind of evidence very strongly." These visual and auditory records protect prisoners and staff from violence and from false allegations of misconduct. Leslie Walker, executive director of Massachusetts Correctional Legal Services, believes that cameras can even discourage the "tiny, degrading, everyday humiliating name calling that can occur." This behavior, she said, will not be reported with any regularity or believed unless it is "seen and heard."

There are other promising technologies. Non-invasive drug-detection devices, such as booths and wands, might be used to minimize the confrontation and humiliation that accompany searches of prisoners after visits or trips to court, searches that sometimes include the inspection of body cavities. Women prisoners, who more often than men are survivors of physical and sexual abuse, may be particularly traumatized by strip searches and body-cavity searches and may even avoid family visits as a result. Technologies that offer some relief from physical intrusion should be developed and deployed. Similarly, special computerized chairs that detect weapons can replace hand searches, and radio frequency identification (RFID) tags can track the movements of prisoners and staff, a powerful disincentive to be in the wrong place at the wrong time.

Any technology has the potential for negative collateral consequences. The additional stress and loss of dignity that might come from being monitored by surveillance cameras must be considered so that these approaches to violence are not counter-productive—coverage typically excludes prisoners' cells, for example. With due regard for these concerns, correctional agencies should make use of recording surveillance cameras and other technologies to prevent violence.

6 **Support community and family bonds.** Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

Strong connections to family and community give hope to people in prison—that elusive element that a correctional facility alone cannot provide but can, if it is not vigilant, destroy. And hope, it turns out, is critical to avoiding violence. The storehouse of self-respect and pride that a person finds in family and community can ward off the shame and humiliation that lead one to violence while incarcerated (Gilligan 1996). For prisoners who are parents, incarceration means being physically removed from children; for them it is critical that we make every effort to maintain family ties. And as former prisoner A. Sage Smith explained, visits from community volunteers "inject a sense of purpose into many prisoners' consciousness" and "bring a sense of concern and infuse a sense of hope" that can assist a prisoner's positive transformation. These relationships with people outside the correctional facility also smooth the process of reentry and make it more likely that prisoners will succeed after release.

The Commission was told about various ways to support community and family bonds. We address three strategies here, although many others should also be considered. First, unlike local jails, prisons are filled with people who have been sent far from home, and in some cases transported to other states. The physical distance to the facility can make it nearly impossible for family to visit regularly and impractical to connect prisoners with groups based in their home communities. Recognizing the importance of family and community bonds, many state systems move prisoners to facilities closer to their home communities in the final months before release. But these bonds are important not only as part of the reentry process but as an important ingredient for a safe environment during incarceration.

Decisions about where to send prisoners, combined with the siting of many prisons far from the prisoners' home communities, disproportionately affect African-American and Latino families and exacerbate the racial divide between prisoners and officers. According to one study, those decisions result in rural prisons, which have a greater concentration of white staff, holding higher percentages of African-American men than correctional facilities in urban areas (Farrigan and Glasmeier 2002). There is widespread agreement that for incarceration to be productive, support must be given to preserving a prisoner's bonds with his or her family and community.

There are many reasons states build prisons in rural locations far from the urban centers from which most prisoners come: lower-cost land, a more favorable political environment, and the perception of a larger employment pool. These factors—reasonable in theory, sometimes debatable in practice—must be considered against the weakening of prisoners' ties with family and community. While a shift in priorities would require tremendous political will, lawmakers should at least examine the impact of decisions about where to locate prisons. In the meantime, corrections administrators should look closely at their internal process for assigning people to facilities and make decisions whenever possible that preserve family bonds. And no system should send their prisoners to other states.

Second, both prisons and jails must do a better job of welcoming visitors, providing ample space and time, and even assisting with transportation. There are costs involved to do this well, but these dollars would be well spent. And in many places the most needed investment is in a change of attitude. Visitors are often sent the erroneous and harmful message that they are not welcome in a facility and that they do not play an important role in supporting prisoners and the well-being of the facility. There are valid security concerns that require restrictions on visitation. Nonetheless, author asha bandele described to the Commission the humiliating and capricious treatment she received when visiting her incarcerated husband. She explained the consequences: "[Poor] treatment of family members has the potential to make the facility less secure because it can lead to severe tensions between a prisoner and a guard who humiliated or otherwise violated his wife."

Another way to encourage visitation is by allowing the greatest degree possible of closeness and privacy, given security imperatives. Because contact visits can inspire good behavior, people confined in both prisons and jails should be allowed to touch and embrace their children, partners, and other friends and family. Physical barriers and telephones should be reserved for those who have abused visitation privileges or otherwise have been determined to pose too great a risk. The Commission was told that people detained in the Washington, D.C., jails prefer to be held in the privately run facility rather than the public jail because, despite some of its disadvantages, it allows contact visits with family.

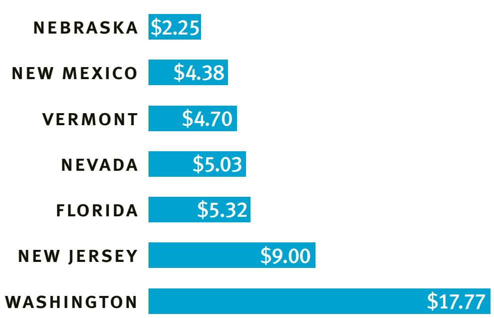
The final way correctional systems, principally prisons, might support family and community bonds is by minimizing the cost of prisoners' telephone calls. At present, most state systems allow only collect calls from prisoners (typically no direct calls out or incoming calls are allowed) and do so through contracts with providers that charge the recipient extraordinarily high rates, with the state receiving a commission. For example, in Florida, where only collect calls are allowed, a prisoner's 15-minute in-state long-distance call from prison costs $5.32. Calling someone out of state costs $17.30. The state earned over $15 million in commissions on prisoners' calls in 2000 (Citizens United for the Rehabilitation of Errants, Florida Corrections Commission).

A growing group of corrections leaders recognizes the critical importance of telephone communication for prisoners and their families. The American Correctional Association has taken the position that prisoners "should have access to a range of reasonably priced telecommunications services" with rates "commensurate with those charged to the general public" (ACA 2001). But many directors of state departments of corrections have been pressured by shortsighted legislatures to use telephone contracts to seek income for state general funds or corrections budgets rather than to ensure family unification. The result is that family members

The Cost of Keeping in Touch

When people are incarcerated far from home, phone calls with partners, children, and parents are often the only practical way for these families to stay in touch. **Calling rates vary considerably from state to state.** Where collect calling is the only option and the rates are high, poor families make large sacrifices to speak with an incarcerated loved one.

Average cost of a 15-minute in-state long-distance collect call placed from a correctional facility



State correctional facilities that enter into exclusive contracts with telephone companies **typically reap** 30 to 40 percent **of all revenue generated**—enormous sums that state legislatures have come to depend on.

Florida's Inmate Welfare Trust Fund took in $15.3 million in fiscal year 2000.

Nevada collected $20.5 million in 1999.

SOURCES: CALLING RATES PROVIDED BY CITIZENS UNITED FOR THE REHABILITATION OF ERRANTS (CURE); INFORMATION ABOUT COMMISSIONS PROVIDED BY THE AMERICAN BAR ASSOCIATION AND BY ALAN ELSNER IN HIS BOOK *GATES OF INJUSTICE*.

of prisoners pay many times more than anyone else for the opportunity to speak with a loved one.

There has been considerable effort to convince lawmakers that, regardless of the income from telephone charges, interference with family unification is too high a price to pay. The American Bar Association recently adopted a recommendation urging "the lowest possible rates," among other measures to ensure ready telephone contact (ABA 2005). Some states are responding. Vermont requires phone contracts to offer prisoners the option of direct or collect calling at "the lowest reasonable cost" (Vt. Stat. Ann. tit. 28 §802a). New Mexico's statute bars its prisons and jails from receiving commissions on the amount billed and requires "the lowest cost of service" (N.M. Stat. Ann. §33-14-1). The District of Columbia bars correctional facilities from charging higher than local Public Service Commission rates and also bars surcharges on prisoner calls (D.C. Code Ann. §24-263.01).

Meanwhile, practices in some states more drastically interfere with prisoners' ability to maintain family and community bonds through phone contact. In Texas, for example, the very ability to make calls is severely restricted: "Offenders who demonstrate good behavior can earn one five-minute call every 90 days" (Texas Department of Criminal Justice 2006). State legislatures and correctional systems must end practices such as these that interfere with the maintenance of critically important family and community ties. ■

Strong connections to family and community give hope to people in prison. And hope, it turns out, is critical to avoiding violence.

PREVENT VIOLENCE: RECOMMENDATIONS RECAP

1. **Reduce crowding.** States and localities must commit to eliminating the crowded conditions that exist in many of the country's prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house.
2. **Promote productivity and rehabilitation.** Invest in programs that are proven to reduce violence and to change behavior over the long term.
3. **Use objective classification and direct supervision.** Incorporate violence prevention in every facility's fundamental classification and supervision procedures.
4. **Use force, non-lethal weaponry, and restraints only as a last resort.** Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.
5. **Employ surveillance technology.** Make good use of recording surveillance cameras to monitor the correctional environment.
6. **Support community and family bonds.** Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

Provide Health Care that Protects Everyone

RECOMMENDATIONS

1. **Partner with health providers from the community.**
2. **Build real partnerships within facilities.**
3. **Commit to caring for persons with mental illness.**
4. **Screen, test, and treat for infectious disease.**
5. **End co-payments for medical care.**
6. **Extend Medicaid and Medicare to eligible prisoners.**

MUCH OF THE PUBLIC IMAGINES JAILS AND PRISONS AS SEALED institutions, where what happens inside remains inside. In the context of disease and illness, which can travel naturally from one environment to another, that view is clearly wrong. Protecting the public health, reducing human suffering, fulfilling our constitutional obligation to those we incarcerate, and addressing the financial cost of untreated illness depends on good and adequately funded correctional health care.

Every year, more than 1.5 million people are released from jail and prison carrying a life-threatening infectious disease (NCCHC 2002). At least 300,000 to 400,000 prisoners have a serious mental illness—a number three times the population of state mental hospitals nationwide (Ditton 1999, Human Rights Watch 2003). And prisoners on average require significantly more health care than most Americans because of poverty, substance abuse, and because they most often come from underserved communities (Marquart et al. 1997).

Until the late 1970s, substandard health care prevailed in correctional facilities. There have been dramatic improvements since then, but the gains have not been equal everywhere. "Some health-care programs are really excellent," leading correctional medicine and public-health expert Dr. Robert Greifinger told the Commission. "And others in this country…too many of them are shameful, not only in terms of what we do to the individuals but shameful in terms of the risks we expose our staff to and the risks to the public health."

Many corrections leaders are struggling to provide quality care without adequate resources and often without frontline staff who understand and share their goal. The consequences for individuals and families can be tragic. In California, where control of health care in state prisons has been ceded to a federal judge, one prisoner was dying needlessly from medical malpractice or neglect every six to seven days as recently as October 2005. "This statistic, awful as it is," wrote federal Judge Thelton Henderson, "barely provides a window into the waste of human life occurring behind California's prison walls" (*Plata v. Schwarzenegger* 2005). Dr. Joe Goldenson, who has investigated the problems in California, reminded the Commission that even though violence is the "usual suspect," poor health care causes more injuries and deaths inside jails and prisons across the country.

Correctional facilities have a constitutional obligation to provide health care—and some fulfill that obligation with vigor. They also have a tremendous opportunity: to protect the public health and to use precious health-care resources efficiently through disease prevention, early detection, and appropriate treatment. But corrections cannot do this alone, and legislatures chronically underfund correctional health care. Medical experts and prison and jail administrators who testified before the Commission delivered that message clearly. With their words in mind, the Commission urges lawmakers to adequately fund correctional health care. We also urge the development of real partnerships between corrections and community health-care providers and between individual caregivers and staff responsible for maintaining security within facilities. This chapter explores the benefits of such partnerships and recommends other ways to improve health care in prisons and jails—because everyone's health depends on it.

1 Partner with health providers from the community. Departments of corrections and health providers from the community should join together in the common project of delivering high-quality health care that protects prisoners and the public.

Jails and prisons are expected to provide medical and mental health care for millions of people every year, most of whom are poor and many of whom have serious health needs that were not appropriately treated before incarceration. In particular, there are significant disparities between the access to and quality of health care that African-Americans and Latinos receive compared with white Americans—disparities that must either be addressed or they will be exacerbated in our prisons and jails. In nearly every state and in most local jurisdictions, correctional systems attempt this mammoth task with less than adequate funding and, more surprising, with little or no help from state and local public health agencies and other community health-care providers (NCCHC 2002).

According to a 2003 survey by the National Institute of Corrections, collaborations between correctional and public health agencies are largely limited to screening, testing, and educating prisoners about an important but narrow group of infectious diseases, particularly HIV and tuberculosis (NIC 2003). Arthur Wallenstein, who oversees corrections in Montgomery County, Maryland, lamented to the Commission that most public health agencies do not even urge the department of corrections in their state or county to seek accreditation by the National Commission on Correctional Health Care.

It is disappointing that public health departments have not taken a more active role in ensuring quality health care for prisoners and that county and state executives have not encouraged partnerships between jails and prisons and a broad range of community health-care providers—including public hospitals, local clinics, teaching institutions, and doctors and nurses in private practice. While such partnerships are unusual, there are successful ventures in certain counties and states around the country that should inspire others. Some of the strongest partnerships can be found in Hampden County, Massachusetts; King County, Washington; Montgomery County, Maryland; and San Francisco, California, and strong statewide

"Some health care programs are really excellent. And others in this country . . . too many of them are shameful, not only in terms of what we do to the individuals but shameful in terms of the risks we expose our staff to and the risks to the public health."

Dr. Robert Greifinger, correctional medicine and public-health expert partnerships have been identified in Connecticut, Massachusetts, Ohio, South Dakota, and Texas (NIC 2003, Raimer and Stobo 2004, Hampden County Sheriff's Department 2002).

Joined together, these correctional agencies and health-care providers from the community are overcoming one of the most significant barriers to good correctional health care: recruiting qualified and caring medical and mental health staff. Jails and prisons must hire doctors, nurses, physicians assistants, clinical social workers, and other health-care providers despite low pay and difficult working conditions, lack of prestige, and in many cases, a remote or impoverished location. And they must contract for expensive and scarce specialty services despite the same obstacles.

Corrections administrators and experts agree that when state and local correctional systems fail to deliver adequate medical care, understaffing and a reliance on underqualified staff are often to blame. Researchers Michael Vaughn and Leo Carroll write that "Prison medical care sometimes is delivered by unlicensed physicians, doctors with substance abuse problems, doctors with criminal histories, and licensed and qualified doctors who treat ailments for which they lack training or experience" (Vaughn and Carroll 1998). In his testimony to the Commission, Dr. Joe Goldenson was explicit about the staffing crisis in California's prisons: "There are facilities with four or five thousand people that only have two or three doctors," he said.

Providing specialty care is a particular problem. For example, prisoners with HIV and hepatitis C need expert care that can be difficult to provide on site. That often means long waits to see specialists. And because specialists are unlikely to be in regular communication with the correctional facility's primary caregivers, questions about treatment may not be readily answered, adverse effects and other complications may not be promptly addressed, and there is a good chance that the recommended treatment regimen will be interrupted or not followed at all.

Partnerships with community and public health providers broaden the pool of qualified caregivers who are committed to working in a correctional environment by allowing them to remain connected with community clinics and hospitals, teaching universities, and public health agencies. The partnerships increase the chances that caregivers will have some sensitivity to the particular cultural and language barriers that can diminish care to poor people of color in any

Committed, Culturally Competent Caregivers

Providing health care to a stigmatized population in a challenging environment and often with severely limited resources requires personal and professional commitment and a high degree of cultural competence. Correctional facilities should seek to hire culturally competent medical and mental health-care providers and to enhance this set of skills through ongoing training for all staff.

Treatment providers must be able to understand and empathize and communicate with their patients. A disproportionate number of the people in this country's prisons and jails are African-American and Latino and come from mostly urban communities. In some states, they are sent to prisons in rural areas where most people are white and have had very limited interaction with urban people of color. These medical and mental health care staff may lack even the most basic understanding of the populations they are serving and may not be able to communicate successfully across cultural and language differences. They may also lack experience recognizing and treating illnesses that are common in the incarcerated population but uncommon in their home communities. The growing number of women in prison suggests a need to hire and train staff who can meet their specific health-care needs.

The work of identifying and diagnosing mental illness, for example, hinges on cultural competency. Staff must be able to disentangle healthy but different cultural behaviors from signs of illness. Understanding the perceptions about mental illness in the communities from which prisoners come is key to accurate diagnosis. And since prisoners are vulnerable to being disciplined for misbehavior that stems from a mental illness, basic cultural competency is important for security staff as well as for health-care workers. According to former prisoner A. Sage Smith, too often white officers fail to recognize mental illness in African-American prisoners and see only the resulting misbehavior. Where cultural competence does not occur naturally, it should be cultivated through targeted recruitment and incentives, careful training, and guidance on the job.

setting. Partnerships also guarantee that contagious and costly diseases are managed by a network of knowledgeable health-care providers who also bear responsibility for public health. Those providers literally bring their community practice into the prison or jail, cultivating a standard of care—and a caring attitude—inside correctional facilities equal to the community standard of care. And the participation of "outsiders" helps to transform jails and prisons from closed and stigmatized environments to open and respected ones.

Finally, a partnership between health-care providers from the community and the local jail dramatically increases the odds that people will have clear access to necessary health services after release—sometimes from the very same doctors and nurses who treated them in jail. Continuity of care is critical for their health, for their chances of success after release, and for the health and safety of the public. As Arthur Wallenstein wrote to the Commission, "We have no desire to build a model jail program. What we're building is a solid community mental health system where corrections and the jail is a component of the system, not the focal point." Partnerships involving prisons can have the same benefit, if those correctional facilities are located close to the communities people return to after release.

Partnerships between correctional agencies and community health-care providers are not a silver bullet. They cannot compensate for gross lack of funding for correctional health care. In some communities health-care providers are too strapped or otherwise unable to handle the responsibility of delivering correctional health care. In rural areas, partnerships may not create a culturally competent health-care staff that is experienced in the medical and mental health problems common among prisoners (see "Committed, Culturally Competent Caregivers," opposite page). And partnerships are not easy to develop and maintain. They require openness and flexibility on the part of participating correctional agencies, a broad-minded sense of mission, and a deep commitment to that mission on the part of participating public health agencies. But given the health-care needs of prisoners and the risks of failing to meet those needs, the Commission urges correctional agencies and community health-care providers to consider the benefits of forging solid partnerships.

2 Build real partnerships within facilities. Corrections administrators and officers must develop collaborative working relationships with those who provide health care to prisoners.

Inside a prison or jail, even a minimum security facility, the environment is tightly controlled.

"We have no desire to build a model jail program. What we're building is a solid community mental health system where corrections and the jail is a component of the system, not the focal point."

Arthur Wallenstein, director,
Department of Correction and Rehabilitation,
Montgomery County, Maryland

Not Fully Qualified to Practice Medicine

Would you want a primary care physician who practices under a license that barred him or her from treating most people? Remarkably, some states allow doctors who have scars on their professional records to practice under a special license that restricts their work to prisons and jails. All too often correctional health care is being provided by doctors, nurses, and others who could not find employment elsewhere due to restrictions on their licenses or for other reasons.

Since 1999, the National Commission on Correctional Health Care (NCCHC) has taken the position that correctional agencies should employ only fully-licensed health-care professionals and that state medical boards should not grant licenses that restrict employment to a correctional environment. "[S]uch practice imparts a sense that patients in a correctional environment are undeserving of qualified care that is similar to care available in the community. This concept is anathema to the important medical canons of ethics and disregards the important public health role correctional health care can play." The NCCHC also acknowledges that physicians with restricted licenses, who are less likely to find employment elsewhere, may be more susceptible to pressures to modify or avoid necessary patient care in order to conform to conflicting security procedures or to save money (NCCHC 2005).

Corrections workers are accustomed to dictating when and where prisoners can go within the facility, what items they can possess, and who they can talk to and interact with. Health-care professionals are also accustomed to functioning in environments where they "call the shots." Unless the two groups of professionals understand, respect, and support each others' roles and obligations, there will be constant conflict between them, with sick prisoners caught in the middle.

Dr. Robert Cohen, former director of medical services for the New York City Department of Correction and a national expert on correctional health care, explained to the Commission how such conflicts can develop: "When you send someone out of the facility, it means you are disrupting the facility. When you are ordering pain medication, you are potentially allowing pain medication to be in the institution. When you are declaring an emergency, you are moving people around who perhaps should not be routinely moved around. So there is fundamental conflict." Given that health care staff in most facilities are, in the words of Dr. Joe Goldenson, "three or four rungs down on the supervisory chain," decisions about whether someone can have a crutch, see a psychiatrist, or be transferred to another facility for specialty care are effectively being made by corrections staff with no medical training. The same is true for crucial decisions about health-care staffing and budgets.

What is needed to minimize conflict between the professions—and the potentially awful consequences of delaying or withholding necessary care—is a true partnership. And that starts at the top. Senior medical staff must be partners with the senior correctional staff in designing a health-care delivery system that works and is highly valued, and collaboration between health-care and security staff must continue down the chain of command.

The underlying idea is interdependence: Medical staff should be solely responsible for making health-care decisions, but they cannot function effectively, especially given their small numbers, without cooperation and assistance from security staff. For example, all prisoners should have some way of confidentially reporting a health problem directly to a health-care provider. This is not only an important right, it

Working Together in Hampden County, Mass.

Through partnerships with local, nonprofit health care centers, the Hampden County Correctional Center is protecting the health of prisoners and the health of the surrounding community. The correctional center in Ludlow, Massachusetts, draws on local medical clinics and hospitals, the state Department of Public Health, and individual practitioners to provide medical, mental health, dental, and vision care both inside the institution and in the community after people are released.

Doctors and other treatment providers from neighborhood clinics spend part of their work week providing care inside the correctional center—a complex of facilities housing about 1,800 male and female pre-trial and sentenced prisoners. Ninety percent of those prisoners will return to local urban neighborhoods. With their dual practice, the treatment providers bring the community standard of care into the correctional facility and their familiarity with and commitment to serving the local Latino and African-American communities. Each prisoner is matched with a treatment provider based on the prisoner's home zip code so that the person can continue to see the same treatment provider after release.

Collaboration between health-care and corrections professionals exists at all levels, which ensures that everyone understands the central role of providing quality health care. The health-care director is among the senior administrators who run the correctional center. And corrections officers collaborate as true partners with medical staff. Thorough and continual cross-training makes those partnerships possible. Together the staff learn how to identify illness and provide health care in a culturally diverse and multilingual correctional setting.

These partnerships enable the correctional facility to provide high-quality care at a cost lower than the average of the nation's 30 largest jails (Hampden County Sheriff's Department 2002). Equally important, the partnerships have strengthened health care in the community by linking treatment providers with the population most in need—not only prisoners but also their families—saving the county and state significant costs down the road. It is an approach rooted in the principles of good public health: early detection, prompt and effective treatment, comprehensive education and prevention services, and ongoing care. It reflects Sheriff Michael Ashe's vision of the correctional center as part of the community. That vision also influences the correctional center's programming and reentry planning, services that have resulted in a re-incarceration rate far lower than the national average. The Robert Wood Johnson Foundation is committing $7.5 million to replicate the Hampden County model at up to 16 correctional facilities across the nation.

also encourages prisoners to seek treatment early, when it can be most effective and least costly. At the same time, security personnel—who spend much more time with prisoners than health-care providers do—should be encouraged and trained to be attuned and sympathetic to the needs of prisoners and to alert health-care providers early on about signs of a developing health problem.

This vision of the role of the corrections officer differs greatly from the reality in many facilities today. But it is a role that corrections officers could be trained to fill, assuming they have the interest and motivation to do it well. Correctional systems could even develop a new role: health-care/security officer. Such a staff person would act as an ombudsman rather than a gatekeeper: a welcoming ear and confidential advocate for someone with a medical or mental health problem. If well-designed and carefully staffed, such a position would go a long way toward realizing the Commission's recommendation to develop collaborative working relationships between health-care and security staff and thereby improve the health and well-being of the prison community.

3 Commit to caring for persons with mental illness. Legislators and executive branch officials, including corrections administrators, need to commit adequate resources to identify and treat mentally ill prisoners and, simultaneously, to reduce the number of people with mental illness in prisons and jails.

The need for mental health care in our country's prisons and jails is enormous. The most conservative estimate of prevalence—16 percent—means that there are at least 350,000 mentally ill people in jail and prison on any given day (Ditton 1999). Other estimates of prevalence have yielded much higher rates, even of "serious" mental disorders—as high as 36.5 percent or 54 percent when anxiety disorders are included (NCCHC 2002, Pinta 1999, Teplin et al. 1997). These prevalence rates are two to four times higher than rates among the general public (NCCHC 2002). They reflect what many witnesses told the Commission: that prisons and jails have replaced state psychiatric hospitals as the institutions that house and care for persons with mental illness. Reginald Wilkinson, who made care of mentally ill prisoners a priority of his 15-year tenure leading the Ohio Department of Rehabilitation and Correction, put it simply: "Detention facilities have, in fact, become the new asylums." The result is not only needless suffering by the individuals who are undertreated but safety problems those prisoners cause staff and other prisoners.

By all accounts, corrections administrators are struggling to meet these needs, often with grossly insufficient resources. Reflecting on this "tragic reality," Louisiana Secretary of Public Safety and Corrections Richard Stalder warned: "Without the resources, without the staff, without the professionalism that's needed to cope with those kinds of problems, you will not have the kind of safe environment that you promote as a Commission."

Decisions about whether someone can have a crutch, see a psychiatrist, or be transferred to another facility for specialty care are effectively being made by corrections staff with no medical training.

Those resources range from psychiatric hospital beds to intermediate care housing separate from the general prisoner population, from therapy and medication to targeted programming. In each of these areas the Commissioners heard about long waiting lists for few available slots and the consequences of delaying or withholding care: suffering, self-mutilation, rage and violence, unnecessary placement in segregation, victimization, and suicide.

Most state systems run or have access to secure psychiatric hospital beds, but those beds cannot accommodate all the prisoners who need the intensive treatment and protection of a hospital setting. New York, for example, relies on the Central New York Psychiatric Center, run by the state Office of Mental Health. It offers excellent care, but since it has only 210 beds, lengths of stay are often shorter than necessary and the return rate is high (65 percent). Often, people who become stable in the hospital have to give up their beds for others in crisis and then end up back in the hospital when their mental state deteriorates again (New York State Office of Mental Health, Correctional Association of New York 2004). Nationwide in 2000, correctional facilities reported that just 1.6 percent of prison inmates were receiving 24-hour mental health care (Beck and Maruschak 2001). More acute care beds are needed to serve the estimated six to 20 percent of prisoners who have a severe mental illness (Scott and Gerbasi 2005).

Intermediate-level care is also lacking. "There need to be more step-down units, roughly equivalent to residential treatment facilities in the community, where prisoners with serious mental disorders can be partially sheltered as they undergo treatment," psychiatrist Terry Kupers, author of *Prison Madness*, wrote to the Commission. Here too, New York has an admirable model, with Intermediate Care Programs (ICPs) located in 11 of the state's 70 prisons. According to the Correctional Association of New York, a legislatively-authorized prison oversight group, the ICPs "perform an essential function for inmates with serious mental illness. They offer a therapeutic, safe environment and access to a range of services" (Correctional Association of New York 2004). But there are places for just 534 people in the ICPs, far too few, given that there are at least 10,000

Careful Screening for Mental Illness in Montgomery County, Md.

Screening for mental illness is a regular part of the admissions process in most prisons and jails. The American Correctional Association has standards that require a brief mental health assessment at intake, as well as more extensive mental health appraisals and evaluations where indicated (ACA 2003, Standards 4-4370 through 4-4372). The quality of that initial screening, however, is uneven around the country and, far too often, limited to gathering a history of prior treatment. That means a significant number of mentally ill individuals are entering facilities undetected.

Careful screening at intake is vitally important for the safety of everyone in the facility: Half of all suicides in jails occur in the first 24 hours. Proper classification by risk requires knowledge of a new prisoner's mental health (Kupers 1999). Also, in jails where stays are often short, good mental health screening is the first step toward lining up treatment in the community after release and can even facilitate early release.

Administrators and staff of the jail in Montgomery County, Maryland, are committed to all of these goals. In an attempt to identify everyone who has a mental illness and divert as many as possible to community treatment, two corrections officers and a registered nurse separately ask incoming prisoners a dozen standard questions concerning their mental health. A single "yes" triggers a referral to Clinical Assessment and Triage Services (CATS)—three to 25 referrals a day, out of an average of 40 admissions, according to Athena Morrow who supervises CATS. And as a result of the unit's community outreach efforts and close collaboration between the public health and justice systems, mothers, lawyers, police officers, and community health workers often call the unit when a mentally ill person they know has been arrested.

One goal for Morrow and her intake screening staff—all mental health professionals with masters degrees—is to arrange for treatment in the community and to recommend release at that day's bail hearing whenever appropriate. Although physically located in the jail, the staff are employees of the County Department of Health and Human Services, which makes it easier for them to ensure continuity of care after release. Individuals who are not diverted are referred to the Department of Correction's Mental Health Services Unit for evaluation. Those who cannot be housed in the general population are admitted to the jail's Crisis Intervention Unit, the county's largest inpatient psychiatric care center.

mentally ill prisoners in New York, based on a conservative estimate of the prevalence of mental illness among prisoners nationally.

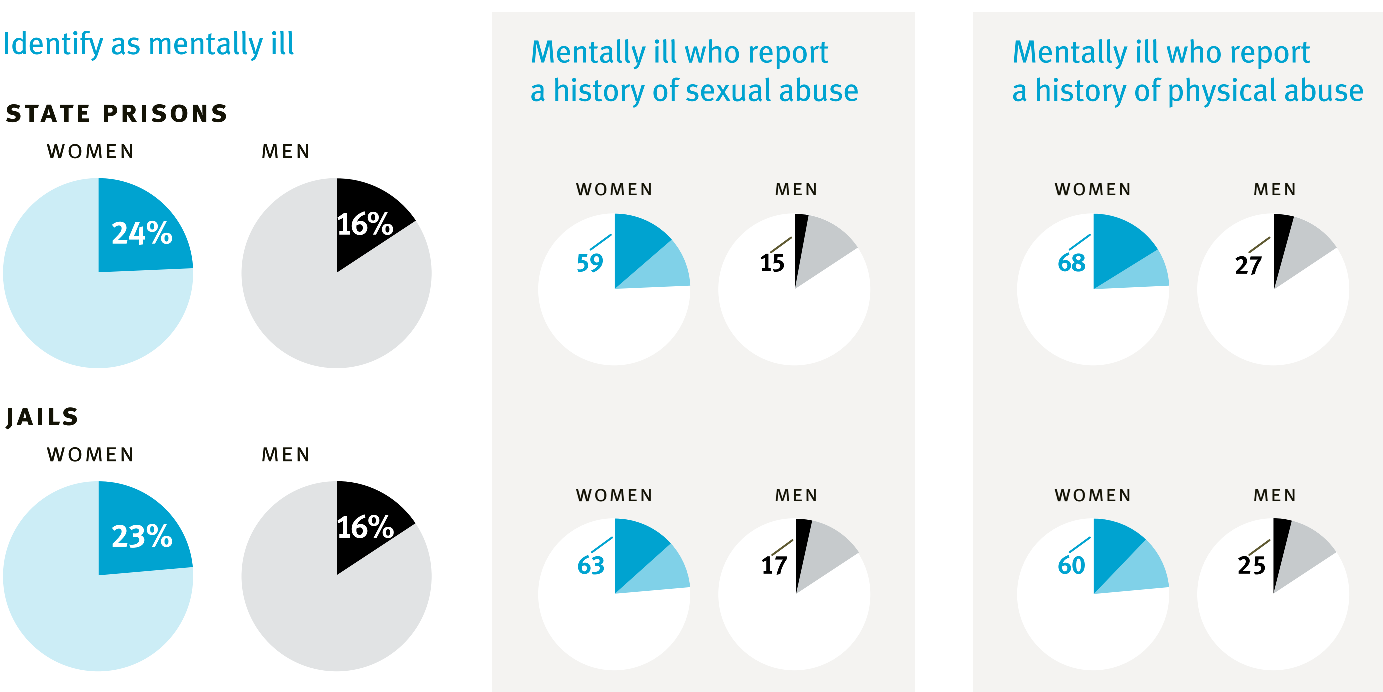
While there is a need for more specialized housing for mentally ill prisoners, those separate environments also have a disadvantage: Hospitalized prisoners and those in intermediate care centers have much less or no access to work and vocational training, education, and other types of programming that support good mental health. Leonard Branch, psychologist for the corrections department in Orange County, Florida, told the Commission, "We try to balance the desire to mainstream inmates with concerns about their health and safety."

Faced with a large number of mentally ill individuals and a lack of treatment services, facilities can be tempted to rely mainly or exclusively on medication, both to relieve suffering and to control people. As Professor Kenneth Adams told the Commission, "There are some wonderful pharmaceuticals out there that do amazing things in terms of helping people along, but that's not the sum total of treatment in terms of what these people need. They need more than that." Similarly, the American Psychiatric Association warns of a troubling tendency to focus the precious few resources on treating those who suffer from what are termed major or severe mental illnesses—psychoses, major depression,

There are at least 350,000 mentally ill people in jail and prison on any given day.

Mental Illness: The Gender Gap

Women prisoners are far more likely than men to identify as having a mental illness and, among those who do identify as mentally ill, women are far more likely than men to report a history of sexual and physical abuse. The American Psychiatric Association recommends developing treatment programs especially for women prisoners that can address their history of trauma.



SOURCE: BUREAU OF JUSTICE STATISTICS

and bipolar disorder—with insufficient attention paid to other disorders that are more likely to result in silent suffering rather than disruptive behavior (American Psychiatric Association 2000, Council of State Governments 2002).

The lack of mental health resources manifests in yet another way: as a dearth of skilled, caring professionals. The Commission heard from a number of witnesses about inadequate staffing levels, high turnover, and staff who are underqualified, under-motivated, or just "burned out." Former prisoner Thomas Farrow, who suffers from bipolar disorder, told the Commission that he was lucky to see any single psychiatrist or psychologist more than three times over his decade of incarceration and that most of these encounters were extremely brief, lasting for about 15 minutes. He also talked about the difficulty of trusting doctors in prison. "We all heard the story about the prisoner who was strapped naked into a restraining chair and forced to take his medication, and while this may not happen that often, it is a fear we all share and this fear motivated many prisoners to avoid any contact with mental health providers."

The Commission also heard, time and again, that the first step in improving the ability of correctional systems to address the enormous mental health issues of prisoners is to improve and expand community mental health treatment and thus to have options other than incarceration, especially for mentally ill people who commit lower-level offenses. Jails in particular are burdened by huge numbers of people with mental illnesses. In jails more than prisons, treatment options are limited by the very short stays of most people who are admitted, making screening and discharge planning the best way to ensure treatment in the community.

"We should aspire to a zero tolerance policy for psychological misery and pain that could be alleviated by appropriate mental health treatment," Jamie Fellner testified to the Commission, "but that standard cannot be met without better funding." Fellner is director of U.S. programs for Human Rights Watch and an author of *Ill Equipped: U.S. Prisons and Offenders with Mental Illness.* Lawmakers and corrections administrators surely need to commit more resources toward identifying and treating the mentally ill in prison and jail, but that is only part of the solution. Our jails and prisons should not have to function as mental institutions.

Some Mother's Son

My son is 20 years old and has been incarcerated most of his legal adult life so far due to having a drug problem, thefts, and mental illness. David has been in the DOC for several months now, and has only written one letter in which he simply stated that he was in a psych ward, and that he loved us with all his heart and soul. I have written many times, and I get no response. I attempted to visit David a couple of months ago, and I was told that David refused to visit. I have heard through an inside contact as to a disturbing situation that occurred that I am not sure was not my son.

The incident involved a man in the same unit that my son was in who was screaming, playing in his feces, and obviously having serious mental health issues. Because this man was screaming, the "goons"—apparently men dressed in black—came into the cell and beat this man and hosed down the cell. Soon after the incident, this man was reportedly taken away to another area. This incident reportedly occurred in housing unit Nine. My son was in housing unit Nine for a brief period, before being transferred to housing unit Five, "the hole."

When I call the DOC and ask to speak with a "case manager," I never seem to get the same person twice. The psychiatrists cannot tell me much of anything because of HIPAA [a federal statute protecting doctor-patient confidentiality], which I understand as an R.N. However I do not think that David is mentally competent (with the limited information and insight that I have) to make that decision.

I also feel that it is too easy for mentally impaired inmates to be abused and essentially "hidden" from family members and loved ones by putting the inmate in "the hole" and simply stating that the inmate is "refusing" release of personal information, visits, and even mail. I am not stating that this has definitely happened to anyone, for I do not know for certain that it has.... But I feel that there is certain potential for inmates to be abused, and for that abuse to be hidden from loved ones. It is scary and disgusting to me to think that there is even a chance that this occurs—whether it occurs to my son, or any other inmate.

—Excerpts from a letter sent to the Commission on December 14, 2005

As a society, we need to expand and improve community-based treatment for persons with mental illness.

4 Screen, test, and treat for infectious disease. Every U.S. prison and jail should screen, test, and treat for infectious diseases under the oversight of public health authorities and in compliance with national guidelines and ensure continuity of care upon release.

Dr. Robert Greifinger, one of the primary authors of the National Commission on Correctional Health Care's report *The Health Status of Soon-To-Be-Released Inmates*, told the Commission that while studying prison health care he had learned that "this was all about…my health and yours and the health of our families because, among other things, the burden of illness among inmates is really very, very extraordinary." He was referring to the very high prevalence among prisoners of communicable diseases such as tuberculosis, hepatitis, HIV, sexually transmitted diseases, and most recently on the rise—drug resistant staph infections. Since many of these diseases disproportionately affect African-Americans and Latinos, our failure to identify and treat disease in correctional institutions puts these communities at particular risk.

The NCCHC report demonstrates that proper screening and treatment of infectious diseases in prisons and jails would improve public health (NCCHC 2002). While some public health agencies already work with correctional systems to manage infectious disease, too many county and state public health departments have not shouldered this responsibility. There are potentially devastating results when corrections departments do not have the help and resources to control disease. Conversely, well-designed systems of disease control can enormously benefit public health and result in tremendous cost savings down the road. For example, in New York City in the 1980s and early 1990s there was an epidemic rise in tuberculosis, including a dangerous jump in the incidence of multi-drug resistant tuberculosis. The rise in drug-resistant cases, in particular, was believed by many to be largely the result of poor treatment in prisons and jails. Research shows a correlation between time spent in jail and tuberculosis infection (Bellin et al. 1993). With support from the Centers for Disease Control and Prevention, the city and state's coordinated response included establishing a Communicable Disease Unit in the jails at Rikers Island. The effort was a success. Between 1992 and 1998 tuberculosis cases declined 59 percent citywide, and the number of drug-resistant cases declined 91 percent (Shalala 2000).

It is particularly challenging for jails to track infectious diseases without active assistance from local public health departments. Many people spend only a day or two in jail, less time than it takes to get results from a tuberculosis or STD test. Given the costs of the tests, jails may be reluctant to provide them to people who might be released before they can be informed of the results. In those jails where the local public health agency is involved in disease testing, that agency can take responsibility for informing people about their test results and following up with necessary care.

Returning Home with a Disease

People carrying an infectious disease who were released from prison and jail in 1996.

HEPATITIS C
1.3 – 1.4 million

HIV/AIDS
98,000 – 145,000 HIV
39,000 AIDS

TUBERCULOSIS
566,000 LATENT
12,000* ACTIVE

*Estimated number of prisoners released in 1996 who had active TB at some point that year.

SOURCE: NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE, 2002

Public health agencies throughout the country should seize the opportunity to collaborate with correctional systems. Working together and following national guidelines, they can ensure that infectious diseases are closely tracked and properly managed through screening, testing, and treatment inside correctional facilities and continued care after release.

5 **End co-payments for medical care.** State legislatures should revoke existing laws that authorize prisoner co-payments for medical care.

Beginning about a decade ago, under significant pressure from state lawmakers to control spiraling medical costs, correctional facilities began charging prisoners co-payments for health care. The trend took off, and by 1997 legislatures in 33 states had passed laws authorizing prisoner fees—generally including co-payments—for medical care (NIC February 1997). Co-payments are not designed to offset the expense of a doctor's visit, and in some systems the cost of administering the fees is greater than the money recovered. Rather, co-payments are intended to drive down medical costs by discouraging prisoners from seeking unnecessary care and to free up physicians to treat the truly ill. And indeed, research in 36 states shows that co-payments reduce sick calls between 16 and 50 percent (Stana 2000).

But these fees do much more than discourage the malingerer. They also have unintended consequences, causing prisoners with legitimate medical concerns to delay or forego seeking necessary treatment. In the worst cases, this can lead to unnecessary suffering and death, and can cause the spread of disease to other prisoners and staff and into the surrounding community. In a study conducted by the Centers for Disease Control and Prevention to evaluate the cause of outbreaks of methicillin-resistant Staphylococcus aureus (MRSA) in correctional facilities in Georgia, California, and Texas between 2001 and 2003, co-payments were singled out as a significant contributor to the spread of these serious and aggressive skin infections because they discouraged prisoners from seeking care (CDC 2003).

Most Americans are accustomed to paying a portion of their medical care. Given the tremendous pressure on corrections administrators to contain costs and hold prisoners accountable, co-pays in a correctional facility also seem reasonable. But even small fees can be insurmountable for sick prisoners who have no control over the jobs and wages available to them (NIC February 1997). The majority of state correctional systems and many jails charge between $2 and $15 for a sick-call request, a doctor's visit, and in some systems, for a prescription (NIC February 1997, NIC September 1997). Meanwhile, not all prisoners have wage-paying jobs, and the majority of states pay their wage-earning prisoners less than $1 per hour. At the very low end of the pay scale, prisoners in Louisiana typically earn two cents per hour—a yearly wage of $38.40—and in Georgia prisoners earn no wages (Camp 2003).

In many cases, the actual burden of paying for medical care falls on prisoners' families.

Supporters of co-payments argue that systems have been designed to ensure care for those who really need it. The very best co-pay systems do not require people with chronic illnesses to pay for routine care or charge co-payments for providing mental health care, treating infectious diseases, or dispensing medication. They also offer treatment to the indigent, but the fees can accumulate as debt and are subtracted from prisoners' accounts when a family member deposits money or the prisoner later earns wages. This debt can follow a prisoner for many years, even after release from prison. While popular with corrections administrators who are under tremendous pressure from state legislatures to cut costs, co-payments can cost the state more in the long run.

The National Commission on Correctional Health Care opposes any fee-for-service or co-payment program that restricts patient access to care and offers strict guidelines under which such programs may operate. Many experts privately state, however, that it is impossible to devise a co-payment program that does not erect barriers to care that could put the health of individuals in jeopardy, lead to the spread of disease, and cost correctional systems and communities much more in the long run when treatment is delayed.

It is impossible to devise a co-payment program that does not erect barriers to care that could put the health of individuals in jeopardy, lead to the spread of disease, and cost more in the long run.

Against prevailing practice, some people argue that a better way to control medical costs is to ensure full and unimpeded access to primary care. At the Hampden County Correctional Center in Massachusetts, nurses visit the housing units every day looking for sick prisoners. Dr. Thomas Lincoln, the center's medical director, explains that educating prisoners about their health and encouraging them to address health concerns immediately is the best way to ease the burden on medical care staff.

Prisoners should never be discouraged from seeking medical care, and co-payments do just that. The Commission believes the risks are too great to justify any short-term cost-savings and urges state lawmakers to eliminate co-payments and provide corrections departments with the resources they need to provide quality medical care in our prisons and jails.

6 Extend Medicaid and Medicare to eligible prisoners. Congress should change the Medicaid and Medicare rules so that correctional facilities can receive federal funds to help cover the costs of providing health care to eligible prisoners. Until Congress acts, states should ensure that benefits are available to people immediately upon release.

No U.S. correctional institution receives federal Medicaid or Medicare reimbursement for health services provided to prisoners, even though most prisoners would qualify for these benefits and many were enrolled in these programs before incarceration.

No U.S. correctional institution receives federal Medicaid or Medicare reimbursement for health services provided to prisoners, even though most prisoners would qualify for these benefits and many were enrolled in these programs before incarceration. Medicaid is funded jointly by the federal and state governments, while Medicare is a federal program. Current law prevents the federal government from paying its share. Dr. Joe Goldenson explained the consequences: "The total cost then falls either on the county in the case of jails or the state in terms of state prisons, and, you know, except for a cost-saving factor on the part of the federal government, there really is no reason that should happen, and it places correctional institutions at a real disadvantage in terms of having access to funding that's available to everyone else for health care."

Just like any other community health-care provider, correctional agencies should be reimbursed for the cost of providing medical and mental health services to people who are Medicaid and Medicare eligible. And as a positive corollary, the process of certifying correctional facilities as Medicaid providers would raise the quality of care in facilities where it is currently substandard. One example may demonstrate how a continued public health investment for prisoners can benefit everyone and reduce costs in the long run. Currently, many prisoners with hepatitis C do not receive treatment because correctional facilities cannot afford to provide anti-viral medication for everyone likely to benefit from it (NCCHC 2002, Allen 2003). Instead, the public health system pays a much larger cost down the road when those untreated prisoners are released and are more likely to require liver transplants because they did not receive treatment earlier. With funding from Medicaid or Medicare, facilities would be able to treat nearly all infected prisoners when it is medically appropriate, most likely to benefit them, and most cost-effective.

Continuing Medicaid and Medicare reimbursement throughout the period of incarceration also would promote continuity of care after release. This is an enormous public health issue, as many of the millions of people released each year—including those with mental illnesses and infectious or chronic diseases—have no way to pay for treatment or medication until they are returned to the Medicaid or Medicare rolls weeks or months later. Arthur Wallenstein, who directs corrections in Montgomery County, Maryland, exclaimed, "This is an unbelievable issue, and I hope the Commission understands it." He went on to explain that benefits for people in jail—even those not yet convicted of a crime but unable to pay bail—are "suspended the day they walk in and, in many cases, revoked, not suspended." Even before the federal rules are changed, states can—some already do—ensure continuity of care by suspending rather than terminating benefits during incarceration and then making benefits available immediately upon release. The National Commission on Correctional Health Care endorses this approach (NCCHC 2002).

Incarceration is no reason for cutting off public funds for health care. Medicaid and Medicare reimbursement would shift billions of dollars in costs from states and localities to the federal government. But it is a shift that makes sense. Given the constitutional mandate to care for prisoners, the public health consequences of failing to do so, and the huge burden of correctional health care on states and localities, reimbursing corrections departments with federal funds for the cost of prisoners' medical care is in everyone's best interest. And until Congress acts, states should ensure continuity of care by suspending—never terminating—benefits, and by arranging for the immediate availability of benefits on a prisoner's release. ■

PROVIDE HEALTH CARE THAT PROTECTS EVERYONE: RECOMMENDATIONS RECAP

1. **Partner with health providers from the community.** Departments of corrections and health providers from the community should join together in the common project of delivering high-quality health care that protects prisoners and the public.
2. **Build real partnerships within facilities.** Corrections administrators and officers must develop collaborative working relationships with those who provide health care to prisoners.
3. **Commit to caring for persons with mental illness.** Legislators and executive branch officials, including corrections administrators, need to commit adequate resources to identify and treat mentally ill prisoners and, simultaneously, to reduce the number of people with mental illness in prisons and jails.
4. **Screen, test, and treat for infectious disease.** Every U.S. prison and jail should screen, test, and treat for infectious diseases under the oversight of public health authorities and in compliance with national guidelines and ensure continuity of care upon release.
5. **End co-payments for medical care.** State legislatures should revoke existing laws that authorize prisoner co-payments for medical care.
6. **Extend Medicaid and Medicare to eligible prisoners.** Congress should change the Medicaid and Medicare rules so that correctional facilities can receive federal funds to help cover the costs of providing health care to eligible prisoners. Until Congress acts, states should ensure that benefits are available to people immediately upon release.

Limit Segregation

RECOMMENDATIONS

1. **Make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets.**
2. **End conditions of isolation.**
3. **Protect mentally ill prisoners.**

BEGINNING IN NOVEMBER, 2002, AN INVESTIGATIVE REPORTER from *USA Today* followed nine people released directly from high-security "segregation" units in Texas prisons, just a few of the approximately 1,200 prisoners the Texas Department of Criminal Justice separates from the general prison population for reasons of safety. Thirty-one months later, seven of the nine had served additional time in prison. Adam Morales is one of them. A gang member, he spent a decade in solitary confinement before his release in 2002. Morales now faces 35 additional years in segregation for shooting up his apartment while drunk and then trying to escape from jail. His niece told the reporter that she remembers seeing her uncle at the local Wal-Mart walking with his back to the walls and avoiding other customers. Psychologist and University of California Professor Craig Haney, who has interviewed hundreds of prisoners in segregation, has said that they are "utterly dysfunctional when they get out" and that family members often ask him to help their relatives adjust to normal life (Johnson 2005). Texas has since begun a pilot program to smooth the transition from long-term segregation to the community and is closely tracking the results.

Separating dangerous or vulnerable individuals from the general prison population is a necessary part of running a safe correctional facility. In some systems around the country, however, the drive for safety, coupled with public demand for tough punishment, has had perverse effects: Prisoners who should be housed at safe distances from particular individuals or groups of prisoners end up locked in their cells 23 hours a day, every day, with little opportunity to engage in programming to prepare them for release. People who pose no real threat to anyone and also the mentally ill are languishing for months or years in high-security units and supermax prisons. And in some places, the environment in segregation is so severe that people end up completely isolated, living in what can only be described as torturous conditions. There is also troubling evidence that the distress of living and working in this environment actually causes violence between staff and prisoners (see "Diminishing Returns in Safety," p. 54).

On June 30, 2000, when the federal Bureau of Justice Statistics last collected data from state and federal prisons, approximately 80,000 people were reported to be confined in segregation units. That is just a fraction of the state and federal prisoners who spend weeks or months in expensive, high-security control units over the course of a year, and it does not capture everyone incarcerated in supermax prisons. And there is no similar data for local jails. But as an indicator of the use of segregation, the BJS prison census data from 1995 and 2000 suggest a troubling shift in practice. Over this five-year period, the growth rate in the number of prisoners housed in segregation far outpaced the growth rate of the overall prison population: 40 percent compared with 28 percent (BJS 1998, BJS 2004). As lawyer, scholar, and prison monitor Fred Cohen told the Commission, segregation is a "regular part of the rhythm of prison life."

The overreliance on and inappropriate use of segregation hurts individual prisoners and officers. But the consequences are broader than that: The misuse of segregation works against the process of rehabilitating people and threatens public safety. Both the problems and their consequences trouble experts like Fred Cohen as well as many corrections administrators. Based on their views and experiences, this chapter presents the Commission's recommendations for placing greater limits on the use of segregation in America's prisons and jails.

Walter Dickey, former secretary of the Wisconsin Department of Corrections, said that his state's supermax prison was filled with the wrong people, "the young, the pathetic, the mentally ill," and at twice the cost of incarceration in a maximum security prison.

1 Make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets.

Tighten admissions criteria and safely transition people out of segregation as soon as possible. And go further: To the extent that safety allows, give prisoners in segregation opportunities to fully engage in treatment, work, study, and other productive activities, and to feel part of a community.

Placing someone in segregation should be a last resort, a choice made only after carefully considering other options and only for the purpose of maintaining safety in the facility. Often that is not the case, however.

Prisoners can end up in "disciplinary" segregation, a form of punishment, for possessing tobacco or talking back to an officer—rule-breaking that poses little or no threat to the safety and order of a facility. And this might occur before less extreme and costly punishments are considered, such as restricting commissary, revoking work privileges, and limiting access to mail and phones (Riveland 1999). Between 1995 and 2000 the daily count of people in disciplinary segregation increased 68 percent—a rate of growth more than double the growth rate of the prison population overall (BJS 1998, BJS 2004). Equally troubling, stays in disciplinary segregation are likely to last for months or even years, rather than weeks or days (Correctional Association of New York 2003). This can happen

Disciplinary vs. Administrative Segregation

Prisoners end up in segregation for one of two reasons. Either they are placed in "disciplinary" segregation as a form of punishment for breaking rules in prison, or they are classified into "administrative" segregation and supermax prisons because they are assumed to pose a threat to other prisoners and staff or because they are especially vulnerable and need to be protected from the general prison population or from particular individuals. Even within the already highly controlled environment of a supermax prison, there can be special control units—a form of segregation within segregation.

In theory, stays in disciplinary segregation are meant to be relatively brief, lasting just weeks. In practice, that is often not the case. Administrative segregation, by contrast, is intended to be long-term, often for the length of an entire sentence. When the purpose of segregation is to punish and deter rule breaking—and the stay is assumed to be brief—it is more accepted to restrict privileges such as access to phones, newspapers, and outdoor recreation. In administrative segregation, additional punishments should not be permitted.

because of the way punishment is meted out. For example, a young prisoner caught with 17 packs of Newport cigarettes—contraband in the nonsmoking jail—was given 15 days in solitary confinement for each pack of cigarettes, more than eight months altogether.

There has also been an upswing in the use of long-term segregation, where prisoners are separated from the general prison population because they pose a danger to others or are vulnerable to attack. This includes "administrative" segregation, where prisoners are classified into control units within a prison, and also supermax incarceration, special high-security facilities that began to populate the correctional landscape beginning in the mid-1980s. The actual risk someone presents to the prison community should be carefully considered before segregating the person for what could amount to the entire length of his or her sentence. Yet just a few years ago, Walter Dickey, former secretary of the Wisconsin Department of Corrections, said that his state's supermax prison was filled with the wrong people, "the young, the pathetic, the mentally ill," and at twice the cost of incarceration in a maximum security prison—$40,000 compared with $20,000 (Zaleski 2001, Wisconsin Department of Corrections).

In some cases, the net has been intentionally widened. Toward the end of the 1990s, officials in Virginia quietly expanded eligibility criteria for Red Onion and Wallens Ridge—brand new, technologically advanced supermax facilities—when there were more cells than dangerous prisoners to fill them. "[T]he 'worst of the worst' had come to be a meaningless phrase," author Joseph Hallinan writes. "It included those who had been disruptive and those who had not, those who had committed horrible crimes and those who had harmed no one.… Wallens Ridge would hold them all" (Hallinan 2003). Researchers believe this kind of inappropriate classification of prisoners is not uncommon (Kurki and Morris 2001, Human Rights Watch 2000, Riveland 1999, *Wilkinson v. Austin* 2005).

Net-widening is not limited to supermax prisons. Former Minnesota prison Warden James Bruton told the Commission, "There are states in this country that [segregate] prisoners simply because they have a gang affiliation, whether or not they have done anything in the prison, and I happen to think that's wrong." In some cases,

Diminishing Returns in Safety

By separating out people who are perceived to be most dangerous or most vulnerable, corrections administrators aim to prevent violence that would spread and multiply throughout their systems. Limited research about the impact of segregation on the safety of correctional systems is not encouraging, however. A carefully designed study of correctional systems in Arizona, Illinois, and Minnesota found that segregating prisoners in supermax facilities did little or nothing to lower overall violence. Prisoner-on-prisoner violence did not decrease in any of the three states. Prisoner-on-staff assaults dropped in Illinois, but staff injuries increased in Arizona, and there was no effect in Minnesota (Briggs et al. 2003). Donald Specter, who litigates on behalf of prisoners in California, testified that the state's efforts to reduce violence systemwide by putting dangerous prisoners in supermax facilities and segregation units was a "failure." "The level of violence in California has been going up, notwithstanding these SHUs [Special Housing Units]," he said.

There also is some evidence that officers who work in SHUs are more likely to be assaulted. One study found that 71 percent of assaults on staff occurred in a control unit that housed less than 10 percent of the facility's prisoners (Kratcoski 1988). It may be that segregated prisoners, many of whom have histories of violence, pose a greater threat to officers than prisoners in the general population. But it may also be true that harsh living conditions in segregation only exacerbate those tendencies. In other words, when segregation approaches or becomes isolation, it can make worse the very problem it is designed to solve.

Veteran officer Gary Harkins described an environment in the Intensive Management Unit at the Oregon State Penitentiary where the lack of meaningful interaction "creates an 'us versus them' mentality on both sides." Former Mississippi prison Warden Donald Cabana, agrees: "The environment…actually increases the levels of hostility and anger among inmates and staff alike," he told the Commission.

Solitary confinement is not the only option. Fred Cohen, a lawyer and scholar who has monitored correctional systems across the country, testified that in Europe dangerous prisoners are housed in small units of 10 people and receive special programming. And according to Steve Martin, who has visited and inspected over 500 facilities, this is an approach that can and does work in the United States: dangerous prisoners can be safely managed without isolating them in locked cells 23 hours a day.

African-American and Latino prisoners are being unfairly labeled as gang members—a practice that only increases tendencies in some systems and facilities to disproportionately house minority prisoners in segregation units (Kupers 1999). Addressing the appropriate use of segregation requires sensitivity to why we perceive some as dangerous and how we feel about isolating them. Moreover, sociologist and former prison gang member Douglas Thompkins explained that the disproportionate segregation of racial minorities can actually encourage both prisoners and staff to engage in gang-like activity for self-protection.

Thousands of people today are living in segregation, often in extremely harsh conditions, with no clear understanding of when they might be moved to the general prison population. In their study of a supermax prison in Tamms, Illinois, researcher Leena Kurki and criminologist Norval Morris noted a lack of regular and meaningful internal reviews to determine whether individual prisoners must remain segregated (Kurki and Morris 2001). Others have decried the absence of formal hearings and appeals where prisoners can defend themselves against being transferred to or held in segregation (Haney and Lynch 1997, Toch 2001).

The Commission heard that prisoners, their families, and the community often lack confidence that correctional facilities keep the "right" people in segregation and the "wrong" people out. Daud Tulam, a former prisoner who spent 18 years in segregation in different New Jersey prisons, told the Commission that the required 90-day reviews were "a sham, with no real investigation," and that after a few years he stopped participating in the review process, feeling that he would never be transferred out of the control unit.

James Bruton explained to the Commission that the sheer volume of people in segregation makes it difficult for departments of corrections to conduct regular and meaningful reviews. Correctional facilities also lack the resources and support to develop programs and incentives that encourage prisoners to behave in ways that make transfer out of segregation likely, according to Steve Martin, who was formerly a corrections officer and general counsel to the Texas Department of Criminal Justice and has visited or inspected more than 500 facilities around the country.

The American Correctional Association requires accredited facilities to have a documented review process and to conduct reviews every 30 days for the purpose of determining "whether the reasons for the placement still exist" (ACA

From Solitary Confinement Straight to the Streets

Across the country, prisoners are being released into the community directly from segregation—in some cases, after spending years in solitary confinement. There are no national recidivism data for people released *directly* from segregation to the community, but a large study of former prisoners in Washington suggests that the odds of success are poor indeed. Researchers tracked rearrest rates among people released from prison in 1997 and 1998, a total of 8,000 former prisoners. Two hundred and forty-two of them had spent at least three continuous months in segregation, and most had been housed in segregation for much longer. Those who had been segregated were somewhat more likely than the others to commit new felonies. And among the repeat offenders, formerly segregated prisoners were much more likely to commit violent crimes.

At first glance, this seems to make sense: People who are violent before being incarcerated, which is true of many but not all prisoners in segregation, may resume violent behavior after release. But an additional finding from the study throws that conclusion into doubt. People who were released *directly* from segregation had a much higher rate of recidivism than individuals who spent some time in the normal prison setting before returning to the community: 64 percent compared with 41 percent. That finding suggests a link between recidivism and the difficult living conditions in segregation, where good rehabilitative and transitional programming are less available (Lovell and Johnson 2004, Commonwealth of Massachusetts Governor's Commission on Corrections Reform 2004, Petersilia 2003). As distinguished criminologist Hans Toch cautions, "Supermax prisons may turn out to be crucibles and breeding grounds of violent recidivism. . . . [Prisoners] may become 'the worst of the worst' because they have been dealt with as such" (Toch 2001).

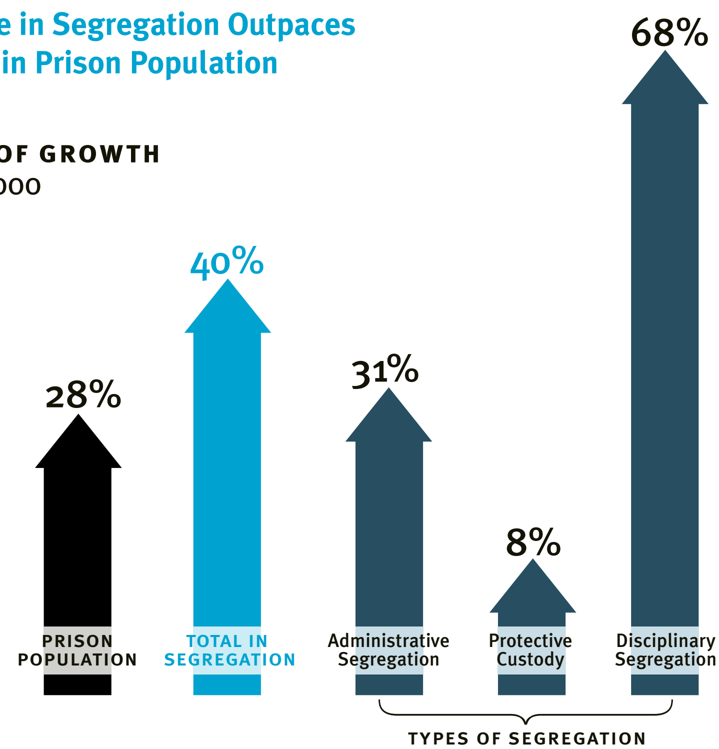
2003, Standard 4-4253 and Standards 4-4251 through 4-4256). But the ACA's standards do not describe the features of a meaningful review process. Nor does the ACA explicitly suggest that corrections administrators should use these reviews to move people out of segregation as soon as possible. These standards could be strengthened by making them more detailed and goal-oriented. The ACA also has standards that require an environment in long-term segregation where prisoners participate in educational programming and recreational activities (Standard 4-4273). More correctional facilities should meet those standards.

There is growing consensus that correctional systems should rely less on segregation, using it only when absolutely necessary to protect prisoners and staff—and that further reforms are needed. Keeping people locked down for hours on end is counter-productive in the long run. To the extent that safety allows, prisoners in segregation should have opportunities to better themselves through treatment, work, and study, and to feel part of a community, even if it is a highly controlled community.

To reduce the number of segregated prisoners, corrections administrators must tighten admissions criteria and create a safe and meaningful process

Increase in Segregation Outpaces Growth in Prison Population

RATES OF GROWTH
1995–2000



CENSUS FIGURES

	PRISON POPULATION	TOTAL IN SEGREGATION	Administrative Segregation	Protective Custody	Disciplinary Segregation
1995*	1,023,572	57,591	27,972	10,006	19,973
2000+	1,305,253	80,870	36,499	10,785	33,586

*Count on June 30, 1995
+Count on June 30, 2000

SOURCE: BUREAU OF JUSTICE STATISTICS

for moving people out of segregation as soon as possible. That transitional process requires gradually increasing a person's interactions with other prisoners and staff, so that formerly segregated individuals become accustomed to living with others in a less controlled environment. And for prisoners nearing the end of their sentence, the transition should include a pre-release transfer to the general prison population where they can participate in mainstream programming as well as targeted reentry preparation.

2 End conditions of isolation. Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm.

"There are offenders who need to be highly controlled at all times," former Minnesota prison Warden James Bruton explained. "But they still need contact with other people. They still need a reason to approach each day with a positive attitude—a phone call or visit from a loved one, a magazine or newspaper. They still need to feel like human beings." In Bruton's opinion, meeting those basic human needs is the key to safety. And locking people in stark cells 23 hours a day without incentives for good behavior is the wrong approach.

Conditions in segregation vary across the country. In the most severe conditions—which are more likely to occur in disciplinary segregation units and supermax prisons—individuals are locked down 23 or 24 hours a day in small cells between 48 and 80 square feet with no natural light, no control over the electric light in their cells, and no view outside of their cells. They have no contact with other prisoners—even verbal—and no meaningful contact with staff. They may be able to spend up to an hour every other day alone in a concrete exercise pen. Access to books and writing materials is limited; radio and television are banned; calls to and visits with family are very infrequent, when permitted at all. While there is no national data indicating how often segregation involves conditions of isolation, experts who have traveled the country and seen systems up close believe that isolation is not a rare occurrence.

The American Correctional Association has standards that prohibit the most punishing physical conditions in segregation. Cells in accredited facilities, for example, must have windows (Standard 4-4148). Cumulatively, the standards aim to prohibit total isolation, where prisoners almost never encounter another

The Torment of Isolation

I never seen the sky, or felt the warmth of the sun, or a breeze pass by me, the trees and grass or a rain drop. I never knew how painful it could be to be denied nature itself. I had a small narrow window which does not open, but all I could see was brick walls and nothing more. I remember from those brick walls was a small plant growing from within the cracks of the brick, that was my only part of nature that gave me hope. As the wind would blow against the leaves of this plant, I would actually close my eyes and pretend this very wind was blowing against my face. I know it sounds crazy, but it was the only part of nature that I had.

Then one day I could not stand it and I so desperately need to feel real air, so I started to scrape the seal from the window with my finger tips, I was determined to make an opening.

For three months of every day I scraped and scraped where my fingers bleeded, but I managed to make a very small opening and I only had room to place one side of my nose against this opening at a time and I would take such a deep breath where I was finally able to inhale a very small amount of air but it was all I needed in order to survive....

The officers there felt sorry for me and they would bring me paper and a pen to keep myself busy with being I had nothing and there is where I started to doodle on paper and from there was how I became an artist. I never in my life knew how to draw, I couldn't draw a heart to save myself, but after three years of this madness of being locked like an animal instead of letting it get to me I put all my pains on paper and before I knew it I had art!

—Excerpted from a letter dated July 15, 2001, to Bonnie Kerness, Director of the American Friends Service Committee's Prison Watch. The author is a 45- year-old mother of three who was housed in the segregation unit of a New Jersey prison.

person. The standards should be strengthened, however, to require regular and meaningful human contact.

"I've spoken with people who begin to cut themselves, just so that they can feel something," said Bonnie Kerness when she testified before the Commission. Kerness is associate director of the American Friends Service Committee's Prison Watch. She has been monitoring conditions in segregation nationally since the early 1980s and receives hundreds of letters every

In the most severe conditions—which are more likely to occur in disciplinary segregation units and supermax prisons—individuals are locked down 23 or 24 hours a day in small cells between 48 and 80 square feet with no natural light, no control over the electric light in their cells, and no view outside of their cells.

year from or about prisoners in these control units. A study of Virginia prisons supports such personal accounts. Half the documented incidents of self-mutilation in 1985 took place in the segregation units (Haney and Lynch 1997).

In the mid-1980s, psychiatrist Stuart Grassian studied a small group of Massachusetts prisoners who had been living in isolation. He identified a constellation of symptoms that includes overwhelming anxiety, confusion and hallucination, and sudden violent and self-destructive outbursts. Because those prisoners were confined in the Special Housing Unit, he called the effects "SHU syndrome" (Grassian 1983). Other researchers, before and after Grassian, have observed the same responses (Brodsky and Scogin 1988, Fisher 1994, Haney 1993, Haney 2003, Kupers 1999, Rhodes 2004, Toch 1975).

In 1997, psychologists Craig Haney and Mona Lynch reviewed dozens of studies conducted since the 1970s and concluded that there was not a single study of non-voluntary solitary confinement for more than 10 days that did not document negative psychiatric symptoms in its subjects (Haney and Lynch 1997). Two years later in *Ruiz v. Johnson*, a federal court in Texas ruled that conditions in that state's administrative segregation units—"extreme deprivations which cause profound and obvious psychological pain and suffering"—violated the Constitution's prohibition against cruel and unusual punishment. While experts believe that prolonged isolation is always harmful, they note that very short-term isolation—for less than 24 hours—can be used in extreme circumstances as a therapeutic intervention to stabilize someone who is completely out of control and to prevent harm to self or others. For isolation to fulfill a therapeutic purpose, as opposed to managing or punishing the prisoner, a trained mental health professional must be involved throughout the process (see "Protect mentally ill prisoners" below).

Extreme conditions in segregation also take a toll on the men and women who work every day in these environments. Bonnie Kerness recalled what one New Jersey corrections officer told her: "'When I see a human being who is reduced to throwing feces and urine, it wears me down,' he said. 'I am breathing the same canned air, sitting under the same fluorescent lights, listening to the same noises. I don't believe this is good for officers or good for the prisoners.'"

There are signals that the fascination with expensive and soul-destroying supermax prisons is waning. "I was in a supermax last week with 240 inmates built for 500," Fred Cohen told the Commission, "and there were inmates jogging on empty cell blocks, playing handball against walls." What's quietly happening, he reports, is that "because you can't say to the legislators we never should have built that supermax, you use it for different purposes, even if you don't rename it." In light of all the evidence, we should accelerate this trend: stop isolating people and ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that can cause lasting harm.

Missing Data

- The number of people held in conditions of isolation
- How often jails rely on segregation
- How much time on average prisoners spend in segregation
- The ethnic, racial, and gender make-up of segregated prisoners

3 Protect mentally ill prisoners. Prisoners with a mental illness that would make them particularly vulnerable to conditions in segregation must be housed in secure therapeutic units. Facilities need rigorous screening and assessment tools to ensure the proper treatment of prisoners who are both mentally ill and difficult to control.

Gary Harkins, a corrections officer for 25 years at the maximum security Oregon State Penitentiary, told the Commission, "It's not unusual to have up to one half of the segregation beds occupied by mentally ill inmates." In the year 2000, 30 percent of prisoners in Washington's Intensive Management Units had a serious mental illness, compared with illness rates among the general prisoner population ranging from 10 to 15 percent (Lovell et al. 2000). In 1999 half the prisoners at the Wabash Valley Special Housing Unit in Indiana had a diagnosed mental disorder (Kupers 1999).

A record 44 prisoners killed themselves in California prisons in 2005, and 70 percent of those suicides occurred in disciplinary segregation units (Thompson 2006). In a national study of 401 suicides that took place in U.S. jails in 1986—one of the largest studies of its kind—two out of every three people who committed suicide were being held in a control unit (Hayes and Rowan 1988).

The presence of schizophrenia, other psychotic disorders, and major depression coupled with suicidal tendencies can make it impossible for a person to cope with the conditions in segregation. And these are not the only mental illnesses that can make life in segregation unbearable and harmful. Experts agree that prisoners with post-traumatic stress disorder, certain phobias, those who are developmentally disabled, and people with severe personality disorders where there is also a history of or significant potential for psychotic behavior under stress may be poor candidates for segregation. Research shows that an extended stay in segregation is harmful to such individuals and makes it more difficult to treat them successfully once they return to the general prison population or are released to the community (Haney 2003).

While prisoners with serious mental illnesses need to be in secure therapeutic units inside prisons and jails, they are likely to end up in disciplinary segregation if they display the kinds of disruptive, troublesome, or self-injurious behavior that corrections workers tend to punish or manage using segregation. "Many of these people who are said to be the 'worst of the worst' are simply the wretched of the earth. They're sick people," Dr. Stuart Grassian told the Commission. He described a "revolving door" phenomenon where mentally ill prisoners in the most isolating conditions become so acutely ill that they end up being committed to a psychiatric hospital, where they recover just enough to be sent back to the control unit. And the cycle begins again.

Three federal courts have determined that some conditions of isolation may constitute cruel and unusual punishment when the individuals being held in those conditions are mentally ill (*Jones 'El v. Berge* 2001, *Ruiz v. Johnson* 1999, and *Madrid v. Gomez* 1995). The American Correctional Association warns that "inmates whose movements are restricted in segregation units may develop symptoms of acute anxiety or other mental problems" and recommends regular psychological assessments of these prisoners (Standard 4-4256). The ACA standards should be strengthened to specify what facilities must do when someone with a mental illness ends up in segregation.

In 1997, a federal court in Iowa found that half the mentally ill prisoners at the Iowa State Penitentiary were living in the segregation unit (*Goff v. Harper* 1997). The high-security cellblock housed so many seriously mentally ill prisoners that it was commonly known as the "bug range." Iowa has since opened a mental health unit to house difficult-to-manage prisoners who would otherwise be placed in isolation. But when a rash of suicides in 2004 suggested a continuing problem, the Iowa Department of Corrections hired a consultant through the National Institute of Corrections to review the situation. Among several problems, the consultant discovered the department's heavy emphasis on prisoner accountability

In Minnesota, A Prison Community Even for Dangerous Prisoners

"I'm a very big believer in control and security. You have to have it, but it goes with dignity and respect." These are the words of James Bruton, former Warden of the maximum security Oak Park Heights prison in Minnesota—a facility that exists in lieu of a traditional supermax prison. He told the Commission that even the most dangerous prisoners need and are assured human contact, natural light and other sensory stimulation, and regular exercise. Perhaps most revolutionary, few people in this high-security prison are locked in their cells during the day.

The lesson of Oak Park Heights is that it is possible to create a secure environment without resorting to near total social and sensory deprivation. And in Bruton's opinion it is not only possible, it is the better option: "When you have a very distilled population like that, where half of the people that you work with every day have killed somebody and 95 percent have hurt somebody, you better find a way every day for them to get up in the morning and look forward to something positive or you've got big trouble."

"I've seen many of the high-security prisons, and Oak Park Heights, I believe, is the most secure institution ever built anywhere in the world. I truly believe that.... Twenty-three years of operations, never been a homicide. Twenty-three years of operations, never been an escape, never been an attempted escape. Very little drugs inside the institution."

"We have a responsibility... maybe more so in a high-security prison, to create an environment conducive to rehabilitation for people who want to make a change in their lives. Why wouldn't we do that? Remember, 95 percent are getting out some day."

led mentally ill prisoners to be placed in disciplinary segregation for behavior they could not control and to be kept there when their behavior did not improve (White 2005). Since that review, the department has improved both policy and practice, and in 2005 there were no suicides in the segregation unit of the Iowa State Penitentiary or any of the state's prisons.

Iowa is not alone in the effort to divert mentally ill prisoners from segregation units. Corrections administrators in New Mexico, Ohio, Oregon, Pennsylvania, and other states are doing the same. In many cities and counties around the country, large jails are making similar progress spurred in part by a promising collaboration of criminal justice, law enforcement, and mental health treatment and advocacy groups coordinated by the Council of State Governments (CSG 2002). But even though diversion works, the mentally ill can end up in therapeutic units where they are locked in their cells nearly all of the time because facilities lack staffing and other resources to treat them in a less restrictive setting. And too often the severely mentally ill remain detained in jails simply because there is no space for them in community-based treatment facilities.

Correctional systems must build on achievements to date and expand the use of rigorous screening and assessment tools to identify mentally ill prisoners who cannot cope with the conditions in segregation. Caring for those who cannot be housed in the general prisoner population requires investing in secure therapeutic units inside prisons and jails staffed by mental health professionals who can handle troubled individuals without locking them in their cells all day. We must also expand the capacity of community mental health resources to care for mentally ill persons before they become mentally ill prisoners (see "Commit to caring for persons with mental illness," p. 43). ■

LIMIT SEGREGATION: RECOMMENDATIONS RECAP

1. **Make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets.** Tighten admissions criteria and safely transition people out of segregation as soon as possible. And go further: To the extent that safety allows, give prisoners in segregation opportunities to fully engage in treatment, work, study, and other productive activities, and to feel part of a community.
2. **End conditions of isolation.** Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm.
3. **Protect mentally ill prisoners.** Prisoners with a mental illness that would make them particularly vulnerable to conditions in segregation must be housed in secure therapeutic units. Facilities need rigorous screening and assessment tools to ensure the proper treatment of prisoners who are both mentally ill and difficult to control.

"We are not knuckle-dragging guards working in smelly dungeons, and we do not deserve that reputation."

Sergeant Gary Harkins,
Oregon State Penitentiary

II. Labor and Leadership

THE PUBLIC RARELY THINKS ABOUT PEOPLE in prison and thinks even less often about the men and women who manage and work in these same facilities. When we do look closely, what we see is a poorly understood profession that shoulders tremendous responsibilities and faces incredible challenges, usually without adequate resources and support. Yet this labor force is responsible for operating jails and prisons that must safely and humanely accommodate an estimated 13.5 million people annually. When corrections professionals fail to meet the demands of the job, for whatever reason, they endanger prisoners and officers alike and, at the extreme, cripple entire facilities. The failures are felt beyond the facility walls when officers and prisoners return to their families and their communities. § This is a tough profession. The

"Prisons that have wardens who are proactive, humane, and model appropriate behavior toward prisoners and staff reduce the likelihood of abusive staff behavior."

Patrick McManus, former corrections secretary in Kansas life of a corrections officer can involve long shifts in tense, crowded facilities without enough backup, support, or training—stressful conditions that take a toll on the workforce both personally and professionally (Finn 2000). Higher up the chain of command, the demands change but they do not decrease. Many wardens have to run aging and understaffed facilities and deal with a workforce in which experienced officers are likely to leave the profession for better paying, less stressful jobs just when they are ready to become good mentors for new recruits. The men and women who manage entire systems are expected to serve more and more people with comparatively fewer resources. They are pressured to succeed in the face of conflicting demands from lawmakers and the public to rehabilitate prisoners but avoid at all costs practices and programs that might "coddle" them. That most administrators do not buckle under the pressure and have instead reduced some of the worst forms of violence is a sign of their professionalism. Their ability to do even better going forward depends in part on support from lawmakers and the public.

The recommendations for reform outlined in this section are intended to acknowledge and build on the underlying strengths of the workforce and its leaders in two broad ways: by improving the institutional culture in correctional facilities and by supporting corrections professionals at every level. Progress in these areas would provide a foundation for improving the safety and effectiveness of America's prisons and jails. Without improvements in these areas, other reforms recommended in this report will be less viable. ■

Change the Culture and Enhance the Profession

FOR ALL THEIR TROUBLES AND ACHIEVEMENTS, CORRECTIONS professionals receive little positive recognition and are denigrated in the news and popular media. As Lance Corcoran, chief of governmental affairs for the California Correctional Peace Officers Association, told the Commission, "After a lifetime, 35 years working, you look back on your life's work and it's very difficult to take pride in what you've done. Society or the newspapers or whatever has told you that this is an awful profession."

These stereotypes, combined with the incredible difficulties of the job, can lead frontline officers and some corrections administrators to distance themselves from prisoners and even to view prisoners as less than human. And there are countless everyday indignities that reinforce perceptions that prisoners are a lower class of people. This is an attitude many corrections professionals acquire in their first days of officer training. Former Warden Jack Cowley told the Commission about a book called *The Games Convicts Play*, still used in some systems to train officers. "They're trained: don't touch, don't even shake hands, don't call them by their name, call them by their number," Cowley recalled.

Cowley fostered a very different kind of culture at the Oklahoma prison he ran from 1985 to 1993. He is among the many wardens, sheriffs, and officers who, for both practical and ethical reasons, have tried to create a humane culture in the correctional facilities where they work. A few of them, such as Warden Burl Cain of Angola Prison in Louisiana, Sheriff Michael Hennessey of San Francisco, and Sheriff Michael Ashe of Hampden County, Massachusetts, have reshaped institutions by changing the underlying culture.

Today there are statewide efforts in places as far apart as Oregon, Arizona, Massachusetts, and Maryland to change the fundamental culture of prisons. Corrections administrators in these states understand that an "us versus them" mentality ultimately jeopardizes the safety and health of prisoners and staff and over time harms the families and communities to which prisoners and staff belong. Their efforts at culture change should be supported, imitated, and improved upon so that no one has to live or work in a dehumanizing environment and so that our correctional facilities serve the public's interests. The culture of these institutions cannot change, however, unless efforts are made to build a highly qualified workforce and

RECOMMENDATIONS

1. **Promote a culture of mutual respect.**
2. **Recruit and retain a qualified corps of officers.**
3. **Support today's leaders and cultivate the next generation.**

to cultivate and support great leaders. The following three recommendations suggest ways to meet all of these goals.

1 Promote a culture of mutual respect. Create a positive culture in jails and prisons grounded in an ethic of respectful behavior and interpersonal communication that benefits prisoners and staff.

The relationship between prisoners and corrections officers is at the very core of the culture of confinement. Too often, that relationship is uncaring and antagonistic, punctuated by moments of overt hostility, aggression, and physical violence. "What ultimately makes a correctional institution work has to do with the hearts and minds and spirits of those who people it, not with bricks and mortar, shatterproof glass, pre-fab cells or organizational charts," Sheriff Michael Ashe of Hampden County, Massachusetts, told the Commission. In an institution where there are "keepers" and "kept," where people are held against their will as punishment for behavior society condemns, it is not surprising that the hearts and minds of prisoners and staff are often set against one another—creating an institutional environment that is dehumanizing to both prisoners and staff (Franklin 1999). Massachusetts corrections Commissioner Kathleen Dennehy further explained the roots of abusive behavior. "The conflicting goals of corrections—deterrence, incapacitation, rehabilitation and punishment—have gone out of balance. People are sentenced to prison as punishment, not for punishment. Some staff lose sight of that." Prisoners who are mistreated become resistant and sometimes hostile. Or as former Minnesota Warden James Bruton writes, "Contempt breeds contempt" (Bruton 2004).

According to Bruton, cultivating a positive culture inside our correctional facilities is more than merely a "feel good" idea: "Security and control—given necessities in a prison environment—only become a reality when dignity and respect are inherent in the process" (Bruton 2004). William Hepner, a longtime trainer of corrections officers in New Jersey, encouraged the Commission to consider the far-reaching costs of a work environment that does not promote mutual respect between prisoners and staff: "When you go to work in a place that has a tendency to be condescending, negative, vulgar, that can show up in your life," Hepner told the Commission. "The expectation of obedience," he continued, "can act as a catalyst for violence at home." In addition, when officers are under extreme stress or injured as a result of altercations, they take sick leave and vacation time, which results in other

A National Effort at Culture Change

In an effort to better understand how to change facilities that suffer from the ills of a "default" correctional culture of disrespect and even cruelty, the National Institute of Corrections (NIC) in 2003 began an Institutional Culture Initiative. This program is designed to assess individual facilities and offer training and assistance to promote positive change. Prison wardens and directors of 12 state systems applied to participate in the NIC initiative. As a group, they requested help with 59 different problems. Strikingly, only six of those problems were about the behavior of prisoners, such as drug use and violence among prisoners. By contrast, 32 of the problems were about staff-related issues, including staff sexual misconduct, staff morale, staff assaults on prisoners, confrontational episodes between staff and prisoners, the lack of ethnic diversity among staff, and difficulty recruiting and retaining quality staff. The remaining 21 problems were related to management or leadership, including leadership changes and a convoluted sense of mission (Byrne et al. 2005).

NIC has developed three interventions to promote positive culture change. These interventions, which are not mutually exclusive, focus on training, problem solving, and developing and modeling positive values and behaviors from the top of an institution down. In order to determine which of these interventions can best help an institution, NIC first sends an assessment team to the facility to interview staff and managers and to develop a picture of the organization's culture, and along with managers of that institution, to choose an appropriate intervention plan (Byrne et al. 2005).

officers being forced to work overtime (Finn 2000). Reducing hostility and conflict within a facility is one of the surest ways to boost staff morale and job performance (Finn 2000). This in part explains why a culture shift that improves relations between officers and prisoners will also ease tensions between staff and management (Coyle 2002).

Growing recognition of the role that institutional culture plays in running a safe and healthy facility has led corrections administrators and other experts in the field to seek concrete ways to make positive changes in the cultures of their institutions. They are building on work in other fields, particularly policing, which has developed methods to assess and improve organizational culture. Culture change requires ongoing efforts to shift values and behaviors over time and must be understood as a continual practice, rather than any single event or program.

Dick Franklin from the National Institute of Corrections (NIC) defines institutional culture as the "product of the values, beliefs, and behaviors of the members of the prison 'community' as expressed in the ways in which they interact with each other." According to Franklin, the default culture in a correctional community is susceptible to a number of serious problems that negatively affect both prisoners and staff. The two most significant problems are a failure of prisoners, staff, and management to be able to identify with each other, and an institutional dehumanization of prisoners coupled with management strategies that exacerbate this dehumanization. These problems result in harassing, careless, cruel, and even criminal conduct; racial and gender prejudices and strife; staff infighting; open conflict between management and labor organizations; abnormal levels of sick leave; and high rates of staff turnover (Franklin 1999).

Traditional research on safety failures and violence in prisons locates the source of that violence in the culture and values prisoners bring into the institution or that develop among prisoners while incarcerated (Byrne et al. 2005). One way to address the environment in a correctional setting is to work with prisoners to change their attitudes and behaviors. (For a discussion of the importance of programming, see p. 27.) That kind of change is more likely to take root and flourish in purposeful facilities, where prisoners are engaged in productive activities. Mary Livers, Maryland's deputy secretary for operations, described ambitious plans for reform in her state. "We are moving from a very restrictive philosophy of managing offenders to…a culture of safety, dignity, respect, and accountability," she said. "We're moving away from having that feeling of being safe when offenders are all locked up, to one where we're actually safer because we have inmates out of their cells, involved in something hopeful and productive."

Another approach to institutional change targets the values, decisions, and behavior of the leaders and staff of the institution. In particular, there is increasing interest in the role that corrections officers play in setting the tone of an institution and, thereby, contributing to the behavior of prisoners (see "A National Effort at Culture Change," p. 66). This approach focuses

"What ultimately makes a correctional institution work has to do with the hearts and minds and spirits of those who people it, not with bricks and mortar, shatterproof glass, pre-fab cells or organizational charts."

Sheriff Michael Ashe, Hampden County, Massachusetts on staff training, problem solving, and the development of leaders who embrace and can model positive values and behaviors.

When training is aligned with the goal of changing the culture of an institution, it includes teaching people how values, beliefs, and behavior contribute to that culture. In particular, training for all staff should convey an ethical code of conduct that recognizes the inherent dignity of all individuals, that emphasizes respect for others, and that teaches a broad range of interpersonal skills and de-escalation techniques needed to put that code of conduct into practice every day in culturally and racially diverse environments. Many training programs across the country already cover ethics and communication. But according to Elaine Lord, who ran a women's prison in New York, those issues and skills are often viewed as special topics, addressed in brief and divorced from all other areas of training. Most training, according to Lord, "revolves around use of force and weapons, and training for serious emergencies, including escapes, disturbances, or riots," with too little time spent teaching interpersonal skills.

"We're moving away from having that feeling of being safe when offenders are all locked up, to one where we're actually safer because we have inmates out of their cells, involved in something hopeful and productive."

Mary Livers, Maryland's deputy secretary for operations

It is also essential that staff take responsibility for solving problems in the institution. This not only creates a more positive work environment, it also increases the chances that staff will feel accountable to the institution's rules and model positive behavior. According to Kathleen Dennehy, "We know that many offenders go through life believing that rules and laws don't apply to them. If the system in which they are incarcerated lacks integrity and moral order, their notions regarding law and order are simply reinforced. I am of the strong opinion that corrections staff should be the very best people prisoners encounter… If staff don't follow the rules, there is no hope for intervention or for changing inmate behavior in the long term." California corrections Secretary Roderick Hickman similarly told the Commission, "One of the things that I do as a secretary on an ongoing basis is work very, very diligently with my staff so that they understand that their culture, their ethics, their values are one of the most important things they bring with them each and every day that they walk in the prisons of California and supervise offenders."

Because correctional facilities are hierarchical by nature, efforts to improve the institutional culture must come from the top, and leaders need proven strategies to accomplish this goal. As Sheriff Michael Ashe told the Commission, "Any successful correctional organization must be infused with, and guided by, a vision of what it seeks to be and, indeed, what it seeks not to be." Patrick McManus, former corrections secretary in Kansas, echoed Ashe's sentiment. "Prisons that have wardens who are proactive, humane, and model appropriate behavior toward prisoners and staff reduce the likelihood of abusive staff behavior," he told the Commission, suggesting that the behavior of these chief officials affects those who work directly under them, who in turn influence the officers they supervise. McManus worked with Andrew Coyle from the International Centre for Prison Studies to develop *A Human Rights Approach to Prison Management* and explained to the Commission that reform-minded corrections administrators around the world are looking for guidance in how to develop more humane correctional environments.

There are other issues that must be addressed for positive change to happen. Consistently fair treatment in correctional institutions cannot be achieved without understanding how race, ethnicity, and other cultural factors influence perceptions of others. Jack Beck, a lawyer who runs the Prison Visiting Project of the Correctional Association of New York, described the barriers to creating a culture of respect in some of New York's rural prisons: "[T]he only people of color [officers] see have been convicted of a crime, and they're in an environment where they have total control over that person and there's no respect." Where there are stark differences in race and culture between officers and prisoners, it takes real effort on the part of corrections staff to understand and effectively communicate with prisoners. Again, pre-service and ongoing training are critical. That training must dig deep into ingrained conceptions about people from different races, cultures, and neighborhoods. In prisons where staff are committed to an ethic of mutual respect, Beck explained, prisoners say there is less violence. Along with training, diversity among staff is important as it offers a broader view of people from different backgrounds.

Changing institutional culture requires assessing the values, beliefs, and behavior of management, staff, and prisoners in an institution and then developing a plan to address problems. That plan must include training for staff and managers that emphasizes communication, cultural sensitivity, and constructive problem solving. The plan also must include strategies to address the challenges leaders face, from hiring a diverse and well-qualified staff to modeling the kind of behavior they want to see in their staff. The process also requires regular monitoring and evaluation to ensure that change happens and is sustained.

The Commission urges corrections leaders to assess the culture of their institutions and to promote a culture of mutual respect in ways that are proven to work. Serious efforts at values-driven culture change, such as that of the National Institute of Corrections, should be supported. These initiatives should be independently evaluated to determine whether they achieve their goals and how they might be refined. Corrections leaders should tap into NIC's resources, as well as resources developed by organizations like

The Daily Indignities

In 1985 I arrived as warden of the Joseph Harp Correction Center, a 900-bed high-medium male facility in central Oklahoma, and walked the yard in my jeans before anyone was really acquainted with me. On this particular day I decided to eat breakfast with the inmates. Food was delivered from a central kitchen and served on each living unit of approximately 160 inmates. The men would line up with their trays and I noticed that some would pick up a spoon while others had their own (which was against the rule). The food that morning was okay as I recall: pancakes, eggs, and sausage.

As I carried my tray of food, following the man in front of me who, like me, did not have his "personal" spoon, we walked over to the slop bucket where the trays were dumped. Beside the slop bucket was a small stainless steel pot in which those men who had completed their meal had deposited their dirty spoons. I watched with complete disgust as the man in front of me fished around in the cold, slimy mush until he found a spoon. I was ashamed that we would allow this to happen, but at that moment I was more concerned about having to follow suit and reach my hand into the muck. I did and washed it the best I could in the "water" and proceeded to my seat. I certainly didn't want to use the spoon but greater was my desire to take what was given as we expected the men to do. It was immediately apparent to me why others had their personal spoons, which I later found could be "purchased" from one of the men who worked in the kitchen for several packs of smokes.

Did the staff observing the feeding process abuse the inmates by allowing such unsanitary conditions to exist? Suffice it to say they never ran out of clean spoons again! There are many such incidents, which occur each day in our prisons. These are the conditions that perpetuate the failure of our system to "correct." From an inmate's point of view, if the staff would allow such things to happen, why should they care themselves? [They] just do their time the best way they can and get out. Never really thinking about what they are going to do once released. Life in prison just becomes days of survival.

—Jack Cowley

the International Centre for Prison Studies and associations of corrections professionals, and seek the advice and assistance necessary to run safer and more humane institutions.

2 **Recruit and retain a qualified corps of officers.** Enact changes at the state and local levels to advance the recruitment and retention of a high quality, diverse workforce and otherwise further the professionalism of the workforce.

Throughout the course of the Commission's work, corrections officers lamented that they are not viewed with the same respect as other law enforcement officials. As Sergeant Gary Harkins from Oregon stated, "We are not knuckle-dragging guards working in smelly dungeons, and we do not deserve that reputation." North Carolina Corrections Secretary Theodis Beck, echoed that sentiment: "We have come a long way, from prison guard to correctional officer." Beck testified that officers in his state are better trained and more professional and dedicated than ever before. Yet, the highly publicized actions of a minority of negligent and abusive officers continue to demean the entire profession. To ensure safe and abuse-free prisons and jails, and to promote better public safety and public health outcomes of incarceration, we must recruit and retain high quality officers and enhance the professionalism of the workforce in other ways.

The corrections profession is an integral part of the American criminal justice system. The 400,000 corrections officers working in U.S. prisons and jails play a large role in determining how incarceration affects the roughly 13.5 million people who are locked up over the course of a year. Yet the officer corps is an extraordinarily unstable workforce. Gary Harkins told the Commission that nearly two-thirds of officers in Oregon have less than five years' experience on the job, and 20 percent have been on duty for 18 months or less. Over the course of a decade, according to a 2003 study by the American Correctional Association, an estimated 490,000 corrections positions will have to be filled—the result of new jobs created and an average annual staff turnover rate of 16 percent. Under present conditions, correctional systems around the country face "serious difficulties in recruiting and retaining an adequate staff of properly qualified corrections officers" (ACA 2004).

There are two major obstacles to recruiting good people: low wages and low prestige. The ACA study points to a salary scale below what police agencies offer and lower than other employers who recruit from the same workforce

Basic Training

In just one decade—1994 to 2004—the U.S. prisoner population expanded by more than half a million people (BJS 2004). Prisons and jails hired tens of thousands of new officers and struggled to adequately train them for an increasingly demanding job. Training for corrections officers is one of the most important ways to promote safety in prisons and jails.

While good training alone cannot make a hard job easy, it can prepare officers for the challenges they will inevitably face and cultivate the knowledge, skills, and confidence they need to respond appropriately in difficult situations. As Massachusetts corrections Commissioner Kathleen Dennehy explained to the Commission, "Experienced, well-trained officers can identify subtle changes [in an inmate] well before the inmate may even be aware. This quick intervention can reduce the likelihood of the inmate harming [him- or her-] self or others."

Basic training for officers varies widely from state to state. The amount of training required for new recruits ranges from three weeks to two months or longer. The mixture of pre-service and on-site training also is uneven, and requirements for continuing on-the-job training vary from 40 hours per year in some states to 40 hours every four years in others to no mandatory continuing education at all in some states. The American Correctional Association standards require 120 hours of training in an officer's first year and 40 hours per year thereafter (Standard 4-4084). The training academies themselves differ among states, and only 16 nationwide have been accredited as Certified Training Academies by the American Correctional Association.

pool. Professor James Marquart, Director of the Crime and Justice Studies Program at the University of Texas at Dallas, explained how low wages force correctional systems in some regions to compete with Wal-Mart and other large retailers for workers. He concluded that corrections has "exhausted the labor pool for competent staff" at current wage levels. The starting salary for corrections officers varies widely from state to state, with Louisiana paying the lowest salary at $15,324, and New Jersey the highest at $36,850 (ACA 2004). There is some correlation between pay and turnover: States with the lowest salaries generally have the highest turnover rates. Rates of annual turnover range from a low of four percent in Massachusetts, which pays its entry-level officers $35,699 per year, to a high of 41 percent in Louisiana (ACA 2004). Better pay, commensurate with that of other law enforcement officers, is a necessary part of retaining staff and building the experience, skills, and capacity of the workforce to meet the significant challenges associated with operating safe and effective correctional facilities.

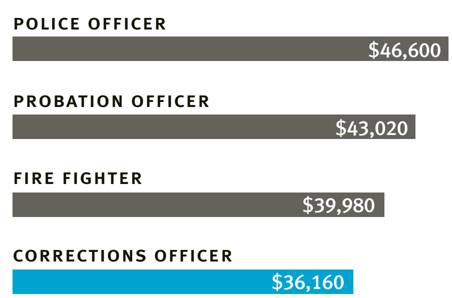
Low wages force correctional systems in some regions to compete with Wal-Mart and other large retailers for workers.

Of course, low pay is not the only reason why America's prisons and jails have trouble finding and keeping qualified corrections professionals. The ACA study also found that demanding hours, inadequate benefits, and stress contribute to high turnover in the corrections profession. And witness after witness told the Commission that it boils down to a feeling of low esteem and an absence of respect. As Robert Delprino, a professor of psychology at Buffalo State College, explained to the Commission, many people do not want to admit that they work in a prison or jail. "They'd rather just say 'I work for the state,'" Delprino testified. "You know, think about it," he continued, "When you talk to children, they want to grow up to be a police officer or firefighter. How many children say they want to grow up to be a correctional officer?" These problems feed each other: Low wages, difficult working conditions, and low esteem deprive systems of adequate staffing; inadequate staffing leads to mandatory overtime and unpredictable shifts, which in turn lead to high turnover and the need to hire more officers. This vicious cycle affects safety and other conditions in prisons and jails.

One approach to boosting officers' esteem, while also making the profession more accountable, is to expand the use of statewide systems to certify and decertify corrections officers. St. Louis University Law School Professor Roger Goldman, a nationally recognized expert on police licensing, told the Commission that states should treat criminal justice professionals just like doctors and lawyers, by making their employment conditional upon a valid license or certification. Half of the states in the country, however, lack a formal process for certifying qualified corrections officers and decertifying those who violate the law or rules of professional conduct. Additionally, there is no national-level mechanism to record and share such

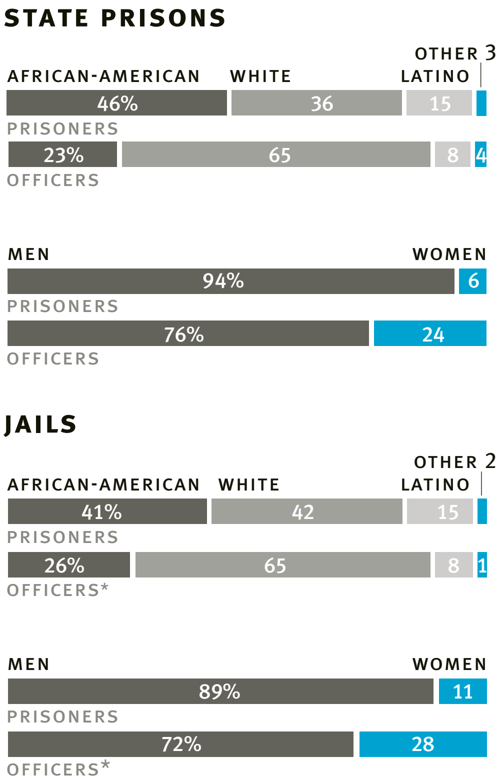
At the Bottom of the Pay Scale

Average Annual Wages for Line Officers in Public Safety Professions



SOURCE: U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, NOVEMBER 2004

Prisoner and Officer Demographics, 2000



*Data for officers in jails is from 1999.

SOURCE: BUREAU OF JUSTICE STATISTICS

information among local jurisdictions and states. Thus, dangerous officers can find employment in different facilities and systems because their past behavior is not known to new employers.

As a first step to ensuring that offending officers are not employed in other jurisdictions, states could share information in a national corrections officer databank, similar to the national databank for health-care practitioners. A repository of basic information about every corrections officer employed within the state—name, social security number, and current place of employment—would enable conscientious correctional agencies to check the employment history of someone applying for a job and to contact the applicant's previous employers. As more states begin certifying and decertifying officers, the databank would include officers' certification status. Such a national databank might be created by expanding the National Decertification Database administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST). As of August 2005, only 19 states were submitting information to this database (Franklin 2005). Corrections officers deserve a professional status equal to that of other law enforcement professionals, and correctional agencies should have the tools to know more about the people they are considering for employment.

Part of building a highly capable corps of officers involves recruiting and retaining a culturally diverse workforce. The percentage of the workforce that is African-American and Latino is rising, but slowly. African-Americans accounted for 23 percent of the officers working in state prisons in 2000 and 26 percent of officers employed in jails in 1999. Latinos comprised eight percent of the officer corps in both prisons and jails. By comparison, the proportion of African-Americans and Latinos among the prisoner population is twice as large (BJS 2000 Census data set, Stephan 2001). For reasons of safety and for other reasons, the Commission heard about the importance of developing a workforce drawn from the same communities as so many of the incarcerated people—primarily poor and urban Latino and African-American neighborhoods. Especially in non-urban areas, where racial and ethnic minority groups are underrepresented, it is important for white officers to regularly interact with ethnic and racial minorities as colleagues rather than solely as prisoners.

The proportion of women officers is also growing—another sign of an increasingly diverse workforce. The greater number of women officers provides an opportunity to address the dangers and benefits that arise when officers interact daily with prisoners of a different gender. The risks associated with male officers supervising women prisoners are well understood, if not always protected against, but the risks posed when women hold the position of authority, and the benefits of cross-gender supervision generally, deserve greater attention.

America's correctional facilities cannot operate safely and effectively without a qualified, stable, and diverse corps of officers. State and local governments must improve pay and find other ways, such as certification and decertification, to enhance the profession. For the sake of everyone—

officers, prisoners, and the communities to which they return—these reforms must begin now.

3 Support today's leaders and cultivate the next generation. Governors and local executives must hire the most qualified leaders and support them politically and professionally, and corrections administrators must, in turn, use their positions to promote healthy and safe prisons and jails. Equally important, we must develop the skills and capacities of middle-level managers, who play a large role in running safe facilities and are poised to become the next generation of senior leaders.

"The fish can rot from the top," Massachusetts corrections Commissioner Kathleen Dennehy warned the Commission, speaking of the dangers of an inattention to corrections leadership. Rhode Island's corrections Director A.T. Wall put it in a positive light: "As corrections leaders we have the duty and the opportunity to shape the culture of our agencies and institutions. If we do not want the culture to default into one of hostility, conflict, and unprofessionalism, we must work tirelessly to promote a positive alternative." Countless others who testified, from former prisoners to directors to line officers, made clear that "values-driven" leadership, as Wall put it, must extend throughout the ranks—from the director's office to facility wardens to shift commanders.

This common-sense mandate is hard to fulfill, however, when the average tenure for a top corrections administrator in a state system is just three years. "Time is not on our side," Maryland's deputy secretary for operations, Mary Livers, told the Commission. According to a survey of prison and jail executives in 2003 by the National Institute of Corrections, 29 percent of respondents had held their current leadership position for one year or less (Clem 2003).

Rapid turnover of senior administrators destabilizes the entire system, sidelining reform initiatives as new leaders become acclimated. "It takes the first year to understand where you are and what's really going on, because invariably what the governor's office tells you and what is really going on are two different things," President of the American Correctional Association Gwendolyn Chunn told the Commission. Not only must newly minted corrections leaders learn an unfamiliar system, middle- and upper-level managers must become accustomed to a new leader. Gary Johnson, former executive director of the Texas Department of Criminal Justice, explained: "[It] takes a long time to change, to make that shift. It is a mistake for people to believe you put out a memo and change the culture. It doesn't work that way. It takes a lot of small steps, a lot of leadership for a sustained period of time for people to change the way they see the world."

The individuals who appoint corrections administrators, from governors to county boards, must hire people for their professional qualifications—political cronyism demeans the entire profession and puts lives at risk—and they must support them. That support includes listening to their expertise, fighting for their priorities in legislative battles, educating the public about the issues facing corrections and the consequences for the public. We must promote stable and excellent leadership at the top because, as Chunn put it quite succinctly, "Time in office, I believe, is a correlate with success."

Corrections leaders also have responsibilities they could better fulfill. They must have the courage to confront executive and legislative leaders when proposed policies and budgets threaten the health and safety of our prisons and jails, and of our communities. Individually and through their professional associations—the American Correctional Association, the American Jail Association, the Association of State Correctional Administrators, and others—leaders in corrections can become a more powerful force than they are today for better conditions of confinement and more effective institutions.

"Staffing a prison when funding is low, housing prisoners when populations are high, and promoting progressive change when cynicism abounds makes the job almost impossible."

Mary Stohr, professor of criminal justice and former Washington State corrections officer

When it comes to matters of safety and abuse, executive branch officials must stand up to organized labor. The collective bargaining rights of corrections officers are extraordinarily important for officers individually and for the development of the profession, but there must be limits when it comes to the safety of prisoners and staff and the prevention of abuse. "As administrators," former superintendent Elaine Lord explained, "we cannot be stripped of our ability to manage and protect inmates by unions. Prisons are not places where we can have unionized staff that own posts." Senior corrections administrators must ensure that wardens retain the authority to protect prisoners when there is credible evidence of abuse by staff, and then guarantee that wardens use their authority fairly.

"Staffing a prison when funding is low, housing prisoners when populations are high, and promoting progressive change when cynicism abounds makes the job almost impossible," Mary Stohr, a professor of criminal justice and former Washington State corrections officer, wrote to the Commission. These and other challenges require innovative solutions. But even the most talented administrators cannot be expected to produce innovations on their own. Recognizing the importance of good leadership, professional organizations and some corrections departments have developed programs to enhance the knowledge and skills of corrections leaders and their capacity to create change. The National Institute of Corrections (NIC), for example, offers a 70-hour Correctional Leadership Development program, and the American Jail Association is developing a national leadership academy to provide advanced training to jail managers.

Still in short supply, however, are forums where corrections leaders can join with each other and with a range of other stakeholders to focus on the most vexing problems facing their institutions. Corrections leaders would be the core participants of such forums, but experts with a view of practices nationwide and a command of the best research on what works also would be valuable participants in such discussions, as would advocates working on behalf of prisoners. This effort at creative problem solving should also involve labor leaders, when appropriate. A forum for discussion that encourages and respects each group's diverse perspectives would help labor leaders and corrections administrators discover common ground. Such a forum might be modeled on the Mayors' Institute on City Design and might be coordinated through an existing and respected body such as NIC. Congress should consider providing the seed money to develop such a forum.

While providing better support to today's senior administrators, we must also cultivate leadership at the middle levels, from captains to wardens. Middle-level managers of any facility have considerable influence. In their role as supervisors and mentors, they have opportunities every day to motivate and educate junior staff and, thereby, to make a real impact on the institutional culture. They need access to the best information and instruction available—something that many correctional systems cannot provide internally.

To augment local training, NIC offers courses for a small number of managers each year. Its Management Development for the Future series—a combined classroom and on-site program—focuses specifically on corrections managers at the middle levels who might go on to become senior administrators. This program and a number of other NIC training efforts aim to convey new developments in the field and addresses important issues raised by changing circumstances in the correctional landscape. These are valuable learning opportunities for managers and leaders-to-be, but NIC's programs are not reaching enough people.

Congress should allocate funds for NIC to train 1,000 middle-level managers each year. Such a commitment to the highest quality training for these influential staff will help to ensure that the best practices and knowledge are disseminated across the nation. Equally important, advanced training for middle-level managers would provide a way to identify, groom, and motivate the next generation of senior corrections administrators—the leaders necessary to keep improving the safety and effectiveness of America's prisons and jails. ■

New to the Job

According to a 2003 survey, **29 percent** or **nearly one out of every three** corrections agency executives had occupied their current leadership position for one year or less.

SOURCE: NATIONAL INSTITUTE OF CORRECTIONS, 2003

LABOR AND LEADERSHIP: RECOMMENDATIONS RECAP

1. **Promote a culture of mutual respect.** Create a positive culture in jails and prisons grounded in an ethic of respectful behavior and interpersonal communication that benefits prisoners and staff.
2. **Recruit and retain a qualified corps of officers.** Enact changes at the state and local levels to advance the recruitment and retention of a high quality, diverse workforce and otherwise further the professionalism of the workforce.
3. **Support today's leaders and cultivate the next generation.** Governors and local executives must hire the most qualified leaders and support them politically and professionally, and corrections administrators must, in turn, use their positions to promote healthy and safe prisons and jails. Equally important, we must develop the skills and capacities of middle-level managers, who play a large role in running safe facilities and are poised to become the next generation of senior leaders.

What prisons and jails need is “light, light, and more light.”

Margaret Winter, associate director,
National Prison Project of the
American Civil Liberties Union

III. Oversight and Accountability

EVERY PUBLIC INSTITUTION—HOSPITALS, SCHOOLS, police departments, and prisons and jails—needs and benefits from strong oversight. Perhaps more than other institutions, correctional facilities require vigorous scrutiny: They are uniquely powerful institutions, depriving millions of people each year of liberty and taking responsibility for their security, yet are walled off from the public. They mainly confine the most powerless groups in America—poor people who are disproportionately African-American and Latino. And the relative safety and success of these institutions have broad implications for the health and safety of the public. Throughout the Commission's hearings, in discussions of virtually every substantive area of concern, witnesses expressed the critical importance of oversight and accountability, both from within the profession and from without.

The majority of officers "did the work as required by rules and regulations, but often with the exception of not reporting certain incidents observed for fear of job loss or retaliation."

Ron McAndrew, former prison warden in Florida

Margaret Winter, associate director of the National Prison Project of the American Civil Liberties Union said that what prisons and jails need is "light, light, and more light." Rhode Island's corrections Director A.T. Wall stressed to the Commission the importance of monitoring from within: "Recognizing that our correctional institutions—like all other institutions in which the exercise of power is a defining characteristic—have the potential for abuse, we cannot sit idly by. If we do so, we run the substantial risk that the dynamics of these environments will default to a position where misconduct can ultimately flourish." Winter added that oversight must take multiple forms, from the "power of courageous news reporting" to action by federal judges who with lifetime tenure can "take the heat," from social scientists doing research to good corrections directors, wardens, officers, and other staff engaged in monitoring their own systems.

Oversight and accountability encompass several distinct but related activities. Some of them, such as independent inspection, litigation and court oversight, and direct inquiry from the public and the press, rely on the work of outsiders. Other activities, such as auditing, professional accreditation, and internal investigations of alleged wrongdoing must be conducted from within the profession. The key, many people told the Commission, is never to rely on any single mechanism of oversight and accountability, but rather to take what Professor Michele Deitch calls a "layered approach." The different activities must be mutually supportive, pointing to the same goals and being comprehensive without being redundant or overly burdensome. Together, the efforts of both insiders and outsiders can ensure that prisons and jails are open and responsive to public scrutiny and that they evolve in ways that make them safer, more effective institutions. That is the promise of oversight, but it remains far from fully realized in the United States.

Oversight of America's prisons and jails is underdeveloped and uneven. The foundation exists, however, to improve the mechanisms that now exist and to create new ones. In this section, the Commission addresses how to strengthen and expand external monitoring of correctional systems and how to improve oversight and accountability within the corrections profession. We also recommend ways in which prisons and jails can become more transparent to and understood by the public. ■

Invest in External Oversight

Jack Cowley, former warden with more than 20 years of experience in the Oklahoma prison system, was one of many witnesses to stress to the Commission the need for external oversight to bolster the ways corrections professionals hold themselves and their staffs accountable. "When we're not held accountable," Cowley said, "the culture inside the prisons becomes a place that is so foreign to the culture of the real world that we develop our own way of doing things." Just as the public does not rely solely on self-policing of public hospitals, it should not do so with correctional agencies. Yet, some corrections administrators have been resistant to external monitoring, and by and large the public and its representatives have not insisted on it.

For there to be any sustained response to the issues of safety and abuse raised in this report, there must be strong independent oversight of prisons and jails nationwide. External oversight, particularly sustained intervention by the federal courts, provided much of the impetus for raising prison and jail conditions from their truly deplorable state three or four decades ago. The Commission urges state and federal legislators, with the collaboration of corrections leaders, to enhance and expand external oversight in four ways: develop independent government inspection and monitoring systems, create a national non-governmental organization to visit and inspect prisons and jails, expand the capacity of government investigators, and ensure access to the judicial process for prisoners who are victims of constitutional violations.

RECOMMENDATIONS

1. **Demand independent oversight.**
2. **Build national non-governmental oversight.**
3. **Reinvigorate investigation and enforcement.**
4. **Increase access to the courts by reforming the PLRA.**

1 **Demand independent oversight.** Every state should create an independent agency to monitor prisons and jails.

Perhaps the least developed form of oversight at present is independent inspection and monitoring. Few states have monitoring systems that operate outside state and local departments of corrections, and the few systems that do exist are generally underresourced and lacking in real power.

Former Florida Warden Ron McAndrew told the Commission that for many years he had sought "a key that would open the door to better and safer security" and hoped for an independent "legal observer" who would monitor each prison and have unlimited access to the facility, its records, and its staff and prisoners. The federal government follows this model with an Inspector General's office operating outside of the Federal Bureau of Prisons. Its director, Department of Justice Inspector General Glenn Fine, urged the wider use of this model. Despite the relative rarity of independent monitoring as a central component of correctional oversight in the United States, there are examples approaching McAndrew's long-sought key.

Perhaps the most comprehensive is California's Office of the Inspector General (OIG), significantly revamped in 2004. The Inspector General is fully independent from the corrections department and even insulated from the governor (by virtue of a six-year term and protection from termination absent good cause) and to some extent the legislature (by virtue of a budget based on caseload—currently $15.3 million annually). And it has the authority—a "golden key" as Inspector General Matthew Cate told the Commission—to visit and inspect any facility within the state prison system at any time, without notice. It has a staff of 95 to implement that authority. The OIG has two core functions: First, it carries out top-to-bottom performance evaluations and investigates alleged wrongdoing of managers; second, it provides real-time oversight of the corrections department's internal affairs investigations of staff misconduct. The lack of transparency in California corrections led to the creation of the OIG, and transparency is now infused into the OIG's work by statute. Every facility audit and summaries of all investigations must be provided to the legislature and to the public. The OIG has no enforcement power but relies on the persuasive power of publishing its findings and the power of collaboration, both with corrections leaders and non-governmental groups of interest.

Other models exist for independent monitoring. States and localities have corrections boards or commissions which can play an inspection and monitoring role. Ohio has created a legislative body that inspects that state's prisons. The Ohio Correctional Institution Inspection Committee, composed of eight legislators, inspects every prison in the state at least every two years. Among its obligations, the Committee is required by state law to review prisoner grievance procedures in each facility and report its findings annually to the full legislature. One example of a monitoring body often cited for its role in collaboratively improving practice is the Florida Correctional Medical Authority. Created

Independent Oversight in Great Britain

Her Majesty's Inspectorate of Prisons has a mandate to examine and report on conditions in each of the 139 prisons and jails in England and Wales. This well-regarded independent monitoring system relies on the power of persuasion and collaboration. Rigorous and typically unannounced inspections are offered as a "free consultancy, trying to improve performance," as described by Chief Inspector of Prisons Anne Owers. And although it has no authority to force change, this collaborative approach is bolstered by a policy to encourage action through publication of its reports. The enabling statute goes one step further: It requires prison managers to file a response stating whether they accept the recommendations in the report. Most often they do.

In her testimony to the Commission, Owers described the benefits of her work: "We can look at what's actually happening on the ground. . . . Even in well-run prisons I don't think I have ever been on an inspection which hasn't found something, however small, that the governor or the warden of the prison didn't know was happening and where the warden hasn't said, 'I'm glad you told us that, I will need to take account of that,' and that is a very important, preventive role that inspection can play. . . . I think independent inspection which is coming from outside the institution can provide a credible voice which gives some political space for reforming and changing prisons."

The monitoring aims to achieve four "expectations": **safety**, even for the most vulnerable prisoners; **respect** for the human dignity of all prisoners, **purposeful activity** available to all prisoners and for their benefit; and **resettlement**, which means preparing people for release in a way that reduces the likelihood of reoffending (Her Majesty's Inspectorate of Prisons 2004).

The work of the Inspectorate is echoed by a similar function performed in 46 European countries by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Its president, Silvia Casale, told the Commission: "In Europe, oversight mechanisms have gradually developed, at the international, the national, and the local level. Mistakes have been made along the way, but workable systems are emerging. Perhaps these developments can inform the debate in the United States on safety and abuse in custody, on the theory that one can learn from other people's errors as well as from their successes."

as a means to replace more than 20 years of federal court intervention in Florida's prison medical care system, the CMA works in collaboration with both the corrections and health departments. Although it receives administrative support from the latter, it remains independent from both.

Reflecting on the limits of litigation and the need for a better prophylactic approach, U.S. District Judge Myron Thompson told the Commission to look to the executive and legislative branches of government: "Only they can step in beforehand and actually prevent constitutional violations." The Commission strongly urges states to create a monitoring body independent of the department of corrections which might draw on California's OIG or one of the other state or local models. It must be sufficiently empowered and funded to inspect and report on conditions and practices in every jail and prison statewide and be dedicated to timely, accurate, and complete public reporting of the problems it identifies. Crucial to its success is a staff that is knowledgeable about correctional systems and sensitive to the challenges managers and staff face. While not a tool of management, through cooperation and collaboration with corrections administrators, this external monitoring body can become essential to management. Typically, an independent monitor has no formal enforcement authority and relies instead on its credibility and powers of persuasion. Yet, the corrections department should be required to formally and publicly respond to its findings and to document compliance, or noncompliance, with its recommendations.

2 **Build national non-governmental oversight.** Create a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators.

There are times when correctional agencies would benefit from the ability to request confidential monitoring and assistance from a neutral party, especially to investigate and resolve distinct problems. What is needed is a new, national non-governmental organization that is committed to working with corrections leaders outside of advocacy and litigation channels, bringing a fresh eye and credible voice to new and old problems. The work of such a group would not be subject to public review, would not result in externally published reports, and would not be available in litigation involving facilities that invite its assistance.

This new non-governmental organization would operate within parameters developed in consultation with the corrections administrators who seek its help. These would set forth the scope of the review, the powers granted to the reviewers, and the form of the end report. At the very least, the organization would be authorized to visit facilities, privately interview prisoners and staff, and review internal documents. Ensuring ongoing confidentiality through protection from discovery in litigation would require creating an attorney/client or similar relationship, depending in part on state law. The organization would produce a report for the internal use of corrections and other state government officials and make pragmatic

"When we're not held accountable, the culture inside the prisons becomes a place that is so foreign to the culture of the real world that we develop our own way of doing things."

Jack Cowley, former prison warden in Oklahoma recommendations for addressing the problems identified. The organization would draw on a pool of investigators experienced in corrections who understand and support the organization's mission and approach and who are trusted by corrections staff and prisoners. Development of such an organization should be undertaken in consultation with the National Institute of Corrections, and perhaps other national bodies that are knowledgeable about and sensitive to the needs of corrections managers.

The virtue of such an approach—relying on invitation, a limited and focused review, and confidentiality—is that administrators need not fear asking tough questions about the performance of their systems and can benefit from the impartial views of people who bring a national perspective to the task and are not invested in the current policies and practices. This kind of voluntary and confidential problem-solving review would also help administrators prepare for review of their systems by independent government monitors who have an obligation to report findings to the public. And they could use select findings from a confidential review to build support for their reform agenda, demonstrate a need for more resources, and document a baseline against which future achievement can be measured.

The inspiration for this form of confidential oversight is the International Committee of the Red Cross (ICRC), which carries out inspections of detention facilities in conflict zones worldwide. The ICRC is formed on the belief that "detention problems are best solved through constructive dialogue based on mutual confidence, rather than in the glare of publicity which inevitably carries the risk of politicizing the issues" (ICRC 2004). The creation of a national organization capable of serving in a similar capacity would benefit all concerned: Corrections administrators, staff, and prisoners would have the benefit of consulting with a neutral party. And managers in particular could rely on a fair and objective assessment of their work, one that recognizes their strengths and provides constructive advice for improvement grounded in the reality of their particular systems and facilities.

"There is tremendous pressure within an institution to keep quiet."

Glenn Fine, U.S. Department of Justice Inspector General

3 Reinvigorate investigation and enforcement. Expand the investigation and enforcement activities of the U.S. Department of Justice and build similar capacity in the states.

"There is tremendous pressure within an institution to keep quiet," Glenn Fine, inspector general of the U.S. Department of Justice, told the Commission. He explained that this makes it all the more important to have strong governmental oversight of prisons and jails. At present, the only federal entity that investigates state and local correctional facilities across the country is the Department of Justice. DOJ can initiate investigations and bring criminal prosecutions and civil actions when it sees incidents or conditions that violate federal statutes or prisoners' constitutional rights. The reach of these powers, however, has always been limited. In recent years, their use has become increasingly sparse. We must expand the capacity of DOJ in this area and build similar capacities in the states.

Criminal investigation and prosecution is an important component of correctional oversight. William Yeomans, former deputy assistant attorney general at the Civil Rights Division of the Department of Justice, told the Commission: "The violence inflicted on inmates frequently results in bodily injury and establishes a tone in an institution that force is an acceptable means of addressing problems in an institution. Prosecutions that punish the offenders in these situations emphasize that all members of the corrections community must abide by the law." Criminal enforcement at the federal level is crucial because too frequently local jurisdictions lack the political will, and sometimes the expertise, to thoroughly

Criminal enforcement at the federal level is crucial because too frequently local jurisdictions lack the political will, and sometimes the expertise, to thoroughly investigate and prosecute abusive corrections officers within their own communities.

investigate and prosecute abusive corrections officers within their own communities. But even in the best of circumstances, when local prosecutors support federal investigations and prosecutions, a limited number of criminal cases can have only a limited impact. In Yeomans' words, "Broader issues regarding the safety of the prison, the training of officers, the adequacy of administrative processes and overall conditions in the prison [often] go unaddressed."

The 1980 Civil Rights of Institutionalized Persons Act (CRIPA) gives DOJ, through its Special Litigation Section, authority to initiate civil lawsuits to remedy egregious conditions in prisons and jails. These civil actions have the power to bring greater systemic change than criminal prosecutions because they can result in court-enforceable consent decrees that mandate and guide specific reforms. During the course of an investigation, Section attorneys, along with experienced corrections consultants, gain access to a correctional facility and talk to both staff and prisoners. The result, according to Yeomans, are "'findings letters' that reflect the detailed findings and recommendations of experts who have toured the facility and examined its practices [and that] can serve as a blueprint for a willing institution to improve itself." Civil actions, which should begin with a collaborative problem-solving approach, can have positive effects even if they are settled before formal litigation is initiated.

In recent years, DOJ's output has been low on both the criminal and civil sides. The Criminal Section has been given broader responsibilities without the resources to fulfill them adequately and has focused on prosecuting human trafficking and involuntary servitude cases. On the civil side, the Special Litigation Section has been investigating only a very small number of correctional systems and appears less insistent that

Diminished Oversight Through Litigation

CIVIL RIGHTS INVESTIGATIONS BY THE DEPARTMENT OF JUSTICE, SPECIAL LITIGATION SECTION, FROM 1996 TO 2004*

Investigations declined:

11 investigations in 1996

2 investigations in 2001 and in 2004

Fewer lawsuits were filed:

7 lawsuits in 1997 and in 1999

zero lawsuits in 2003

*Adult prisons and jails only

SOURCE: U.S. DEPARTMENT OF JUSTICE

LAWSUITS BY PRISONERS, BEFORE AND AFTER THE PLRA
(PRISON LITIGATION REFORM ACT)

Civil rights cases declined by nearly half:

In 1995, **one year before the PLRA**
37 cases filed...
per 1,000 prisoners

Five years later, in 2000
19 cases filed
per 1,000 prisoners

Plaintiffs were less successful:

In 1995, **one year before the PLRA**
13% success...

Six years later, in 2001
10% success

SOURCES: ADMINISTRATIVE OFFICE OF THE U.S. COURTS, BUREAU OF JUSTICE STATISTICS

troubled systems enter into court-enforceable consent decrees. In fiscal years 2003 and 2004 combined, the Section initiated six investigations and filed only one civil court action addressing conditions in adult prisons or jails (USDOJ).

The Department of Justice has the powers it needs to effectively investigate civil rights violations in correctional facilities; it must be given the resources and the mandate to vigorously employ them. As a first step, Congress should hold hearings to examine the reasons for the small number of cases filed by the Special Litigation Section and the challenges facing DOJ in investigating and prosecuting criminal behavior within correctional facilities.

Equally important, states should become more involved in investigating and prosecuting criminal misconduct by prison and jail staff and civil rights violations caused by facility practices or conditions. After all, state prisons and local jails make up the vast majority of America's correctional facilities. As mentioned previously, this is not a job that most local prosecutors' offices are prepared to handle. Resources in these offices are stretched thin, and local prosecutors may not be in the best position to handle these types of cases. They may have little experience with the challenges of collecting evidence in a culture often ruled by a code of silence, or with the differences between prosecuting law enforcement officers rather than "common criminals," or with overcoming the higher burden of proof that juries tend to require in cases where the victim is a prisoner. For these cases, states need a capacity much like DOJ's Civil Rights Division, Criminal Section. State attorneys general or other statewide law enforcement agencies should be empowered to partner with local prosecutors to investigate civil rights violations in correctional facilities and prosecute them when warranted. They should also be granted the power to review local investigations and to prosecute cases that a local prosecutor has declined, either because of a lack of will or a lack of resources or expertise.

Both the federal government and the states must lead vigorous efforts to investigate and bring civil or criminal actions against correctional agencies and individual officers for unlawful conditions and behavior.

4 **Increase access to the courts by reforming the PLRA.** Congress should narrow the scope of the Prison Litigation Reform Act.

For some time now, the federal courts have played the biggest role in watching over America's prisons and jails and shedding light on the most dangerous conditions and abuses. According to scholars Malcolm Feeley and Van Swearingen, "Litigation has probably been the single most important source of change in prisons and jails in the past forty years" (Feeley and Swearingen 2004). With their independence from political forces and their obligation to protect the rights of those whose pleas might otherwise go unheard, federal judges provide the oversight of last resort, and in some cases the only truly effective monitoring. It is a role that must be protected.

Litigation became the default form of oversight in part because corrections leaders understood it could play a constructive role. In fact, litigation is often welcomed—occasionally invited—by system administrators who themselves are desperate for help that they are not receiving from lawmakers. Criminology professor and researcher Barbara Owen told the Commission that prison administrators have said to her, "Why don't you call up some of your friends and have them sue me?" James Gondles, executive director of the American Correctional Association, explained what a lawsuit can trigger: "State legislatures or county commissioners have responded to those suits by increasing budgets and improving programs, which has also had a rippling effect of improved programs and funding for other correctional facilities and agencies, without another lawsuit being filed."

Nonetheless, many have pushed back against prisoners' federal civil rights litigation. Over the last decade, this important source of oversight has declined, principally as a result of the 1996 Prison Litigation Reform Act (PLRA). The law was passed to eliminate what was described as a flood of frivolous prisoner lawsuits. Although there were a large number of lawsuits, Congress conducted no studies and held only one substantive hearing to consider potential solutions before passing the PLRA as a rider to an appropriations bill. The resulting legislation has caused so much confusion and provoked so much litigation about its own meaning that one federal Court of Appeals noted, "When Congress penned the Prison Litigation Reform Act…the watchdog must have been dead" (*McGore v. Wrigglesworth* 1997).

The Supreme Court has described the PLRA's purposes, in part, as twofold: "to reduce the quantity and improve the quality of prisoner suits" (*Porter v. Nussle* 2002). Since its enactment, prisoner lawsuits in federal court are dramatically down, by nearly half when the increase in the prison population is taken into account. The year before the law took effect, the rate of filing was 37 civil rights actions per 1,000 prisoners; five years later it was 19 per 1,000 (Scalia 2002). While the total number of cases is down, there is no reason to believe that the PLRA actually filters out frivolous claims. If success in litigation is a measure of case quality, the PLRA has failed: The proportion of successful suits went down after its enactment (Schlanger 2003). Something else happened. Between 1995 and 2000, court monitoring of prisons diminished. The number of states with little or no court-ordered regulation of their prisons (those having no more than 10 percent of prisoners living in a facility under court supervision) more than doubled, from 12

"Litigation has probably been the single most important source of change in prisons and jails in the past forty years."

Malcolm Feeley and Van Swearingen

Prisoner Civil Rights Cases: Frivolous or Not?

At the time the PLRA was enacted, prisoners were annually filing almost 41,000 civil rights actions in federal court, although prisoners were no more litigious than other Americans when both state and federal filings are counted (Administrative Office of the U.S. Courts, Schlanger 2003). In fact, the debate over the PLRA conflated "frivolous" with "non-meritorious" cases. Although only 15 percent of prisoners' civil rights suits prevailed in the early 1990s, only a very small 4.8 percent were dismissed as legally or factually frivolous (Fradella 1998). There are many reasons that prisoners' suits have a low success rate. One is the high threshold courts have established for proving a constitutional violation. In the prison medical care context, for example, where the courts have confirmed an Eighth Amendment right to medical treatment, prisoners can prevail in court only if they can prove that the failure to provide necessary care was the result of a particular defendant's "deliberate indifference" to their serious medical needs. This difficult standard led one federal judge to plead for change: "As the law stands today, the standards permit inhumane treatment of inmates. In this court's opinion, inhumane treatment should be found to be unconstitutional treatment" (*Ruiz v. Johnson* 1999).

states to 28 (BJS 1998, BJS 2004). The Commission urges Congress to amend the PLRA in the following four ways.

First, eliminate the physical injury requirement. The PLRA bars a federal civil rights action by a prisoner "for mental or emotional injury suffered while in custody without a prior showing of physical injury" (42 U.S.C. §1997e(e)). In the words of Stephen Hanlon, a lawyer experienced in class-action prisoner litigation, this provision "seems to make it national policy the idea that mental torture is not actionable." Many serious abuses leave no physical injury. For example, sexual assault in prison is likely to be

Congress conducted no studies and held only one substantive hearing to consider potential solutions before passing the PLRA as a rider to an appropriations bill.

coerced rather than forcible and thus often results in no physical injury. The courthouse door should not be barred to anyone that a corrections system fails to protect from sexual assault.

Second, eliminate the filing fee for indigent prisoners or make it reflective of the person's earning power, and eliminate the restrictions on attorney fees. The PLRA discourages prisoners from filing lawsuits, and attorneys from representing them, through a range of economic burdens and disincentives. Under the PLRA even indigent prisoners must pay a filing fee of $350, which is collected over time from their accounts, presenting an insurmountable burden for many prisoners (28 U.S.C. §§1914 and 1915(b)). Court filing fees are normally waived for indigent plaintiffs. Just as problematic, the PLRA discourages attorneys from representing prisoners with civil rights claims by capping their fees at an unrealistic level (42 U.S.C. §1997e(d)(3)). And if the prisoner prevails in court, the attorney's fees are limited to a percentage of the damages awarded to a prisoner, which are considerably lower than in other civil lawsuits, rather than being calculated on an hourly basis as in other types of federal litigation (42 U.S.C. §1997e(d)(2)). These provisions are counter-productive because they discourage representation even in meritorious cases.

Third, lift the requirement that correctional agencies concede liability as a prerequisite to court-supervised settlement. The PLRA bars a court from approving a consent decree—a form of settlement—without determining that a constitutional violation has occurred, and the court cannot make that determination prior to trial unless the defendant concedes liability (18 U.S.C. §§3626(c)(1) and (a)(1)(A)). This is a major obstacle to settling cases because a central purpose and attraction of negotiated settlements is that the question of liability need not be resolved. Although the statute allows for private settlement agreements when there is no such concession, the implementation of the terms of these settlement agreements cannot be monitored by a federal court, undercutting the court's critical oversight function.

Fourth, change the "exhaustion" rule. The PLRA bars the courthouse door to prisoners who have not fully "exhausted" all available grievance procedures in the facility where they are incarcerated (42 U.S.C. §1997e(a)). Prior to the PLRA, the Civil Rights of Institutionalized Persons Act (CRIPA) required that the application of an "exhaustion rule" hinged on the existence of a grievance procedure that met standards set by the Department of Justice (28 C.F.R. §§40.1-40.22). The standards are important because if the grievance procedures are meaningless or unnecessarily cumbersome or strict, an exhaustion rule simply undermines access to justice.

At the time this report went to press, the Supreme Court was set to decide a related matter: whether the PLRA's exhaustion rule also bars judicial review when a prisoner fails to meet a filing deadline or other procedural requirement. Many states and localities require prisoners to file a grievance in as little time as within three days of an incident (*Woodford v. Ngo* brief 2006). If the Court rules there is a "procedural default" element in the PLRA exhaustion rule, a prisoner claiming that a facility failed to protect him from assault might be forever barred from a legal remedy if he were locked in a segregation unit or held in a medical unit for three days without access to the grievance process. Congress should encourage reliance on meaningful grievance procedures—and meaningful procedural justice—by returning to the CRIPA exhaustion rule, and if the Court identifies a procedural default element in the exhaustion rule, Congress should eliminate it.

These four changes to the PLRA would increase the ability of federal courts to both deliver justice to individual prisoners and to provide the authority necessary to force reform of facilities where people are in danger or subject to abuse. ■

INVEST IN EXTERNAL OVERSIGHT: RECOMMENDATIONS RECAP

1. **Demand independent oversight.** Every state should create an independent agency to monitor prisons and jails.
2. **Build national non-governmental oversight.** Create a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators.
3. **Reinvigorate investigation and enforcement.** Expand the investigation and enforcement activities of the U.S. Department of Justice and build similar capacity in the states.
4. **Increase access to the courts by reforming the PLRA.** Congress should narrow the scope of the Prison Litigation Reform Act.

Strengthen Accountability Within the Profession

RECOMMENDATIONS

1. **Monitor practice not just policy.**
2. **Strengthen professional standards.**
3. **Develop meaningful internal complaint systems.**

THE CORRECTIONS PROFESSION IN AMERICA HAS A STRONG commitment to meeting the increasing challenges it faces, demonstrated in part by the considerable progress of corrections administrators in building systems to monitor their work and to promote accountability from within. That internal accountability takes several forms: from internal affairs bureaus and correctional inspectors general to internal auditing and performance measurements and evaluations. These efforts are all the more impressive given that they have been largely self-generated rather than imposed through political pressure. However, the Commission agrees with the many corrections leaders who told us that there is still much left to accomplish in the realm of internal accountability and oversight to transform a relatively closed and unregulated domain within state and local governments to an open one. This chapter explores two areas that invite improvement: professional accreditation and internal systems for reporting unsafe or abusive conditions.

1 **Monitor practice not just policy.** Ensure that American Correctional Association accreditation more accurately reflects practice as well as policy.

Since the mid-1970s, the American Correctional Association (ACA), the principal corrections professional association, has offered an accreditation program for prisons and jails. This voluntary and rigorous process involves auditing facilities for compliance with ACA's standards covering virtually every aspect of correctional operations. It is essentially a collaborative effort by individual corrections managers and the ACA to raise the level of professionalism in a particular facility or systemwide. The Commission heard repeatedly that ACA accreditation is an important indicator of safety and humane treatment in a prison or jail. Accreditation has limits, which is why it must complement rather than substitute for other, more independent forms of oversight. But there is little doubt that it is a spur to good practice.

At present, 525 of the nation's 1,208 adult prisons and a strikingly low 120 of the 3,365 jails across the country are ACA accredited. The Commission urges many more facilities to seek accreditation and, at the same time, urges the ACA to strengthen the process so that accreditation is even more meaningful. The primary concern about the accreditation process is that it focuses too heavily on a facility's written policies and procedures without sufficient corroboration from direct observation. The result, critics contend, is a certification process that does not do justice to the ACA standards and does not sufficiently indicate to managers, legislators, and the public how well—or poorly—an institution functions from day to day.

The accreditation process is extensive, including review of a prior self-evaluation by the facility's own managers, review of documentation regarding compliance with standards, a three-day compliance audit by three corrections professionals followed by a hearing, and consultation throughout the process (ACA 2003). To be accredited by the ACA, a facility must meet or exceed all of the mandatory standards—roughly 10 percent of the standards are mandatory—and meet 90 percent of the remaining, non-mandatory standards. Accreditation extends for three years, and facilities must annually certify their continued compliance with the standards. As extensive as the audit process is, no single audit or series of audits spaced years apart can determine whether policies and practices are routinely carried out. As former Warden James Bruton put it in his Commission testimony, "I'm a big believer in it [ACA accreditation], but…the only way it has teeth is if the warden of the institution is inside every day being sure those standards are being followed."

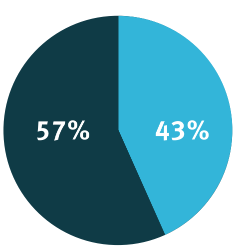
Inherent limitations aside, there are a number of ways that the ACA could improve its ability to gauge practical compliance over time. One way would be to institute one or more mid-term inspections, whereby a team of auditors would come in—perhaps unannounced—to check on compliance in a limited number of areas. Undoubtedly, a series of unannounced visits would contribute to the accreditors' ability to evaluate practical compliance and could help administrators identify trouble spots. There is no reason why unannounced visits cannot be part of a collaborative relationship between facility administrators and accreditors, and collaboration need not preclude an objective review geared to improving operations.

Another innovation would be to institute a procedure whereby staff and prisoners can report deficiencies in practice to the ACA audit committee.

Accreditation has limits, which is why it must complement rather than substitute for other, more independent forms of oversight. But there is little doubt that it is a spur to good practice.

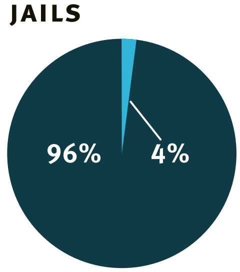
Professional Accreditation Remains Underused

PRISONS



525, or **43 percent**, of the nation's **1,208 adult prisons** are accredited by the American Correctional Association

JAILS



Only **120**, or **4 percent**, of the nation's **3,365 jails** are accredited by the American Correctional Association

SOURCES: AMERICAN CORRECTIONAL ASSOCIATION, BUREAU OF JUSTICE STATISTICS

Several witnesses told the Commission that facilities were spruced up for visits and then reverted to disorder when the auditors left. Confidential questionnaires before and after an audit could be used to elicit specific information about compliance over time.

A third change would be to alter those standards that may contribute to accreditation's failure to reflect practical compliance. Some standards, including some mandatory standards necessary for "life safety," expressly require no more than a written plan (e.g., Standards 4-4224 responding to security threats, 4-4300 periodic classification review, 4-4357 HIV management). Consideration should be given to changing these and similar standards to require a greater degree of compliance in practice.

The ACA has been taking steps on its own to improve the process. Over the past five years, the ACA has begun to move towards performance-based standards and outcome measures designed to demonstrate actual compliance with the standards. This pilot effort has been focused on standards governing health care but will be expanded to other areas.

While self-monitoring aided by a professional association can never substitute for independent monitoring by government, the ACA's accreditation process is an important way to raise standards and improve practice in prisons and jails nationwide. The Commission urges the ACA to continue to make accreditation more rigorous and objective—for the good of all the correctional systems that already seek accreditation and for the many more that should.

2 **Strengthen professional standards.** Support and improve American Correctional Association standards.

The more than 500 American Correctional Association (ACA) standards form a comprehensive framework for guiding and assessing the operations of a prison or jail (ACA 2003). They are the only standards governing the core operations of adult correctional facilities. (Standards developed by other organizations govern particular areas of operations, most notably health care.) The standards are developed, and revised as necessary, by a 20-member committee selected by the president of the ACA and the chairman of the commission responsible for accreditation. The Standards Committee includes members from outside the corrections field, invites input from and consults with a range of interested groups, and holds meetings that are open to the public. Several witnesses told the Commission that the ACA standards are an extremely important tool to promote safe and humane conditions in prisons and jails but that they could be improved in two ways. First, they could be stronger. Second, they could benefit from even more input from individuals and organizations from outside the corrections profession.

Currently, most of the standards set a low threshold to encourage compliance. As ACA Deputy Executive Director Jeffrey Washington told the Commission, "This whole process, one forgets, is [about] minimal standards." The notion of minimal standards, however, is often criticized. Brian Dawe, executive director of Corrections USA, a national organization of corrections labor groups, told the Commission that "in order for an accreditation process to effectively address the issues that plague corrections, it must be fearless...raising standards whenever possible." Standards Committee member Michael Hamden agrees that although accreditation is a good process, some of the standards are not tough enough. "I agree there are standards that do not come to the level I think we could accomplish," he said. Hamden, who as executive director of North Carolina Prisoner Legal Services was a skeptic about the standards and accreditation process when he joined the Committee, has become a strong proponent of the system.

The Commission learned of a number of important areas in which ACA standards are insufficient or should be made mandatory. We offer two examples: one broadly applicable and one quite narrow.

"In order for an accreditation process to effectively address the issues that plague corrections, it must be fearless . . . raising standards whenever possible."

Brian Dawe, executive director of Corrections USA

The ACA standards should require that all prisons provide substance abuse treatment to those in need. The current standard (4-4377), which is not mandatory, requires that prisoners have "access to" a treatment program and requires a needs assessment, treatment plan, education, and a discharge plan. These are all the right steps, but the standard falls short of requiring that access to treatment translates into delivery of treatment. Perhaps as many as 80 percent of prisoners are in need of drug or alcohol abuse treatment, and many facilities have lengthy waiting lists for an insufficient number of long-term treatment slots (Mumola 1999). Untreated dependency can be a catalyst to violence and other behavioral problems. Moreover, the wait for treatment often outlasts a prisoner's sentence, threatening the prisoner's success on release and potentially the safety of the community to which he or she is released. The ACA standard on substance abuse should be mandatory and should guarantee that accredited facilities are in fact providing treatment to those in need.

The standard governing exercise time for prisoners in segregation (4-4270) requires only that they have opportunities to exercise outside of their cells one hour per day, five days per week, and only when "security and safety concerns [do not] dictate otherwise." The standard was developed to meet constitutional norms set by the courts and to reflect limits imposed by staffing constraints. But minimal constitutional standards aside, five hours per week is insufficient given the small size of segregation cells and the other harmful strictures imposed on people in segregation.

In the process of developing stronger, more constructive standards, the ACA Standards Committee would benefit from including an even greater range of voices and interests than it presently does. According to Jeffrey Washington, the Committee has made efforts in this regard—engaging and responding to groups that advocate for lower prisoner phone rates and tougher standards governing prisoner sexual abuse, for example—and will continue to seek and listen to advice from advocates and others.

The Commission encourages the ACA to involve the broadest range of interested parties in the process of developing ever stronger standards for correctional practice. It is particularly important to involve representatives of organized labor—a critical source of knowledge, an important constituent, and a group that feels it has not had a voice in the development of ACA standards. Seeking input from current and former prisoners is equally important. And the Commission invites the Standards Committee to use this report as a guide for strengthening those standards that have a direct influence on the safety of prisoners and staff.

> **"[There is] a recurrent pattern in American prisons of threats and retaliation against prisoners who file grievances and complaints."**
>
> John Boston, director of the Prisoners Rights Project of the New York City Legal Aid Society

3 Develop meaningful internal complaint systems. Corrections managers should strengthen the systems that allow them to listen to those who live and work in prisons and jails.

Corrections leaders at all levels have much to learn from those who live in prisons and jails and those who work in the tiers and pods. No director, warden, or shift commander alone can know all he or she needs to know. Strong internal oversight and accountability depend on listening to the people with day-to-day knowledge of conditions and acting on what they say. That means establishing meaningful and safe grievance procedures for prisoners to use and also encouraging staff to report unsafe conditions and abuses.

Meaningful grievance and complaint systems for prisoners serve three critical functions. First, they are an important source of knowledge about the functioning of a facility. Prisoners want their facilities to be safe and orderly and should be able to point out problems and offer potential solutions (Commonwealth of Massachusetts Governor's Commission on Corrections Reform 2004). Second, a meaningful grievance system demonstrates commitment to procedural justice and the rule of law. There can be no accountability for safety failures and misconduct if victims are not encouraged to make their grievances known. Moreover, the right to seek a judicial remedy depends on compliance with existing grievance procedures, so justice demands that those procedures be meaningful and freely available (see "Increase access to the courts by reforming the PLRA," p. 84). Third, a meaningful procedure serves as an important "safety valve" for prisoners and staff, and its absence encourages prisoners to create their own systems of accountability that might involve disorder and even violence. As former prisoner A. Sage Smith told the Commission, "The guys who think somebody is listening to them don't cause problems. When they don't think that they're being heard, that's when they cause problems."

Early Warning Systems

Careful attention to complaints from prisoners and efforts to encourage staff to report misconduct—and protection for both groups—should be coupled with the development of early warning systems that identify officers prone to misconduct. Such systems pay dividends for all involved. They spur early action to protect prisoners from future abuses; they give managers the information necessary to intervene; and they even protect misbehaving staff persons by signaling when intervention is necessary, before more serious troubles arise. As Michael Gennaco, chief attorney at Los Angeles County's Office of Independent Review, told the Commission, "One thing . . . that does exist in some of the more progressive police departments is a computer tracking system of employee behavior. . . . Unfortunately, this kind of model hasn't moved over to the correctional setting, and there's no reason why it can't."

Nearly every prison and most jails have a procedure for receiving prisoners' grievances. However, the Commission heard that many are ineffective. The Massachusetts Governor's Commission found that "grievances are frequently denied on procedural issues rather than substance, even when they involve allegations of abuse by staff" (Commonwealth of Massachusetts Governor's Commission 2004). Leslie Walker, executive director of Massachusetts Correctional Legal Services, described other ways that grievance systems can be meaningless or even obstructive: "It begins with the withholding of pens and paper in segregation. It begins with not making copies of prisoners' grievances so that they have no record that they have made it and then throwing them away.... The whole system lacks confidentiality.... The assaulted prisoner who was brave enough to report it needs to know that report is going to be held in confidentiality, which is not currently happening."

Some corrections administrators understand the critical importance of confidentiality and other protections from reprisal. Rhode Island corrections Director A.T. Wall described "multiple channels to communicate problems," including providing "deposit boxes [for grievances] that can only be opened by special staff." Federal Bureau of Prisons Director Harley Lappin told the Commission about extensive protocols, including referring all allegations of staff misconduct to the Department of Justice's Inspector General to ensure some external accountability for the safety and soundness of the grievance process. Many grievance systems lack such protection, however, and even good practices like these may not be enough to assure prisoners that they will be protected from retaliation for filing a complaint alleging staff misconduct. In describing a dozen jury verdicts and judicial findings, John Boston, director of the Prisoners Rights Project of the New York City Legal Aid Society, pointed to "a recurrent pattern in American prisons of threats and retaliation against prisoners who file grievances and complaints" (Boston 2006).

Encouraging corrections staff to report misconduct and protecting staff from reprisals is also critical for operating prisons and jails that are safe and demonstrate respect for the rule of law. Many corrections officers and managers told the Commission that most staff would be eager to report unsafe and abusive conditions—even when those conditions involve misconduct by their peers—if they felt safe doing so. But, all too often, they neither feel safe, nor do they report.

Corrections officers feel particularly vulnerable to retaliation from other officers. As Michael Gennaco, chief attorney at Los Angeles

Missing Data

- The number of grievances and complaints filed by prisoners
- The types of problems prisoners are describing
- What actions are taken as a result of prisoners' grievances and complaints

Fearing Retaliation

Preliminary findings from a survey of prisoners by the Correctional Association of New York suggest that more than half of prisoners who file grievances report experiencing retaliation for making a complaint against staff. According to prisoner rights attorney Leslie Walker, "Retaliation can take many forms, including the likelihood of remaining in segregation for longer periods of time, poor classification decisions that keep that prisoner in a higher security environment where they cannot get any program or are not near their families, the very real fear of physical retribution wherever they go in the system, and should the grievance be denied, at least in Massachusetts, the fear of discipline for filing a false grievance."

Corrections officers also fear retaliation by fellow officers if they report wrongdoing. Former warden Ron McAndrew explained: "That's very intimidating to walk out to your car in a large parking lot where there are three or 400 cars, and there are 10 or 12 goons sort of surrounding your car. They don't say a word to you, they just look at you real hard like, 'You better be getting the message, bubba.'" Recently, the California legislature found that general whistleblower laws were "insufficient to protect" corrections staff who "choose to expose the wrongdoing of coworkers or their superiors" and that "additional protections" were necessary; it instructed the corrections department to develop those protections, along with a clear code of conduct that set forth the "duty to report wrongdoing" (Senate Bill 1431 §1 2004).

County's Office of Independent Review, told the Commission, "There's a significant pressure placed on a deputy or any other correctional officer not to report in order to remain within the group of colleagues that are there backing them up every day with regard to a very dangerous occupation." In his Commission testimony, former Florida prison Warden Ron McAndrew explained that the majority of officers "did the work as required by rules and regulations, but often with the exception of not reporting certain incidents observed . . . for fear of job loss or retaliation." Those fears are based on such incidents as "serious telephone threats," or rogue officers' "meeting a staff member suspected of 'informing' at his personal vehicle at quitting time," he explained. It is not only custody staff who fail to report misconduct. According to Dr. Robert Cohen, who was medical director of New York City's jails, doctors and nurses frequently fail to report signs of violence that they observe. Such failures to report should result in sanctions.

"There's a significant pressure placed on a deputy or any other correctional officer not to report [misconduct] in order to remain within the group of colleagues that are there backing them up every day with regard to a very dangerous occupation."

Michael Gennaco, chief attorney,
Los Angeles County
Office of Independent Review

Everyone who works in a prison or jail must be required to report misconduct by other staff or by managers. Administrative and, in egregious instances, criminal sanctions must be used to ensure reporting. But this requirement must be backed up with an unrelenting commitment to protect people from retaliation. A.T. Wall told the Commission about some of the strategies he uses, from a credible investigation to serious consequences for retaliation, adding, "That's when people know you mean it." The Commission urges corrections departments to develop these protections and others. Meaningful and safe grievance and complaint procedures for prisoners and reporting requirements and protections for staff are a critical part of professional accountability and require much greater attention. ■

STRENGTHEN ACCOUNTABILITY WITHIN THE PROFESSION: RECOMMENDATIONS RECAP

1. **Monitor practice not just policy.** Ensure that American Correctional Association accreditation more accurately reflects practice as well as policy.
2. **Strengthen professional standards.** Support and improve American Correctional Association standards.
3. **Develop meaningful internal complaint systems.** Corrections managers should strengthen the systems that allow them to listen to those who live and work in prisons and jails.

Educate and Involve the Public

"FOR TOO LONG ONLY WE IN CORRECTIONS TALKED TO EACH OTHER about our policies and approaches," Richard Seiter, former director of corrections in Ohio and professor of criminal justice, testified. "It is critically important in my mind that those outside of corrections and outside government in the corporate, religious, not-for-profit, academic, and media world come together to discuss our nation's correctional policies." Mr. Seiter was part of a chorus of witnesses—from corrections administrators and union officials to advocates and former prisoners—to emphasize that it takes an educated public to demand reform of America's prisons and jails. There are two avenues by which interested individuals as well as organized citizens' groups might better understand what is happening behind the walls of prisons and jails: direct access to facilities and greater access to information about facilities through a free and informed press.

RECOMMENDATIONS

1. **Encourage visits to facilities.**
2. **Strive for transparency.**

1 Encourage visits to facilities. Create opportunities for individual citizens and organized groups, including judges and lawmakers, to visit facilities.

"The public I think understands to some degree what our work is about, but you know, they don't have an opportunity to really see it up close and personal. So they only know the horror stories sometimes that occur," said Theodis Beck, secretary of the North Carolina Department of Correction. Providing opportunities for the public to visit facilities serves this educational purpose. Visitors can witness and even sense the strictures of prison life for the incarcerated as well as the pressures on staff; they can begin to understand both officers and prisoners as individuals, perhaps breaking down stereotypes; they can learn about problems as well as good practices and, if they return to the facility, they can see how things do or do not change over time.

"If [the Commission] wants to know what is really happening in our prisons and jails, I ask that you take the time to visit," said Jeffrey Beard, secretary of the Pennsylvania Department of Corrections. This invitation was one of several that the Commission received over the course of our year-long inquiry. We accepted Secretary Beard's invitation and visited the impressive, program-intensive maximum security prison in Graterford. An important part of this visit was a lengthy and frank private discussion with a group of long-term prisoners. At Graterford and elsewhere, Commission members were impressed with the openness, sincerity, and constructiveness of established prisoners' groups. The opportunity to talk privately with such groups should be part of any prison visiting program, as should talks with staff, individually and in small groups.

Visits by the public to correctional facilities can also serve as an informal monitoring mechanism. They provide an opportunity for corrections staff and prisoners to discuss their concerns, and they bring an independent eye into closed institutions. Sheriff Michael Ashe of Hampden County, Massachusetts, testified that his county's jail system has over 500 volunteers coming into the facilities. He stressed that "such openness to the community is a de-facto monitoring agent…adding 500 sets of eyes that those who would perpetrate violence and abuse must avoid—in a sense, 500 surveillance cameras from the larger community." Federal District Judge Myron Thompson urged visitation by a specific group of outsiders—state judges responsible for sentencing: "If state judges were required to visit state prisons on a fairly regular basis…I think it would make them more transparent, and I think it would make the judges more aware of what's going on," and perhaps inspire some shared accountability for the conditions to which they sentence people.

> **"The public I think understands to some degree what our work is about, but you know, they don't have an opportunity to really see it up close and personal. So they only know the horror stories sometimes that occur."**
>
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Corrections administrators, who are responsible for maintaining the security of their facilities, are sometimes apprehensive about opening their doors to the general public, and all are attuned to the related security concerns. They may be skeptical about the motives of visitors, thinking that they harbor biases, or as corrections directors A.T. Wall and Harley Lappin pointed out, that "naïveté" on the part of an individual will make the person susceptible to being deceived or manipulated by prisoners.

These concerns are not insurmountable. Citizens' visiting groups developed in England along with the first prisons, and the institutions traveled together to this country. These groups have taken many forms, from informal opportunities for observation to formal boards or commissions of citizen leaders. The latter approach was described by University of Texas at Dallas professor James Marquart who reminded the Commission that, at one time, the Texas prison system was known as the "black hole of Calcutta," a "violent, dangerous world" from which the public was excluded. "But that changed, and it changed as a result of leadership within the wider community. Prominent bankers, politicians, school teachers, university types came in and shone light on what was going on within that environment.… Today it's the same issue. We have 160,000 people that are locked up. We've bottomed out, you know. We can't build our way out of this. We need people, prominent people, who are going to come out and say enough is enough."

The Correctional Association of New York, the Pennsylvania Prison Society, and the John Howard Association of Illinois have long brought citizens to visit and monitor facilities in their respective states, without compromising safety or security. Indeed the visits may help to promote safety. Jack Beck, of the Correctional Association, has observed how visits can defuse prevailing tensions: "Communication with inmates is very affirming to them.... At least [there is] someone to hear their grievance rather than just be frustrated." These three organizations thoroughly prepare people for their visits and encourage ongoing, rather than one-shot, participation. Other programs include the Corrections Citizens' Academy of the Orange County (Florida) Corrections Department, which offers the public a 13-week program focused on the department's functions and staff, and special orientation programs in Iowa and New Jersey for the family members of corrections officers.

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James Marquart, professor, University of Texas, Dallas

Citizen visits to correctional facilities have at least one other important benefit. The presence of individuals from the surrounding community helps to normalize the prison environment. As former prison chaplain Jacqueline Means told the Commission, it gives people in prison a sense of the broader world and hope for their future in that world. For all of these reasons, correctional agencies should strongly encourage members of the public to visit prisons and jails.

2 **Strive for transparency.** Ensure media access to facilities, to prisoners, and to correctional data.

Much of what the public knows about prisons and jails comes through the press. When journalists have the time and space to explore issues in depth, they can engage and educate the public. In 2005, the *New York Times* published a series of articles by reporter Paul von Zielbauer on the serious failings of the private company that provides health care in New York's correctional facilities. Accounts of individual suffering and death combined with detailed information about the operations of one of the biggest private correctional health-care companies brought this issue to the attention of ordinary people around the country. But the ability of the press to provide the public with the depth of information necessary to reach intelligent and informed opinions has been impeded by barriers that prevent members of the media from visiting facilities, talking to staff and prisoners, and reviewing official records.

Press access cannot be unlimited, but the many valid security and privacy concerns that exist must not be used to shield institutions from public scrutiny. While correctional systems differ in the degree to which they grant media access, journalists have cited the following problems: denial of face-to-face interviews with specific prisoners, even with the prisoner's consent; a near total lack of access to supermax prisons and segregation units; restrictions on their ability to freely visit facilities; the lack of confidentiality for interviews with prisoners and staff; the failure to protect prisoners from retaliation for speaking with the press; barriers to using cameras and audio

Alan Elsner, Reuters journalist and author of *Gates of Injustice*, compared "covering the U.S. prison system" to "what it used to be like trying to cover the former East Bloc, where one's access was limited and movements were strictly monitored."

recorders, and in some cases paper and pens; and a sense that responses to their requests are arbitrary rather than reflecting a thoughtful, consistently-applied policy (Gest 2001).

Alan Elsner, Reuters journalist and author of *Gates of Injustice*, testified that such limits on his access to facilities and prisoners brought him to the point where he "made a deliberate decision to stop making these visits because I came to the conclusion that their journalistic usefulness for me was very difficult, had run out, was about a zero." He compared "covering the U.S. prison system" to "what it used to be like trying to cover the former East Bloc, where one's access was limited and movements were strictly monitored." As a journalist, Elsner felt that it was better to forego the story than to base it solely on what the facility wanted him to know: "They basically took you to where they wanted to take you and showed you what they wanted you to see and had you speak to who they wanted you to speak to."

An informed public and, indeed, representative government depend on the watchdog role offered by an independent and objective press. The ability of the press to fulfill this role depends in turn on the broadest possible access to correctional facilities, consistent with valid concerns about security. Policies governing media access must be objective, streamlined, and consistently applied rather than being dependent on friendly relations between journalist and warden. A speedy appeals process should be developed so that the media may have recourse when their requests for access are denied, and correctional systems should maintain records of applications and denials to monitor practices. According to Ted Gest, president of Criminal Justice Journalists, the Society of Professional Journalists has identified North Carolina and Oregon as having what it considers reasonable media access policies in their state systems.

Direct access to facilities is not the only important form of media access. Prisoners should be able to contact journalists directly, by phone and through confidential written correspondence, just as they can with their lawyers. As Margaret Winter of the National Prison Project told the Commission, "That would be a very, very significant thing if prisoners had direct access to the press—not simply through letters, but by telephone, in person so that their voices could actually be heard."

Freedom of information laws are also important tools in opening government to scrutiny by the press and thus by the public. Perhaps even more than other government bodies, correctional agencies resist freedom of information requests. Michael Gennaco, chief attorney at Los Angeles County's Office of Independent Review, testified that "corrections managers…read the interpretation of the statutes very narrowly." Freedom of information laws should be read broadly, to fulfill their purpose—providing public access to information about how government is functioning. Exceptions, such as for ongoing investigations and to preserve confidentiality, should be made only when necessary. And the laws should apply equally to private companies that operate prisons or jails under government contract, as specified in pending legislation that would make private companies contracting with the Federal Bureau of Prisons subject to the Freedom of Information Act (FOIA) (The Private Prison Information Act of 2005, HR 1806). Free and unfettered access to records should be made a part of a renewed commitment to transparency, one grounded in broad media access. ■

EDUCATE AND INVOLVE THE PUBLIC: RECOMMENDATIONS RECAP

1. **Encourage visits to facilities.** Create opportunities for individual citizens and organized groups, including judges and lawmakers, to visit facilities.
2. **Strive for transparency.** Ensure media access to facilities, to prisoners, and to correctional data.

“We have a fixed resource base, and we continue to pour more people into it.”

Richard Stalder,
Louisiana corrections secretary

IV. Knowledge and Data

ONE OF THE MOST DIFFICULT TASKS THIS Commission faced was to ascertain what is known today about safety and health in America's correctional facilities and the prevalence of violence and abuse. To do that, we asked a wide array of experts to tell us what they have learned over their years of experience. We spent as much time reviewing available research and data, which also turned out to be a task of critical analysis and interpretation. § There are stunning gaps in the research and data about violence and abuse. Throughout this report we have pointed out many of these missing pieces. Even where numerical evidence exists, there are no easy answers to the most controversial questions. Perceptions and expectations play a large role in shaping opinions about how much is known and what it means. As Professor Michele Deitch testified

The prevailing view of correctional facilities as shrouded and unknowable reflects the shortage of meaningful and reliable data about health and safety, violence and victimization.

about issues of safety and abuse, "We have very little way to know what's going on; we end up dealing with anecdotes.… [As] to how widespread these problems are, we don't have that kind of information."

The prevailing view of correctional facilities as shrouded and unknowable reflects the shortage of meaningful and reliable data about health and safety, violence and victimization; ignorance about what information is available; and the difficulty of accessing and interpreting much of the data that corrections departments collect but do not widely disseminate or explain. There are real obstacles to overcoming each of these problems, but it is possible and necessary to know much more than we do today. Where research and data are weak, they can be strengthened; where information is available it can be widely shared.

Corrections administrators want to base their operational decisions on sound information and are taking steps on their own to improve data collection and performance measurement. Equally important, there must be public demand for more and better information about the health and safety of our correctional facilities. Without it, we cannot assess successes and failures, ensure accountability, promote responsible and innovative leadership, and help people learn from one another how to run safer and more effective institutions. In this section, the Commission offers three recommendations for improving our knowledge and data, so that crucial public policies can be grounded in complete and reliable information. ■

Measure Safety and Effectiveness

THE COMMISSION HEARD FROM EXPERTS BOTH INSIDE AND OUTSIDE the corrections profession about significant weaknesses and blind spots in the data related to the Commission's areas of inquiry. That body of data is weak in three ways: First, crucial information is either not being collected or is not reported nationally. Second, differences—sometimes extreme—in how state and local jurisdictions define specific conditions and events render it impossible to make sound comparisons across the country. And fluctuating definitions within a single state or local corrections system make it difficult to dependably track trends over time. Third, much of the data is shallow, based only on conditions and events that are captured in official records and sometimes failing to reflect important distinctions, such as the difference between use of force and excessive use of force. This is a problem particularly in the realm of violence and abuse, where events are underreported for many reasons. Overcoming this particular weakness is not easy, but it is possible to produce official counts that more closely reflect reality. Just as important, we need more in-depth, qualitative studies of violence and abuse in correctional facilities as an important check on, and way to understand, baseline data about prevalence.

There are other failings. Efforts to use data to make correctional facilities safer and more effective are uneven around the country and just beginning to gather momentum, even in jurisdictions where data collection is more advanced. And lawmakers in many states do a poor job drawing on the best available knowledge and data to forecast the impact of proposed legislation. The recommendations described below address these problems and provide concrete ways to produce stronger measures of the safety and effectiveness of America's prisons and jails.

RECOMMENDATIONS

1. **Develop nationwide reporting.**
2. **Fund a national effort to learn how prisons and jails can make a larger contribution to public safety.**
3. **Require correctional impact statements.**

1 **Develop nationwide reporting.** Federal legislation should support meaningful data collection, and states and localities should fully commit to this project.

There are many different ways to define and count things. Consider something as straightforward as demographic information. Most correctional systems provide separate counts of Latino prisoners and staff, but in Georgia, for example, most Latinos are counted among the population of "white" prisoners. Now consider something a little more difficult to define, such as segregation. The living conditions in most supermax prisons are just as stringent—and often more stringent—than conditions in high-security "segregation" units in other prisons. Yet national counts of prisoners in segregation most likely do not capture the majority of people incarcerated in supermax facilities. The Commission heard testimony that this expensive form of confinement is overused. To reduce it, corrections administrators and lawmakers need accurate measures to monitor progress toward that goal.

Finally, consider something very difficult to define and count: A prisoner dies while officers are forcefully removing him or her from a cell (a "cell extraction"). That event could be defined and counted as an accidental death (the same as a death from falling down a flight of stairs), a negligent or reckless homicide, or even a murder. How it is counted depends on the circumstances, but those circumstances are likely to be defined differently in different states and facilities. Even in the same facility definitions change over time as leadership and the institutional culture change.

While deaths that occur during cell extractions are rare events, non-lethal assaults among prisoners and between prisoners and staff are much more common, yet the differences in definitions are even more disparate around the country. Allen Beck, chief statistician at the U.S. Department of Justice's Bureau of Justice Statistics, told the Commission that what constitutes a serious assault varies substantially across state and local systems. Beck went on to explain that our knowledge about levels of assaults nationally and variations around the country are rough partly because of the many different definitions in play. Another key factor is variation in the reliability of internal mechanisms for accurately recording and reporting information. To meaningfully track and compare the numbers and rates of aggravated assaults in facilities across the country, every institution must define an aggravated assault in the same way and use the same "counting rules" to indicate what should be counted and how (Gaes et al. 2004).

The difficulty of comparing data among states and localities is a primary reason why the body of national-level data is less comprehensive and rich than it should be. But there is another problem. While some state prison systems and large jails collect a wealth of information and closely monitor trends, others—particularly smaller jails—collect and monitor very little. There also

Crowding: Different Stories in the Data

Official measures show a decline in crowding nationally after a crisis in the 1990s. In 1995, state prisons were at 114 percent of their highest capacity and dropped to 99 percent of capacity by 2004 (Harrison and Beck 2005). Are corrections professionals, experts, and the media wrong when they blame violence on crowding? Or do we need to look more closely at the data?

One explanation for the decrease in crowding by official counts is that institutions increased their capacity by double- and triple-celling prisoners. Professor Craig Haney testified that when he began studying prisons 30 years ago, double-celling was regarded by academics and corrections administrators as an "unmitigated evil." "Nothing has changed except for the numbers of people that we have in prison to shift that judgment. Nothing has changed in academia to suggest that crowding is not harmful," he said.

Still, the entire decrease in crowding cannot be explained by this shift in practice. Even measured against a facility's original "design capacity," a number that never changes, crowding declined from 125 percent of capacity in 1995 to 115 percent in 2004 (Harrison and Beck 2005). Many systems expanded their capacity by building new facilities and, in terms of available bed space, are less crowded than they were 10 years ago. So, why are we still concerned about crowding?

Crowding can occur even when facilities are less than full, as a result of circumstances ranging from a rise in the number of high-risk prisoners who need their own cells to a broken water pipe that makes cells uninhabitable. Equally important, crowding is about more than physical space. Systems that now double-cell prisoners or that have added beds have not necessarily been able to make parallel increases in numbers of staff and in productive activities, two factors that affect safety. This suggests that the data on crowding do not capture the problems created by adding more and more people to a facility or system.

Finally, national numbers mask variation among the states. While some state systems are less crowded by conventional measures, some of the largest systems are *more* crowded. California, the nation's third-largest prison system, is currently at twice its capacity by some estimates, and the Federal Bureau of Prisons, the largest system, is at 140 percent of its capacity. Furthermore, some state systems are simply shifting the problem by increasingly leaving larger numbers of sentenced prisoners in local jails.

are crucial pieces of information that very few systems routinely collect, ranging from the time people spend in segregation, to complaints about medical neglect, to how often force is used against prisoners belonging to different racial groups, to offer three examples.

Government and academic researchers, as well as leaders in the corrections profession, are working to overcome the many obstacles to producing better and more useful data. The Bureau of Justice Statistics routinely collects more quantitative data from corrections departments nationally than any other single agency or organization. Currently, BJS is helping the Association of State Correctional Administrators (ASCA) to develop uniform definitions of key conditions, characteristics, and events that directors of all 50 state correctional systems could use to monitor performance (see "Performance-Based Measurement" on p. 106).

Congress should pass legislation that builds on this effort and others by funding uniform, nationwide reporting, and state legislatures should mandate compliance with the national reporting requirements. All jails and prisons should be required to record and report essential information related to safety and health. ASCA's project is an excellent starting point. With start-up funding from the federal government, particular state and local systems might serve as laboratories for developing and testing definitions and measurement tools. Many of these things are very difficult to measure accurately, so the federal legislation must include a plan to provide technical assistance to states and localities.

Because lawmakers and the public will use this information to make tough choices about law, policy, and spending, decisions about exactly what to collect and how to define each piece of information must be informed by a broad base of expertise. This cannot be a project for any one profession to complete alone. A broad base of concern and expertise will guarantee, for example, that we are able to collect national data on both sanctioned and excessive uses of force by corrections officers, rates of infectious and chronic diseases, and a host of other issues that influence safety inside the walls and beyond.

While administrative reporting is crucial and must be improved, it should never be the sole measure of safety. Measuring certain behaviors and incidents in prisons and jails—particularly violence—is extremely difficult because it is underreported by both victims and assailants; corrections staff do not always know about threats, fights, and assaults; and different interpretations of behavior can lead to subjective decisions about what to report and what not to report (Cooley 1993, Edgar and O'Donnell 1998, Hewitt et al. 1984, Sykes 1958, Wright 1991, Resig 1998). BJS currently conducts surveys of inmates every five years that include a few questions related to victimization. Questions should be added to the survey of inmates to expand the picture it provides of dangers and harms that prisoners experience, and this survey should be adequately funded by Congress.

Finally, some of the most valuable knowledge we have about corrections is the product of in-depth and sometimes qualitative research conducted by academics and policymakers inside our correctional institutions. Federal

To meaningfully track and compare the numbers and rates of aggravated assaults in facilities across the country, every institution must define an aggravated assault in the same way and use the same "counting rules" to indicate what should be counted and how.

legislation should encourage research, both through increased funding to the National Institute of Justice and by making prisons more accessible to researchers.

2 Fund a national effort to learn how prisons and jails can make a larger contribution to public safety. The federal government and states should invest in developing knowledge about the link between safe, well-run correctional facilities and public safety.

Correctional institutions are expected to make our communities safer. However, high rates of incarceration and little investment in rehabilitation fuel recidivism and increase problems for the communities hit hardest by incarceration (MTC Institute 2003). If correctional systems are to perform a public safety function, the public must be able to hold institutions at least partly accountable for the impact that former prisoners have on the communities to which they return. That requires measures of success that can be compared across systems—including recidivism, family reunification and employment after release—and knowledge about the conditions of confinement that influence those outcomes.

In the 1970s policymakers shifted the goals of our prisons and jails away from rehabilitation toward incapacitation and punishment (Allen 1998, Tonry 2001). At the same time, Professor Robert Martinson released a study that was published in the *New Republic* and the *Public Interest*, suggesting that rehabilitation had little impact on recidivism (MacKenzie 1997). Along with the dramatic rise in the prisoner population, there has been decreasing support from lawmakers for improving the education and skills of people in prison. Giving up on rehabilitation was a mistake. Our soaring prison costs coupled with a national re-arrest rate of 67 percent and a re-incarceration rate of 52 percent three years after release is an indication of how far wrong we have gone (Langan and Levin 2002).

One of the weaknesses of the early research on rehabilitation is that the studies used overly simplistic measures of success and measured the outcomes of programs that were poorly implemented (MacKenzie 1997). Researchers have

Performance-Based Measurement

With funding from the federal government—through the National Institute of Justice, the Correctional Program Office, and the Bureau of Justice Statistics—the Association of State Correctional Administrators (ASCA) is developing uniform definitions to measure performance in state correctional systems across the country. For decades, BJS has had the difficult task of harmonizing data from every jurisdiction and has had to rely on the voluntary cooperation of state and local correctional systems (the one recent exception being federally mandated reporting of sexual violence in compliance with the 2003 Prison Rape Elimination Act). BJS's chief statistician, Allen Beck, is drawing on the agency's experience to assist ASCA.

In the first wave of the project, ASCA defined select measures in four broad areas: public safety, institutional safety, mental health and substance abuse, and offender profile data. ASCA consulted seven different research-based models for measuring performance in correctional institutions and systems—models that are generally more comprehensive than the initial set of measures ASCA developed. For instance, at least one of the models consulted includes "perception of danger" by prisoners among its safety measures, while ASCA's chosen measures of physical danger are limited to substantiated sexual assaults and assaults that result in serious injury, those that require stitches, setting broken bones, tending to a concussion or something more than bandaging a wound (Wright et al. 2003).

After developing its initial set of uniform definitions, ASCA surveyed correctional agencies to gauge how closely the new definitions matched definitions in use around the country. In terms of assaults among prisoners, for example, there was very little match: Only 17 percent of respondents used the same definition, and only eight percent used a comparable definition to measure prisoner-on-staff sexual assaults (Wright et al. 2003).

Six states are currently piloting the project, and ASCA has produced a manual for other states to encourage them to begin using the uniform measures. ASCA's project has the potential to produce data that can be reliably compared across jurisdictions, but the Association acknowledges that these measures are only a beginning. ASCA's efforts, along with the established work of BJS and other researchers, continues despite the lack of national mandatory reporting requirements for correctional facilities. This absence remains a significant obstacle to producing data that offer a complete and meaningful national picture of the safety and effectiveness of America's prisons and jails. Mandatory national reporting is an important step, one that requires a change in the law and additional funding and support to succeed.

Strengths and Weaknesses of Key Data

RESEARCH	SOURCE	FREQUENCY	STRENGTHS	WEAKNESSES
Census of adult state and federal correctional facilities, and jails	Bureau of Justice Statistics	Conducted every five years Most recent published data: state and federal facilities—2000; jails—1999	Facility-level demographic information about prisoners; detailed information about facilities, programs, health and safety conditions; and particularly detailed information from jails about drug testing policies and practices, inmate work assignments, education and counseling programs, and the prevalence of HIV/AIDS and tuberculosis.	• Budgetary constraints mean the census is conducted every five years and results are often published years later. • Relies solely on administrative records, which can be weak. • Definitions differ across jurisdictions, so comparisons can be misleading. • Some data provided by states is inaccurate and cannot be validated. • Few reliable measures of non-deadly violence and no measure of assaults by staff against prisoners.
Survey of inmates in state and federal correctional facilities, and jails	Bureau of Justice Statistics	Conducted every five years Most recent published data: state and federal prisoners—1997; prisoners in jails—2002	Provides individual-level data from prisoners about demographics, circumstances of current confinement, criminal history, history of alcohol and substance abuse, family history, and very limited information about victimization in prison or jail.	• Budgetary constraints mean survey is conducted only every five years and results are often published years later. • Relies solely on self-reports, which may be inaccurate. • No questions about victimization by staff. • Questions about victimization have changed from one survey to the next, making it impossible to document trends.
Survey on sexual violence	Bureau of Justice Statistics	National survey of administrative records in 2004 National survey of prisoners planned	Thorough survey of at least 10 percent of state and local correctional facilities nationwide, producing measures of sexual violence against prisoners and staff.	• Although sexual violence is thought to be significantly underreported, initial survey relies only on administrative records.
Deaths in custody in state prisons and jails	Bureau of Justice Statistics	Collected quarterly	Thorough reports of deaths in custody nationwide, with information about cause of each death, location, and limited information about circumstances.	• "Accidental injuries" includes deaths by positional asphyxiation during a cell extraction. • Homicides by staff are counted under "other homicides," masking the role of staff in these deaths.
Corrections Yearbook	Criminal Justice Institute, Inc.	Published annually through 2002 None available after 2002	Nationwide data from prisons and jails to describe populations, facilities and their operations, staff, budgets, and extensive information about the work of probation and parole offices.	• Definitions differ across jurisdictions, so comparisons can be misleading. • Few measures of lower-level violence and no measure of assaults by staff against prisoners. • Some data provided by states is inaccurate and cannot be validated.

Continued on page 108

Strengths and Weaknesses of Key Data (*continued*)

RESEARCH	SOURCE	FREQUENCY	STRENGTHS	WEAKNESSES
Performance—based measures	Association of State Correctional Administrators	Measures piloted in 2005 in six states	Uniform measures across jurisdictions that will allow for more meaningful comparisons of state systems. Clear and precise counting rules. Thorough measures of sexual violence and sexual misconduct.	• Currently, a narrow view of the victimization of prisoners, including only those incidents that result in very serious injuries and substantiated sexual assaults. • No measure of assaults by staff against prisoners, excessive use of force, or homicides (although prisoner-on-staff assaults and homicides are measured).
Corrections Compendium	American Correctional Association	Monthly or bi-monthly journal	Research articles, book reviews, and surveys on a broad range of topics including health care, reentry, inmate grievance procedures, and staff training (e.g., a 2002 survey asked all states to report riots, disturbances, violence, assaults, and escapes in their facilities).	• Much like the national data published by BJS and CJI, the 2002 survey on violence suffered from a lack of uniform definitions across jurisdictions and incomplete reporting from jurisdictions surveyed.
Administrative records	Federal Bureau of Prisons, state prisons, and local jails.	Ongoing	Individual state and local level data that always includes information about the population and budgets and typically includes at least some measures of violence.	• Large disparities in the quality of state and local data across the country. • Very little data available on assaults, staff misconduct, or excessive uses of force. • Limited public access.
NIC resources for prisons and jails	National Institute of Corrections	Ongoing	NIC-sponsored studies cover a broad range of topics, including facility operation, prison and jail trends and issues, and issues of concern to staff and prisoners.	• NIC surveys can suffer from the same weaknesses as other national efforts to collect data: lack of uniform definitions across jurisdictions, incomplete reporting, and an inability to check the validity of the data reported.

since developed more comprehensive measures of rehabilitative success, and there is a growing understanding about what kinds of programs work (MTC Institute 2003). Yet policymakers are still not paying attention. The disconnect between what we know to work and the laws and policies legislatures implement is perhaps greater in this field than in any other area of social policy (Jacobson 2005).

Resourceful corrections administrators are already measuring the effectiveness of their programs. For example, the Pennsylvania Department of Corrections, under the leadership of Jeffrey Beard, measures all of its programs against a series of "principles of effective interventions," such as how well they perform risk and needs assessments and whether they provide relapse prevention services (Gnall 2006). This kind of effort should be regular practice in corrections, and both the measurement tactics and the insights gained should be shared across jurisdictions. As Arizona corrections Director Dora Schriro put it: "I'm going to encourage us to strive for more than reducing recidivism," to measure not only whether prisoners "have stopped doing bad things" but also the extent to which correctional systems assist prisoners to "acquire the skills to start doing good things."

There is still a great deal to learn about what works in prison, the role of safety, and how to define and measure success. The only way to improve our knowledge is to measure the outcomes of a whole range of conditions of confinement. This means we must tie our measures of success in the community to the conditions of confinement, such as spending on programming and the benefits of programming, institutional crowding, levels of violence, staff-to-prisoner ratios, and hours and quality of officer training, just to name a few key factors.

Congress should enact legislation that provides incentives for states to track the success of former prisoners using the most sophisticated indicators of success: recidivism, employment, family unification, and other measures of stability. The results should then be analyzed alongside measures of key conditions of confinement, which also should be made uniform across jurisdictions. By knowing what works, we can hold correctional institutions partly accountable for outcomes in the community, and those corrections administrators can demand the resources and support necessary to run their facilities in a way that contributes to public safety. This is a tremendously difficult task, but it is work that policymakers should embrace, as it will contribute directly to public safety.

The disconnect between what we know to work and the laws and policies legislatures implement is perhaps greater in this field than in any other area of social policy.

3 Require correctional impact statements. The federal government and states should mandate that an impact statement accompany all proposed legislation that would change the size, demographics, or other pertinent characteristics of prison and jail populations.

We cannot hold corrections administrators accountable for the safety of prisoners and staff, and for public safety, if we do not provide the resources necessary to effectively manage their facilities. One of the most significant challenges those administrators face is the size of the prisoner population, which has grown dramatically, without a corresponding increase in resources. Over the past 25 years, the rate of incarceration for state and federal prisons has increased three and a half times.

BJS Chief Statistician Allen Beck explained that "the growth in the prison population is not about crime; it's about how we have chosen to respond to crime and that we've introduced sanctioning policies that have had profound impacts on the size and composition of the nation's prison population." Administrators have had to deal with increasing numbers of mentally ill prisoners and prisoners facing extremely long and often life sentences. "We have a fixed resource base, and we continue to pour more people into it. How do we make those resources stretch to accomplish our goals?" asked Richard Stalder, Louisiana's corrections secretary and president of the Association of State Correctional Administrators, when he testified to the Commission.

Every criminal statute, every sentencing policy, and every policy related to probation and parole has consequences for the conditions inside our prisons and jails. If we incarcerate more people with mental illness, our prisons and jails need the resources to provide mental health care. If we lengthen sentences or increase the number of life sentences, then correctional institutions need additional resources to provide medical care for aging prisoners and the terminally ill. Before legislatures pass laws that have consequences for the size, demographics, and needs of the incarcerated population, they should understand those consequences, inform the public, and be held accountable for full and ongoing funding for the laws they pass. A number of states currently require fiscal impact statements as a prerequisite to legislation, and Virginia's requirement is regarded as one with real muscle (Wilhelm and Turner 2002).

Legislators should also be held accountable for the consequences of criminal justice policy on our communities. If we are going to ask corrections to be responsible for the impact of confinement on a person's success after release, we must also be sure that legislators understand who they are sending to prison and the impact those decisions have on particular communities. Many of our laws have disproportionately impacted poor communities in primarily urban neighborhoods, and predictably so. Laws that have the consequence of incarcerating one in every three or four African-American men in some neighborhoods clearly impact the health, resources, and long-term viability of those communities. For example, laws that establish "drug free zones" have a disproportionate impact on urban African-Americans and Latinos because overlapping zones in densely populated urban areas render entire communities "prohibited" (Greene et al. 2006). Our policymakers should be required to study these kinds of potential consequences before they vote, and they should be required to publish those studies so that citizens can understand the consequences and express their views.

Congress and every state legislature should be required to review and publish statements that explain the impact of any proposed legislation that would influence correctional systems and the community. ■

1,000 Voices of Concern: Another Kind of Data

Over the course of the Commission's inquiry, we received more than 1,000 letters, e-mails, and phone calls from current and former prisoners and their family members and from officers and other staff. People from 46 states wrote to share accounts of what they or their loved ones encountered inside our prisons and jails. Several letters described the good work of individual officers, physicians, and administrators. Given the charge of the Commission, however, we naturally received many more accounts of problems and abuses. We were struck by the frank and passionate nature of those accounts, by the common threads of the reported problems, and by the desire of those who wrote to us about their own suffering to make things better for others.

These accounts form an integral part of the Commission's record. Indeed, some people who submitted personal accounts also testified at the Commission's hearings. They include former Rhode Island Detective Scott Hornoff, who was later exonerated and who described degradation and abuse; former Florida Warden Ron McAndrew, who described a code of silence that allowed rogue officers to brutalize prisoners with impunity; and Victoria Wright, who recounted a story of medical neglect that led to the death of her husband in a California prison.

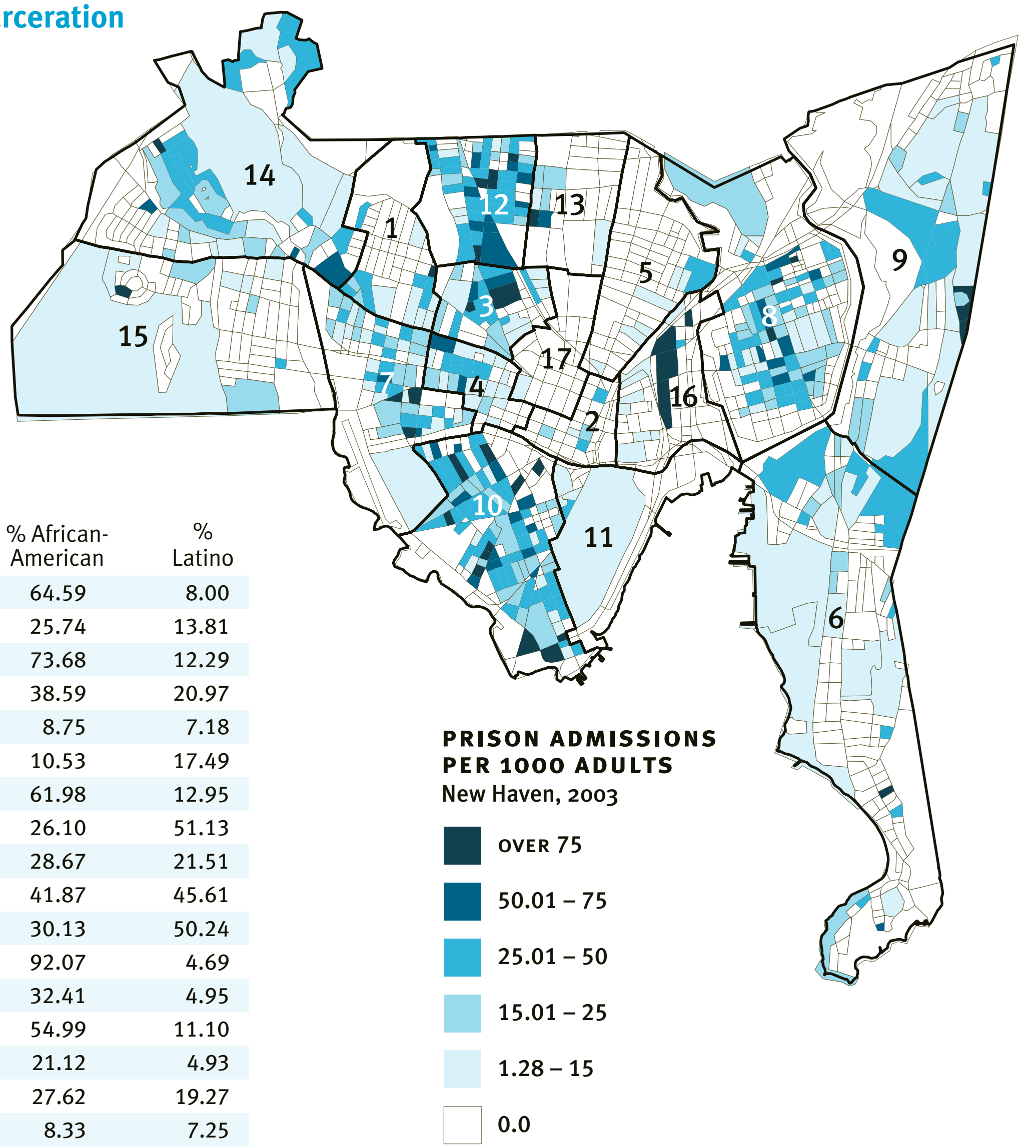
These and other stories were echoed many times over in the accounts we received. Prisoners and their family members described abusive conditions in segregation units, physical and sexual violence, gangs, the treatment of Muslim-Americans after September 11, 2001, and humiliation. Many people described gross medical neglect. One bereaved mother wrote, "Isidro was a human being who got less treatment than the dogs receive at the local animal rescue center." Prisoners described "ugly" reprisals for speaking the truth, and officers told us about losing their jobs after reporting abuses by fellow officers. Inadequate treatment for the mentally ill, racial discrimination, and crowding were among the other concerns raised in numerous testimonials. One woman wrote, "We are packed in, eight women to each small cell, originally built to hold four."

Although they are a tiny chorus among the vast number of people who have experienced or come to know life in America's prisons and jails, these testimonials put human faces on the problems. They are a powerful reminder of the dizzying array of issues the Commission confronted over the course of a year. Informed by these accounts and others like them, the Commission's recommendations are an attempt to understand, address, and eventually eliminate the problems that affect prisoners, staff, and their families and communities.

The Unequal Impact of Incarceration

Nationally, compared to whites African-Americans are incarcerated at a rate roughly seven times higher and Latinos at a rate roughly three times higher.

At the local level, the differences are starkly revealed. In **New Haven**, for example, incarceration rates in poor African-American and Latino neighborhoods are many times higher than nearby, whiter and more affluent neighborhoods.



Neighborhood	Number	% African-American	% Latino
BEAVER HILLS	1	64.59	8.00
BUSINESS DISTRICT	2	25.74	13.81
DIXWELL	3	73.68	12.29
DWIGHT	4	38.59	20.97
EAST ROCK	5	8.75	7.18
EAST SHORE	6	10.53	17.49
EDGEWOOD	7	61.98	12.95
FAIR HAVEN	8	26.10	51.13
HEIGHTS	9	28.67	21.51
HILL (4 CITY POINT)	10	41.87	45.61
LONG WHARF	11	30.13	50.24
NEWHALLVILLE	12	92.07	4.69
PROSPECT HILL	13	32.41	4.95
WESTHILLS	14	54.99	11.10
WESTVILLE	15	21.12	4.93
WOOSTER SQUARE	16	27.62	19.27
YALE	17	8.33	7.25

SOURCE: ERIC CADORA AND CHARLES SWARTZ, THE JUSTICE MAPPING CENTER.

MEASURE SAFETY AND EFFECTIVENESS: RECOMMENDATIONS RECAP

1. **Develop nationwide reporting.** Federal legislation should support meaningful data collection, and states and localities should fully commit to this project.
2. **Fund a national effort to learn how prisons and jails can make a larger contribution to public safety.** The federal government and states should invest in developing knowledge about the link between safe, well-run correctional facilities and public safety.
3. **Require correctional impact statements.** The federal government and states should mandate that an impact statement accompany all proposed legislation that would change the size, demographics, or other pertinent characteristics of prison and jail populations.

Commission Witnesses

Hearing 1: Tampa, Florida

Kenneth Adams: Professor, University of Central Florida, whose work focuses on the culture of violence in prison. **John Boston:** Director, Prisoners Rights Project, New York City Legal Aid Society. **Donald Cabana:** Former Warden, maximum security prison in Parchman, Mississippi, and author of *Death at Midnight: The Confession of an Executioner*. **Jack Cowley:** Former Warden, Oklahoma Department of Corrections, who is currently involved in faith-based reentry programming. **Garrett Cunningham:** Former Texas prisoner who was raped by a corrections officer. **Alan Elsner:** National Correspondent for Reuters News Service. **Glenn Fine:** Inspector General of the U.S. Department of Justice, overseeing all federal prisons. **Michael Gennaco:** Chief Attorney for the Office of Independent Review, which oversees the Los Angeles County Sheriff's Department. **Judith Haney:** Lead plaintiff in a successful class-action lawsuit involving women strip-searched at a Miami jail. **Jeffrey Scott Hornoff:** Former Rhode Island Police Detective who was wrongfully convicted and incarcerated for six and a half years. **Steve Martin:** Former Corrections Officer and former General Counsel of the Texas prison system. **Ron McAndrew:** Former Warden, Florida Department of Corrections. **Anadora Moss:** Consultant whose work focuses on sexual abuse and institutional culture. **Barbara Owen:** Professor, California State University, Fresno, whose ethnographic research focuses on women's prisons. **David Parrish:** Detention Department Commander, Hillsborough County (Florida) Sheriff's Office. **Donald Specter:** Director of the California-based Prison Law Office. **Douglas Thompkins:** Sociologist at the John Jay College of Criminal Justice, New York, and former gang leader and prisoner. **Margaret Winter:** Associate Director, American Civil Liberties Union National Prison Project.

Hearing 2: Newark, New Jersey

Donald Joseph Baumann: A state Corrections Officer for 19 years in Southern California. **Pearl Beale:** Mother of a young man who was murdered in a Washington, D.C., jail while awaiting trial. **Jeffrey Beard:** Secretary of the Pennsylvania Department of Corrections. **Allen Beck:** Chief of the Corrections Statistics Program at the federal Bureau of Justice Statistics. **Devon Brown:** Commissioner of the New Jersey Department of Corrections (at the time of the hearing), now Director of the Washington, D.C., Department of Corrections. **James Bruton:** Former Warden, Minnesota Department of Corrections, and author of *The Big House: Life Inside a Supermax Security Prison*. **Fred Cohen:** Consultant and court-appointed monitor in several states specializing in prison mental health care. **Dr. Robert Cohen:** Consultant working nationally and former Director of medical services for the New York City jails. **Thomas Farrow:** A former prisoner incarcerated for more than two decades in New Jersey. **Jamie Fellner:** U.S. Program Director, Human Rights Watch, and co-author of *Ill Equipped: U.S. Prisons and Offenders with Mental Illness*. **Dr. Joe Goldenson:** Medical and Program Director for the San Francisco County jails. **Dr. Stuart Grassian:** A psychiatrist with extensive experience evaluating the mental health effects of stringent conditions of confinement. **Dr. Robert Greifinger:** Health-care policy and quality-management consultant and principal investigator of the 2002 report to Congress, *The Health Status of Soon-to-Be-Released Inmates*. **Dr. Gerald Groves:** Former corrections psychiatrist in New Jersey. **Craig Haney:** Professor at the University of California, Santa Cruz, who recently published *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. **Gary Harkins:** A Corrections Officer for 25 years in the state of Oregon. **Michael Jacobson:** Director of the Vera Institute of Justice and author of *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration*, and former Commissioner of Correction for New York City. **Bonnie Kerness:** Associate Director of the American Friends Service Committee's Prison Watch. **Dr. David Kountz:** Medical Director of the Somerset County Jail in New Jersey. **Sister Antonia Maguire:** A Catholic nun who has worked for 32 years with prisoners at three New York State prisons. **Vincent Nathan:** An attorney, law professor, and national consultant on prison management. **Richard Stalder:** Secretary, Louisiana Department of Public Safety and Corrections, and President of the Association of State Correctional Administrators. **Daud Tulam:** A former prisoner who spent 18 years in isolation in various New Jersey facilities. **Arthur Wallenstein:** Director, Montgomery County (Maryland) Department of Correction and Rehabilitation. **Reginald Wilkinson:** Director, Ohio Department of Rehabilitation and Correction (at the time of the hearing).

Hearing 3: St. Louis, Missouri

asha bandele: Married to a long-term prisoner in New York State and author of *The Prisoner's Wife*. **Theodis Beck:** Secretary, North Carolina Department of Correction. **Randall Berg:** Executive Director, Florida Justice Institute. **Larry Brimeyer:**

Deputy Director for Eastern Operations, Iowa Department of Corrections. **Lance Corcoran:** Chief of Governmental Affairs, California Correctional Peace Officers Association. **Larry Crawford:** Director, Missouri Department of Corrections. **Brian Dawe:** Executive Director of Corrections USA, a corrections labor group. **Robert Delprino:** Professor, Buffalo State College, and lead researcher of *Work and Family Support Services for Correctional Officers and their Family Members: A National Survey*. **Kathleen Dennehy:** Commissioner, Massachusetts Department of Correction. **Sharon Dolovich:** Professor, University of California, Los Angeles, Law School, where she teaches prison law and policy. **Eddie Ellis:** Director, NuLeadership Policy Group at the City University of New York, and a former New York State prisoner. **Michael Hamden:** Executive Director, North Carolina Prisoners Legal Services, Inc., and member of the American Correctional Association's Commission on Accreditation for Corrections. **William Hepner:** Program Development Specialist for the Corrections Staff Training Academy, New Jersey Department of Corrections. **Ronald Kaschak:** Former Deputy Sheriff in Mahoning County, Ohio. **Mary Livers:** Deputy Secretary for Operations, Maryland Department of Public Safety and Correctional Services. **Elaine Lord:** Former Superintendent, Bedford Hills Prison for women in New York. **James Marquart:** Professor, University of Texas, Dallas, and a former corrections officer. **Patrick McManus:** National consultant on use of force and former Secretary, Kansas Department of Corrections. **Rev. Jacqueline Means:** Head of the Episcopal Church's national prison ministry program and former Prison Chaplain. **Evelyn Ridley-Turner:** Treasurer, American Correctional Association, and former Secretary, Indiana Department of Correction. **Richard Seiter:** Executive Vice President and Chief Corrections Officer, Corrections Corporation of America, and former Director, Ohio Department of Rehabiliation and Correction. **Frank Smith:** Field Organizer, Private Corrections Institute, a national organization critical of the for-profit corrections industry. **Michael Van Patten:** Correctional Sergeant, Oregon State Penitentiary. **Jeffrey Washington:** Deputy Executive Director, American Correctional Association. **Lou West:** Corrections Officer, St. Louis County Justice Center. **Mark Wrighton:** Chancellor, Washington University in St. Louis, Missouri.

Hearing 4: Los Angeles, California

Daniel "Nane" Alejandrez: Executive Director, Barrios Unidos, a national movement that addresses youth, violence, and gangs, and a former prisoner. **Michael Ashe:** Sheriff of Hampden County, Massachusetts. **Jack Beck:** Director of the Prison Visiting Project, Correctional Association of New York. **Merrick Bobb:** Court-appointed monitor of the Los Angeles County Sheriff's Department and President, Police Assessment Resource Center. **Alvin Bronstein:** Director Emeritus and founder of the American Civil Liberties Union National Prison Project. **Pernell Brown:** Former member of the Bloods street gang who now works with the Oregon Department of Corrections and community-based organizations to reduce gang violence. **James Byrne:** Professor, University of Massachusetts, Lowell, whose work focuses on the causes, prevention, and control of institutional violence and disorder. **Silvia Casale:** President, Counsel of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. **Matthew Cate:** Inspector General of California, responsible for investigating and auditing the State Department of Corrections and Rehabilitation. **Gwendolyn Chunn:** President, American Correctional Association. **Michele Deitch:** Attorney and Adjunct Professor, LBJ School of Public Affairs, University of Texas, Austin. **Anthony Delgado:** Security Threat Group Investigation Coordinator, Ohio Department of Rehabilitation and Correction. **Walter Dickey:** Professor at the University of Wisconsin Law School and former Secretary, Wisconsin Department of Corrections. **Katherine Hall-Martinez:** Co-Executive Director, Stop Prisoner Rape. **Stephen Hanlon:** Partner at the law firm of Holland & Knight and pro bono counsel in numerous class-action lawsuits about unsafe and abusive conditions in prison. **Scott Harshbarger:** Former Massachusetts Attorney General and Chair of the Governor's Commission on Corrections Reform. **Roderick Hickman:** Secretary, California Department of Corrections and Rehabilitation (at the time of the hearing). **Gary Johnson:** Former Executive Director, Texas Department of Criminal Justice. **Jody Kent:** Coordinator of the Los Angeles County Jails Project for the American Civil Liberties Union of Southern California. **Harley Lappin:** Director, Federal Bureau of Prisons. **Laurie Levenson:** Professor, Loyola Law School, and Director of the Center for Ethical Advocacy. **Anne Owers:** Her Majesty's Chief Inspector of Prisons, United Kingdom. **Dora Schriro:** Director, Arizona Department of Corrections. **A. Sage Smith:** Director of Client Services at the Center on Wrongful Convictions, Northwestern University, and a former prisoner. **Hon. Myron Thompson:** United States District Judge for the Middle District of Alabama. **Leslie Walker:** Executive Director, Massachusetts Correctional Legal Services. **A.T. Wall:** Director, Rhode Island Department of Corrections. **Victoria Wright:** Wife of Jay Wright, a prisoner who died three months into his sentence. **William Yeomans:** Director of Programs, American Constitution Society for Law and Policy, and former Deputy Assistant Attorney General at the Civil Rights Division of the U.S. Department of Justice. ■

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COMMISSION RECOMMENDATIONS

I. CONDITIONS OF CONFINEMENT

Prevent Violence

1. **Reduce crowding.** States and localities must commit to eliminating the crowded conditions that exist in many of the country's prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house.
2. **Promote productivity and rehabilitation.** Invest in programs that are proven to reduce violence and to change behavior over the long term.
3. **Use objective classification and direct supervision.** Incorporate violence prevention in every facility's fundamental classification and supervision procedures.
4. **Use force and non-lethal weaponry only as a last resort.** Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.
5. **Employ surveillance technology.** Make good use of recording surveillance cameras to monitor the correctional environment.
6. **Support community and family bonds.** Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

Provide Health Care that Protects Everyone

1. **Partner with health providers from the community.** Departments of corrections and health providers from the community should join together in the common project of delivering high-quality health care that protects prisoners and the public.
2. **Build real partnerships within facilities.** Corrections administrators and officers must develop collaborative working relationships with those who provide health care to prisoners.
3. **Commit to caring for persons with mental illness.** Legislators and executive branch officials, including corrections administrators, need to commit adequate resources to identify and treat mentally ill prisoners and, simultaneously, to reduce the number of people with mental illness in prisons and jails.
4. **Screen, test, and treat for infectious disease.** Every U.S. prison and jail should screen, test, and treat for infectious diseases under the oversight of public health authorities and in compliance with national guidelines and ensure continuity of care upon release.
5. **End co-payments for medical care.** State legislatures should revoke existing laws that authorize prisoner co-payments for medical care.
6. **Extend Medicaid and Medicare to eligible prisoners.** Congress should change the Medicaid and Medicare rules so that correctional facilities can receive federal funds to help cover the costs of providing health care to eligible prisoners. Until Congress acts, states should ensure that benefits are available to people immediately upon release.

Limit Segregation

1. **Make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets.** Tighten admissions criteria and safely transition people out of segregation as soon as possible. And go further: To the extent that safety allows, give prisoners in segregation opportunities to fully engage in treatment, work, study, and other productive activities, and to feel part of a community.
2. **End conditions of isolation.** Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm.
3. **Protect mentally ill prisoners.** Prisoners with a mental illness that would make them particularly vulnerable to conditions in segregation must be housed in secure therapeutic units. Facilities need rigorous screening and assessment tools to ensure the proper treatment of prisoners who are both mentally ill and difficult to control.

Continued on page 122

COMMISSION RECOMMENDATIONS (*CONTINUED*)

II. LABOR AND LEADERSHIP

Change the Culture and Enhance the Profession

1. **Promote a culture of mutual respect.** Create a positive culture in jails and prisons grounded in an ethic of respectful behavior and interpersonal communication that benefits prisoners and staff.
2. **Recruit and retain a qualified corps of officers.** Enact changes at the state and local levels to advance the recruitment and retention of a high quality, diverse workforce and otherwise further the professionalism of the workforce.
3. **Support today's leaders and cultivate the next generation.** Governors and local executives must hire the most qualified leaders and support them politically and professionally, and corrections administrators must, in turn, use their positions to promote healthy and safe prisons and jails. Equally important, we must develop the skills and capacities of middle-level managers, who play a large role in running safe facilities and are poised to become the next generation of senior leaders.

III. OVERSIGHT AND ACCOUNTABILITY

Invest in External Oversight

1. **Demand independent oversight.** Every state should create an independent agency to monitor prisons and jails.
2. **Build national non-governmental oversight.** Create a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators.
3. **Reinvigorate investigation and enforcement.** Expand the investigation and enforcement activities of the U.S. Department of Justice and build similar capacity in the states.
4. **Increase access to the courts by reforming the PLRA.** Congress should narrow the scope of the Prison Litigation Reform Act.

Continued above right

***III. Oversight and Accountability**, continued*

Strengthen Accountability Within the Profession

1. **Monitor practice not just policy.** Ensure that American Correctional Association accreditation more accurately reflects practice as well as policy.
2. **Strengthen professional standards.** Improve and support American Correctional Association standards.
3. **Develop meaningful internal complaint systems.** Corrections managers should strengthen the systems that allow them to listen to those who live and work in prisons and jails.

Educate and Involve the Public

1. **Encourage visits to facilities.** Create opportunities for individual citizens and organized groups, including judges and lawmakers, to visit facilities.
2. **Strive for transparency.** Ensure media access to facilities, to prisoners, and to correctional data.

IV. KNOWLEDGE AND DATA

Measure Safety and Effectiveness

1. **Develop nationwide reporting.** Federal legislation should support meaningful data collection, and states and localities should fully commit to this project.
2. **Fund a national effort to learn how prisons and jails can make a larger contribution to public safety.** The federal government and states should invest in developing knowledge about the link between safe, well-run correctional facilities and public safety.
3. **Require correctional impact statements.** The federal government and states should mandate that an impact statement accompany all proposed legislation that would change the size, demographics, or other pertinent characteristics of prison and jail populations.

In March, 2005, we began the first national prison commission in three decades. At 2.2 million, the prisoner population was larger than ever and still growing. There were accumulating doubts about the effectiveness and morality of our country's approach to confinement. Fifteen months later, the need for reform feels even more urgent. Millions and millions of lives are at stake. It is time to do what corrections officer Lou West tries to do every day: to make things right.