

1                   DR. DUDLEY: The subject of our next  
2 panel is the concept of transparency as it applies to  
3 correctional institutions. It is my pleasure to  
4 introduce three distinguished witnesses who will help  
5 us explore and illuminate this topic. They are  
6 Professor Walter Dickey, Ms. Gwendolyn Chunn, and Dr.  
7 Silvia Casale.

8                   Our panelists will explain the importance  
9 for democratic societies in transparent government  
10 institutions, they will articulate the key components  
11 of the transparency, they will discuss the mechanisms  
12 and obstacles to achieving greater transparency in  
13 the context of corrections. The panel will also  
14 examine how our correctional agencies in the United  
15 States stand in comparison to other government bodies  
16 and to correctional agencies in other countries  
17 regarding issues of transparency and openness.

18                   Professor Walter Dickey was the Secretary  
19 of Corrections for the State of Wisconsin in the  
20 1980s, currently is the court-appointed monitor of  
21 the Wisconsin supermax facility, and the faculty  
22 director of the Remington Center for Research,  
23 Education and Service in Criminal Justice at the  
24 University of Wisconsin Law School.

25                   Ms. Gwendolyn Chunn is the president of the

1 American Correctional Association and was formerly  
2 the Director of the Division of Youth Services of the  
3 North Carolina Department of Human Services.

4 Dr. Silvia Casale is the president of the  
5 Counsel of Europe's Committee for the Prevention of  
6 Torture and Inhuman or Degrading Treatment or  
7 Punishment.

8 We have asked, as in prior panels, for each  
9 of the panelists to speak for about five minutes and  
10 then we can then have an hour of exchange between  
11 them and then questions and discussions for about an  
12 hour following that, so I thank you all for  
13 participating in the examination of this important  
14 topic. We look forward to hearing your remarks.

15 We would like to begin with Professor  
16 Dickey.

17 MR. DICKEY: Thank you.

18 Rather than repeat my paper that I think  
19 you might have seen, I thought I would go at these  
20 questions in a slightly different way in the hope we  
21 might illuminate the questions before us.

22 I think if you ask most wardens of prisons  
23 what the purposes that they have were I think the  
24 first one they would say is the maintenance of order  
25 and I think they would be right. If you ask the

1 question how do you get it and why do you want it, I  
2 think the reason you want order is it brings safety  
3 and that's one of the primary things prison wardens  
4 should want. How do you get it. I think in a broad  
5 sort of sense it is a function of compliance with the  
6 rules, and that leads to the question how do you get  
7 compliance with the rules if that is what gives us  
8 order.

9 I think the thing about prisons is it is  
10 tempting to look at the bars and the handcuffs and  
11 the technology and all that sort of stuff and assert  
12 or believe that's the primary method for getting  
13 compliance with the rules and that certainly plays a  
14 role in getting compliance, but I think there are  
15 other things that work that are very important and I  
16 think they have everything to do with this question  
17 of transparency.

18 I think first of all for all of us, and it  
19 goes to prisoners too, we get compliance for the  
20 rules mostly through agreement. We have all agreed  
21 to play by the rules and comply by the rules, and I  
22 think in Monaghan Prison one of the things that you  
23 want more than anything is to have the prisoners  
24 agree to play by the rules, abide by the rules,  
25 because that's one way of getting compliance.

1           I think, secondly, compliance with the  
2 rules is a function of habit and prisons, of course,  
3 run on procedure and repetition and habit and the  
4 more of that we can get, the better. And obviously  
5 there are incentives, rewards for playing by the  
6 rules; disincentives, punishment for not playing by  
7 the rules, and incentives play a powerful role in  
8 ordinary life as well as in prisons in getting  
9 compliance with the rules.

10           Now I guess to sort of return to my  
11 question, if agreement to play by the rules is  
12 important, the question is how do you get people to  
13 agree. Again, I think the lessons of ordinary life  
14 often apply with respect to prisons. I think we  
15 agree to play by the rules because we think the rules  
16 are fairly and legitimately made, we understand them,  
17 we understand why playing by them is something that  
18 we ought to be doing, we think they're factually  
19 necessary for a civilized and civil sort of life.  
20 And I think without legitimacy, without that sort of  
21 agreement because they're fairly made and because  
22 they're factually based and well understood, it is  
23 very hard to expect people to comply because they  
24 agree. And, secondly, if you don't have programs,  
25 whether they're schools, jobs, factories, whatever

1 they are, the things again that make up the naturally  
2 occurring forces that bring compliance with your  
3 rules, you are much more likely to be relying on  
4 force and handcuffs and all that sort of stuff as a  
5 way of getting compliance because the less agreement  
6 and the less naturally occurring forces that are  
7 contributing to compliance, the more you are going to  
8 have to resort to those sorts of things. To put it  
9 another way, it seems to me the more legitimacy we  
10 have, the more compliance and the more desirable,  
11 that is a way of getting people to comply to the  
12 rules.

13           And I think this question of legitimacy  
14 goes to the very heart of what is called  
15 transparency. It has to do with visibility, it has  
16 to do with the fact that they are factually based, it  
17 has to do, I think, with accountability because if  
18 there's not factually-based rules, well understood,  
19 made in the ordinary course of things, fairly made,  
20 it is very unlikely that you are going to have, as I  
21 say, compliance. It is also very unlikely you are  
22 going to have accountability, and you need  
23 accountability and visibility in order to get  
24 compliance of the kind that I just described.

25           You need other things as well. I think in

1 business, for example, in this country today, if you  
2 look at the sort of competitive environment that we  
3 have, I think what you see are companies that are in  
4 a sense constantly scanning the environment, trying  
5 to figure out better ways to make money because the  
6 environment is a competitive one that's changing and  
7 therefore they have to be on top of their game in  
8 order to be profitable.

9           Unfortunately, that competitive environment  
10 doesn't exist in prisons, there is not that incentive  
11 certainly to be reviewing what you do, yet I would  
12 say because the facts and circumstances of life in  
13 prison are also changing, that also needs to be  
14 continually under review by leadership in those  
15 institutions because I think without that sort of  
16 continual review, you can't have rules and a way of  
17 life that is, in a sense, legitimate and responsive  
18 to the environment in which people live. All of  
19 that, as I said, would require, I would say,  
20 basically compliance with the rule of law because it  
21 is through the rule of law that we get compliance,  
22 accountability and visibility. The rules fairly made  
23 are rules that are made according to the rule of law.  
24 That requires legislative interest and oversight,  
25 that requires some administrative process by which

1 these rules are made as they are in other areas of  
2 public life, and I think by in large when we don't  
3 see the rule of law operating in the prisons in that  
4 very ordinary sort of way, I think what we tend to  
5 resort to is things like court oversight or oversight  
6 of some other kind because the ordinary methods that  
7 we use in the democratic society to bring visibility  
8 and accountability and oversight really aren't  
9 operating.

10           So I think if one of the questions here is  
11 why would we want visibility, I think one of the  
12 answers is because it lends legitimacy to this  
13 endeavor and by lending legitimacy to this endeavor,  
14 it brings compliance with the rules and order and  
15 therefore safety.

16           Let me just say one or two more words about  
17 this question of oversight here and also one thing  
18 about gangs because I listened to the discussion this  
19 morning and I didn't hear at all, but there was one  
20 thing that I felt was absent from this that I thought  
21 was very important in understanding this question of  
22 gangs, and that is we tend to talk about intervention  
23 and all that sort of stuff to try to deal with gang  
24 problems. When I was running the Wisconsin prison  
25 system and we looked at this problem and we thought a

1 lot about it and we tried to figure out what to do to  
2 not have it, one of the things we quickly realized  
3 was that gangs can find a foothold in any institution  
4 when the institution isn't doing business the way it  
5 should. That is to say, if the institution doesn't  
6 have safety and protection of the people there, the  
7 inmates are going to look for it somewhere and if it  
8 comes from group activity, they're going to go to the  
9 group activity. Now safety is one thing they may  
10 look for but if you ask who has control of the jobs  
11 in the institution, if it is the staff and you can  
12 look to the staff making the job decisions in  
13 legitimate and lawful sorts of ways, I don't think  
14 you are going to go to trustees or other inmates to  
15 try to influence those kind of decisions. But in a  
16 sense when the institution abrogates its  
17 responsibility, I think that is the moment at which  
18 it is possible for the gangs to sort of take over.

19           Finally on this question of oversight, let  
20 me just say this. I worked with a lot of people in  
21 corrections and one of the things I have always  
22 started out my work with, I think it has always been  
23 confirmed in my work with the folks I work with, is  
24 that the people want to do the right thing. You may  
25 disagree with them about what the right thing is, you

1 may disagree with them about how to get there, but  
2 they invariably want to do the right thing. And I  
3 think if you enter into any sort of partnership in  
4 which you are going to bring oversight or involvement  
5 or engagement of any kind, I think to approach it in  
6 any way other than on the assumption that they're  
7 trying to do the right thing and that you are in a  
8 partnership with them to find out what that is and  
9 how best to get it, it is likely to end in failure.  
10 Just think about it this way. Suppose it was you  
11 that was going to be the subject of oversight and the  
12 approach we took was we're going to assume you want  
13 to do the wrong thing, we're are going to assume your  
14 motives are lousy, you want to hurt people, whatever  
15 it is. If that was the assumption that one started  
16 with, that is hardly the sort of engagement that is  
17 going to bring any kind of a positive partnership,  
18 and so I think oversight takes a lot of forms and a  
19 lot of shapes. It really is circumstantial, whether  
20 it is special masters as I currently am, or boards or  
21 visitors or whatever the heck it is. But I think  
22 unless it is entered in that spirit, it is likely to  
23 turn out to be so contentious as to really end up  
24 being largely ineffective and, quite honestly, run  
25 the risk of making things worse rather than better.

1 And these are fragile sorts of endeavors and I don't  
2 think you should ever forget that interventions, well  
3 intentioned as they may be, have the risk not only of  
4 success, but also of failure.

5 DR. DUDLEY: Thank you.

6 MS. CHUNN: I submitted already some  
7 written remarks that speak largely to the role and  
8 the contributions that the American Correctional  
9 Association has played since 1870 in the professional  
10 growth and development of persons who work in this  
11 field. I thought my time might be better spent if I  
12 gave you a few reasons as to why it is difficult to  
13 cultivate a transparent system. I am particularly  
14 aware of the clock over here and I'm going to do my  
15 best to sort of move through this so I won't  
16 elaborate as much as I might. I will just urge you  
17 that if there are things that I don't cover that you  
18 would like to hear me talk more about, that you will  
19 feel free to do so during the question and answer.

20 Number 1. Corrections leaders are  
21 generally assumed to be guilty before any findings of  
22 fact, and what I mean by that is that generally we  
23 are assumed to be people who enjoy meting out harsh  
24 punishment and punitive sanctions. Nothing could be  
25 further from the truth. The reality is that prison

1 has been glamorized in this society for a number of  
2 years. Even it will go back to George Rath in the  
3 Big House and all of that. We are still doing it in  
4 television today.

5           You get the resounding notion during prison  
6 reform that let's not make it too comfortable for  
7 these people, maybe they won't want to come back.  
8 Well, certainly evidence would suggest that that is  
9 not true. They're coming back faster than we can  
10 take them in.

11           Number 2. The public generally lacks the  
12 political will to get involved in prison reform and  
13 to demand changes. As one legislator said to me,  
14 "Corrections won't get you elected but it can  
15 certainly keep you from being reelected." So we're  
16 striking this balance between citizen concerns,  
17 victim concerns, which are long overdue, and  
18 treatment which often means providing education and  
19 other resources that the general public has to pay  
20 for and so there is this tension about that.

21           What offenders get in terms of dispositions  
22 is often a function of who they are and what they're  
23 able to pay. Truth in sentencing went a long way to  
24 help improve that situation, but we still have had  
25 work with disproportionate minority confinement for a

1 long time. To hear this morning that one out of  
2 three African-American males can expect to be a part  
3 of the system is one thing. When I started 20 some  
4 years ago, the ratio was not quite that high. And so  
5 we see a situation that is getting worse and worse  
6 and now including brown people as well, so that the  
7 problem is exacerbated and we still continue to say  
8 in so many words, "Ain't it awful," but we're not  
9 doing a lot to intervene in that process.

10           Number 4. Time in office I believe is a  
11 correlate with success. If you look across the  
12 country to those people who have been doing this work  
13 for a number of years, who built some trust, who have  
14 some political capital, then those people understand  
15 what it takes to make systems work and whether or not  
16 you moved around the country or whether you stayed in  
17 one place, it is important to recognize that that is  
18 important in setting a tone where people can be  
19 authentic with what they're doing and they're not  
20 afraid of what's going on.

21           You might also want to know that the  
22 average tenure for a director is only three years in  
23 adult corrections and less than that in juvenile  
24 corrections. The appointing authority, and I would  
25 like to sort of bring home to this point, none of us

1 actually volunteer for these jobs. Though we may  
2 think that it would be a nice thing to do, somebody  
3 has to believe that you are capable of doing it.  
4 Usually it is the governor or county exec or somebody  
5 like that or you are elected if you are a sheriff,  
6 but somebody believes that you are able to do it.  
7 What really needs to happen is those appointing  
8 authorities need to begin to understand that this is  
9 a profession. You cannot take people off the street  
10 because they are great contributors to your campaign,  
11 you have to have people who have the experience and  
12 the wherewithal to make the difference.

13           Finally I would like to say that it is the  
14 quality of the person that you get in the leadership  
15 role in corrections, and I would like to say a few  
16 words about the American Correctional Association  
17 here.

18           Many people such as myself who came out of  
19 a background that had nothing to do with corrections,  
20 those folks after a point began to say somebody in  
21 the country must be doing this better, let me find  
22 out where the resources are that will help me to be a  
23 better manager in terms of corrections. And so it is  
24 important that you have a person of character, a  
25 person who has commitment, a person who believes that

1 you are capable of change because the bottom line  
2 right now is there are no incentives for you to do a  
3 good job. If you don't hold it in your heart, nobody  
4 is saying to you you really need to go out and make  
5 sure that the system is transparent; that you have  
6 some integrity, it is authentic.

7           So one of the things that I would like to  
8 see this commission consider is the importance of  
9 providing some incentives. And, folks, that doesn't  
10 always mean money, but it doesn't also mean that we  
11 can't have money, it simply means that sometimes we  
12 need priority. We know, for example, that substance  
13 abuse problems, mental health problems, have plagued  
14 our systems for years. Most of us can't afford to  
15 buy those services. So if we could even get some  
16 priority from federal agencies and from state  
17 agencies, that could go a long way in making the  
18 difference.

19           I continue to applaud what we have done in  
20 the American Correctional Association because  
21 accreditation has been the only avenue for one to  
22 guarantee that what you see is what you get, and in  
23 that regard then I think we have gone the extra mile  
24 in making the difference.

25           DR. DUDLEY: Thank you.

1 Dr. Casale.

2 DR. CASALE: Thank you. It is a great  
3 pleasure to be here and to contribute to the  
4 commission which is obviously doing very important  
5 work.

6 DR. DUDLEY: Could you pull your  
7 microphone in a little?

8 DR. CASALE: Yes. Sorry. Is that  
9 better?

10 DR. DUDLEY: That's much better.

11 DR. CASALE: I want to speak briefly  
12 about a few things which I didn't mention in my  
13 written note which I hope people have had a chance to  
14 read.

15 I want to speak about prevention, negative  
16 and positive findings, cooperation and layers of  
17 oversight, publication, and the need for independent  
18 scrutiny, all in five minutes.

19 I start from the basis of a mandatory  
20 system. A mandate comes from the treaty which 46  
21 European states have signed, and have by that signing  
22 conveyed exceptional powers of access to all persons  
23 deprived of liberty by the state to all places, to  
24 all information that the CPT might consider it was  
25 necessary to have in order to do its work. So

1 confidential information such as court files, police  
2 files, you name it, whatever it is, secret files.

3           So this is a rather extraordinary mechanism  
4 and it doesn't obviously translate to other settings.  
5 However, there are some features which might be of  
6 use in other settings to think about and to at least  
7 consider, not least some of the misconceptions that  
8 have arisen and some of the problems that we have  
9 faced might also be faced in other settings.

10           The preventive approach is extremely  
11 important. We are looking to the future, not to the  
12 past. Some of the interlocutors; that is, ministers  
13 of state or heads of prison systems or prison  
14 governors or prison staff on the ground or prisoners,  
15 some of the people we are working with, think that  
16 we're trying to build cases in order to pursue  
17 individuals who have been ill treated. That's not  
18 so. We are building a dialogue basis, a basis of  
19 dialogue for change. In prisons we speak to many  
20 people, staff and prisoners, so it is not possible to  
21 attribute what we report to any particular  
22 individual. That's important. We cross-check, we  
23 corroborate. We have forensic medical experts on our  
24 team, we have forensic psychiatrists on our team and  
25 lawyers and we assemble data from various sources.

1 We would never proceed to fact-finding without  
2 verification. And we do this not to, as I say,  
3 pursue cases, but in order to have a basis of fact to  
4 get over the first hurdle which is that people don't  
5 want to be inspected and the first reaction is  
6 defensive. If we can get over the defensiveness in  
7 order to demonstrate that we know that there are  
8 weaknesses in this system, we have found ill  
9 treatment, we know it exists, it often does in many  
10 systems. Even if it doesn't exist, we have found  
11 that there were gaps in the safeguards that protect  
12 persons.

13           When I say ill treatment, I don't  
14 necessarily mean physical ill treatment. We monitor  
15 police facilities also and there we do find torture,  
16 but in prisons we rarely do. What we find instead is  
17 basically conditions that are substandard and  
18 omissions. We give negative and positive feedback,  
19 we want to give credit where credit is due, and we  
20 find often that the positive examples are ones which  
21 are not pursued by the prison system so that where we  
22 have found good practice, it may depend on an  
23 individual whose initiative will cease to have effect  
24 when that individual moves on because the prison  
25 system doesn't recognize the practice necessarily,

1 and we as a monitoring body can help to point the way  
2 to good factors and try to convince the managers to  
3 apply that good practice elsewhere.

4           We work with layers of oversight and we  
5 don't think that they are mutually exclusive. Layers  
6 of oversight at monitoring board level, the oversight  
7 prison services conduct for themselves internally are  
8 not, they do not run counter to independent scrutiny.  
9 Independent scrutiny is necessary in systems so that,  
10 Europeans would say, because we are talking about  
11 exceptional powers of the state; powers which have  
12 been delegated by the people to the state in order to  
13 carry out one of the most extreme uses of power  
14 against the individual.

15           In Europe the most extreme power against  
16 the individual is the deprivation of liberty since we  
17 do not have the death penalty in our 46 countries.  
18 And so we feel that if that delegated power is to be  
19 exercised rightly, that it must be open to  
20 independent scrutiny in the interest of the public,  
21 the public which has delegated that power in the  
22 first place, and we proceed on the basis of shared  
23 values about which I have talked in my written  
24 summary.

25           I have also in that talk highlighted a

1 number of issues which we may wish to return to in  
2 discussion. That is independence, expertise,  
3 impartiality, the powers of enforcement and  
4 persuasion, cooperation and confidentiality, and the  
5 values that underpin the European prison models.  
6 Thank you.

7 DR. DUDLEY: Thank you.

8 Each of you had said in somewhat different  
9 ways why having transparency may be important or not  
10 be important. I'm wondering just as a starting point  
11 for our discussion, I suppose, assuming that  
12 transparency is something that's good or necessary,  
13 if each of you could kind of summarize why, what you  
14 think could be gained from having a transparent  
15 correctional system.

16 MR. DICKEY: If transparency means  
17 visibility in decision making in policies and  
18 procedures, it is very hard to have accountability  
19 without visibility and it seems to me accountability  
20 is a highly desirable quality. Without visibility  
21 and accountability, I don't think you have that  
22 legitimacy I mentioned, and it seems to me in the  
23 most utilitarian sort of way you want legitimacy  
24 because it is going to make it easier to run the  
25 institution the way it should be run, fairly and

1 effectively and the like.

2           The second thing about it is that all  
3 institutions require public support. Now prisons,  
4 people may not care, but one of the disincentives  
5 here is people don't seem to care that much. But the  
6 fact of the matter is if we're going to have any  
7 confidence in the stewardship of these places we have  
8 to know what's going on and I think when the public  
9 loses its confidence in its institutions that's a bad  
10 thing, so I would say legitimacy is important not  
11 only for the consent of the government, of the  
12 institution, but also because the people on the  
13 outside need to feel or have some level of confidence  
14 that this is being done in the right way and without  
15 visibility and accountability how can they have that  
16 belief; they have to take it on faith.

17           MS. CHUNN: I think it is a matter of  
18 integrity and morality. I really believe that this  
19 is one of the greatest countries on the face of the  
20 earth. I only say "one of" because of my esteemed  
21 colleague here. If she were not here I would say the  
22 greatest country in the world. She says I can say  
23 that, that's okay.

24           I think that we been founded on principles  
25 that speak to integrity, that speak to a quality of

1 life issue that has not been diminished over time.  
2 Even myself as a former, as a descendent of a slave  
3 family knows the importance of what can be done when  
4 we decide to make a difference. I see this as being  
5 no different. These people can be reclaimed, they  
6 can be reintegrated into communities, they can become  
7 part of the solution rather than part of the problem.  
8 Will that happen for everybody, no. Not everybody  
9 who goes in the hospital comes out alive; not  
10 everybody who goes into a university comes out  
11 educated; not everybody who does anything will ever  
12 get the absolute response, but can we do more than  
13 we're doing now? I believe that we can and I believe  
14 we have the know how.

15 I think what we have demonstrated already  
16 in the American Correctional Association speaks to a  
17 process where we can find some agreement among 50  
18 states and six territories about what we collectively  
19 see as being responsible, professional behavior. And  
20 so with that in mind, I think it is a matter of  
21 integrity and it is a matter of reflecting what the  
22 society is all about.

23 DR. CASALE: I think transparency is  
24 part of the instrument that I use in order for a  
25 democratic society to reassure itself that it is

1 truly democratic in the modern sense of the word  
2 which is more than a matter of universal suffrage, it  
3 is about the public being able to perceive that what  
4 it wants to happen in its state is happening and this  
5 is something, therefore transparency, which is  
6 required in all public services, all organizations  
7 which perform public services. It is not something  
8 that is uniquely needed for prisons, but it is,  
9 perhaps, from my point of view especially vital in  
10 prisons because while the great majority of what  
11 happens in prisons is according to the rule of law, I  
12 know from my personal experience of work in 46  
13 countries, and that's all I can speak about, I can't  
14 say for the United States, that sometimes it does go  
15 remarkably wrong and that is not a criticism of the  
16 system because all systems go wrong some of the time,  
17 and transparency is the instrument by which you try  
18 to minimize the degree to which things go wrong and  
19 to reassure the public that, in fact, the rule of law  
20 is what is happening.

21 DR. DUDLEY: Thank you.

22 MR. SCHWARZ: I want to actually take  
23 off from Ms. Chunn's comment about the greatest  
24 country. I suppose we aspire to being the greatest  
25 country, but I would like to ask the two other

1 witnesses comparative questions on that subject.

2           First a specific one to you, Dr. Casale,  
3 and then a general one to you, Professor Dickey.

4           In the European Union where you've had in  
5 the past, at least, problems with terrorism in  
6 Ireland for the British and in Algeria for the  
7 French, did either of those two countries ever  
8 establish prisons which were secret and could not be  
9 visited; for example, by the Red Cross?

10           DR. CASALE: No.

11           MR. SCHWARZ: And then the general  
12 question of Professor Dickey. I saw in the little  
13 outline of your comments that you were worried about  
14 whether the United States stands as well as we would  
15 hope it to in terms of comparison with other nations  
16 on transparency and what did you have in mind?

17           MR. DICKEY: Well, I think, first of  
18 all, it is important to be mindful we have 51  
19 jurisdictions and there's variation in practice and  
20 variation in visibility of transparency, whatever you  
21 want to call it, and there's also variation,  
22 therefore, in legitimacy and other things that I have  
23 mentioned. But I think by in large what you have to  
24 say about the American corrections systems is that  
25 they're more characterized by the absence of the rule

1 of law as we ordinarily know it. Now I don't mean to  
2 say there are lawless institutions, but if you look  
3 at the processes that we use for most governmental  
4 agencies or institutions, how they have to operate by  
5 way of information gathering about their practices,  
6 how they operate by the way of rule making,  
7 visibility, opportunity for public comment, what we  
8 do by way of accountability and the like, I think you  
9 have to say prisons really sort of stand out as  
10 places to which rule of law as we ordinarily think of  
11 it just doesn't apply.

12           Again, I think if you went and looked at  
13 the laws of the states of this country you would  
14 find, for example, just take administrative procedure  
15 records which is one of the usual ways that we do  
16 this, most prison systems are exempt from this and it  
17 has always been so, and they have sort of, and I  
18 don't want to hold the administrative rule making up  
19 as the be all and end all, I don't think there's any  
20 answer, but I think what you see is the hands-off  
21 doctrine, as we used to call it, with respect to the  
22 courts. Actually there's been a hands-off doctrine  
23 with respect to the legislature and actually there's  
24 been a hands-off doctrine respect to the governor.

25           In large, if we don't hear about it from a

1 politician's point of view, that's the best thing  
2 possible, right? Visibility is almost always going  
3 to bring this respect in the eyes of elected  
4 officials, and it may be because the people who are  
5 in institutions tend to be poor and of classes that  
6 are not the dominant classes in our society. There's  
7 also a willingness to sort of not pay attention to  
8 them, disregard them, not really attend to them the  
9 way I think we would expect our institutions to  
10 respond to people of greater wealth or a greater  
11 status in our society.

12           I guess the point that I would make is,  
13 granted, it is a little hard to generalize amongst  
14 the 51 jurisdictions, but I don't think you would see  
15 the rule of law applied the way we see it in other  
16 governmental agencies and institutions and I would  
17 say by in large you don't see it in the way you see  
18 it in Europe, at least not to the degree that we  
19 think it exists there, and I think the explanations  
20 for that are many and complex. That is to say, we  
21 don't apply the rule of law because we have chosen  
22 not to, we have chosen not to in a sense because it  
23 is them, that's one of the reasons we have chosen not  
24 to, and because of the political risks and all the  
25 disincentives that exist. Just think about the

1 press, right? If you are a corrections commissioner,  
2 I have sat in this position, and the idea is, well,  
3 the press is going to be paying attention to what  
4 we're doing in the institution. By in large, my  
5 experience with the press is it has not been very  
6 fair minded in its reporting of what goes on in  
7 correctional agencies. They tend to report crises,  
8 terrible things, and the like. In a sense, opening  
9 yourself up to that kind of visibility and  
10 accountability is a high risk sort of proposition,  
11 news is always going to be bad, and that's going to  
12 have profound effects on the commissioner, as well as  
13 a lot of other people and the politicians. The point  
14 I'm trying to make is you see all these disincentives  
15 operating to not bring to bear on these governmental  
16 institutions the level of visibility we claim to  
17 attach to lots of others.

18           One of the things, again, I just think  
19 about in coming from a state, I didn't grow up there  
20 but I lived there at one time, Wisconsin, the  
21 Department of Natural Resources, big deal; deer  
22 hunting, how many deer you can kill and fish you can  
23 catch and all that is a big deal. Do you know how  
24 much public interest, attention there is to that?  
25 The idea that the Department of Public Resources

1 would have visibility and accountability about how  
2 they make those decisions? It is unthinkable, they  
3 would never be able to get away with that. Compare  
4 corrections. There's no comparison, right? There's  
5 not anything like the public demand for visibility  
6 and accountability in that area of life as opposed to  
7 this other one. So if we're looking for reasons why,  
8 one of the reasons we don't have what we're talking  
9 about, is because at some level we don't want it.

10 MR. BRIGHT: I want to follow up on  
11 that, but I want to ask a question of what we mean  
12 exactly by transparency and accountability and I want  
13 to say I'm a big supporter of the American Prison  
14 Association, but it has not been my experience that  
15 what you see is what you get. The American Prison  
16 Association says you have to have a policy with  
17 regard to fill in the blank, and the institution has  
18 policy after policy after policy and you go to the  
19 warden's office and they're all piled up in there and  
20 then you go into the institution and none of those  
21 policies are being followed, so my question is this.

22 When we talk about transparency and those  
23 sorts of things, are we talking about the media? It  
24 used to be that newspaper reporters and television  
25 people and all that could come to these institutions,

1 see what was going on, interview inmates, take  
2 telephone calls from inmates. The prison in  
3 Louisiana printed a magazine, still does, uncensored  
4 prison magazine that won numerous journalism awards  
5 because the inmates there wrote stories that were of  
6 award-winning quality and all that. Today that  
7 magazine is censored. Most departments, as far as I  
8 know, do not let the media in, do not let the media  
9 in to interview inmates, so that's one of the  
10 guardians for a free society, is the media.

11           And the second is, I would ask is there  
12 anywhere in the United States where we have like in  
13 Europe where an independent watchdog agency has the  
14 ability to just show up any time and go through an  
15 institution solely for the purpose of seeing whether  
16 or not these various things are being complied with.

17           Go ahead.

18           MS. CHUNN: Thank you.

19           I ask you to remember what I said to you  
20 about the average tenure of a director of  
21 corrections; about three years. It takes the first  
22 year to understand where you are and what's really  
23 going on because invariably what the governor's  
24 office tells you and what is really going on are two  
25 different things. You have to then begin to build

1 some trust. In those places where facilities have  
2 been accredited and they have policy after policy, as  
3 you put it, stacked up, the problem --

4 MR. BRIGHT: They're good policies.  
5 I'm not criticizing the policies, I'm just  
6 criticizing the failure to implement the policies.

7 MS. CHUNN: Please, I'm not suggesting  
8 that either.

9 I'm just saying that if you look at the  
10 person who's leading the agency, if they have been  
11 around for a number of years the chances are those  
12 policies have been implemented. If they have been  
13 around as in the case of California for only a couple  
14 of years, the chances are that they're still trying  
15 to figure out where are the problems in this system  
16 and where are the places that will get us in trouble.  
17 You learn quickly as a corrections administrator it  
18 isn't what you know, it is what you don't know that  
19 will get you in the press and get you eaten alive,  
20 and so you spend a lot of time trying to find out if  
21 what you think is going on is in fact going on.

22 I have seen a number of commissioners, both  
23 adult and juvenile, who have been relieved of their  
24 job primarily because they thought staying in the  
25 capitol, finding out what was going on in the

1 governor's office, was more important than knowing  
2 what their people are doing.

3           These places are out of sight and out of  
4 mind by design and if you have ever tried to build  
5 one you know how difficult it is because nobody wants  
6 one in their backyard. However, they want you to be  
7 tough on crime which means that it is very difficult  
8 to strike a balance between what the governor's  
9 office wants and what the political entities need in  
10 order for you to get the support, particularly before  
11 the legislature, and what you need to do in terms of  
12 what I call your mission and that is the  
13 rehabilitation of the people. So I would ask you to  
14 be thoughtful about those policies where they have  
15 been implemented and where they have got good  
16 leadership that's committed to this.

17           Running a 24/7 operation means that by  
18 definition somebody is out there Christmas, New  
19 Year's, Grandpa's birthday, Maxine's graduation, and  
20 it is going on all the time. And increasingly what  
21 you see in terms of commitment to the mission is a  
22 function not only of training, but also of pay, and  
23 we are beginning to see that we are retiring a number  
24 of people and we don't have people standing in line  
25 to work in corrections. That's going to be a very,

1 very serious problem in this coming decade. Already  
2 we are beginning to see people running vacancies,  
3 high vacancies because they can't find people clean  
4 enough to work in them. When I say clean enough, I  
5 mean who can pass the background investigation. And  
6 so when you talk about a watchdog situation, the  
7 problem is that many governors don't want that. As I  
8 said, corrections won't get you elected but it can  
9 get you unelected, and many directors are told keep  
10 the lid on, do a good job over there, but there is  
11 never any articulation of what does that mean, and so  
12 there's a lot of space there where you can carve out  
13 what it means.

14           For me when I was Director of Juvenile  
15 Corrections it meant to me find a place where  
16 somebody is actually doing something that works, but  
17 I did that at my own volition. Most people that I  
18 know do this because of their own commitment. We  
19 want to be transparent, you want to feel like you  
20 have done a good job, you don't want to do business  
21 by suit.

22           In the late eighties the notion was get  
23 sued. Well, it only takes a couple of getting sued  
24 when you end up with a Cadillac and all you really  
25 wanted was a good bicycle, and so you end up getting

1 a whole lot more trappings that generally begin to  
2 consume not only your time and effort, but also begin  
3 to compromise what you are able to do somewhere else  
4 because there are opportunity costs that go with  
5 this.

6 MR. BRIGHT: And should the media be  
7 availed of that? Put aside the governor. You are  
8 the commissioner of a system. Should there be media  
9 access, should there be access by watchdog groups,  
10 should there be access by citizens?

11 MS. CHUNN: I would like to see it  
12 carefully thought through because the kinds of crimes  
13 that you have now are not simple crimes anymore. You  
14 have somebody that's there for armed robbery but they  
15 also have a substance abuse problem, they also are  
16 retarded, and there are other issues at play, so you  
17 have to think very carefully about who do you want to  
18 play that function. Not should the function be  
19 played, certainly it should be played on some level,  
20 but who plays it and do they play it forever, because  
21 the politics surround this so much you begin to see  
22 people who have their own political agenda about  
23 doing this. When we get to that point where you have  
24 an outside watchdog who also has a political agenda,  
25 you begin to by definition compromise the integrity

1 of the whole thing. If we cannot make this --

2 MR. BRIGHT: Is that really true? I  
3 mean, is the legislature compromised because half of  
4 the people are Democrats and half the people are  
5 Republicans and they don't have the same agenda? I  
6 thought in a democracy that self-criticism was the  
7 secret weapon of making things better.

8 MS. CHUNN: I'm not suggesting that it  
9 isn't, but you have seen this Congress unable  
10 sometimes to perform because of those problems and so  
11 we know that there are times when it goes awry. I  
12 think rather it is thoughtful, that we need to be  
13 very thoughtful about these solutions because we  
14 don't want to do any harm. We don't want to make it  
15 worse than it is. We want to make sure that people  
16 understand the professional payoff, and I'm not  
17 talking about another job, I'm talking about the  
18 satisfaction that makes you continue to do this work  
19 because you believe it is an important piece in the  
20 quality of life for everybody in this country.

21 MR. DICKEY: Let me take inmate  
22 discipline, the transfer from one institution to  
23 another, who gets to visit, three matters that are of  
24 vital interest and importance with people in  
25 institutions. I guess it is hard for me to imagine

1 why we would say we don't want to make the rules  
2 about those three things in ways that are consistent  
3 with democratic society. Now I don't mean prisons  
4 are a democracy, but why would we make those rules  
5 and have them not be clear, have them be a secret?  
6 Now that's the rules.

7           What about their application? If you are  
8 going to be accountable, I don't see how you are  
9 going to have it unless you know how things are being  
10 administered. And so, again, stated that way, as a  
11 matter of principle it is very hard to argue about  
12 the idea that in a democratic society we should keep  
13 all those things a secret. Now how do you develop  
14 mechanisms that permit visibility, legitimacy and the  
15 things that I was talking about and have, I think as  
16 the other speakers have mentioned, responsible review  
17 of how those are actually being operationlized.  
18 Again, I don't want to be riding this horse too long,  
19 but I think what we usually think is that's the job  
20 of the legislature, that is what the oversight is  
21 supposed to be, but I think, as I said, I don't see  
22 very much of that. So now you are groping around,  
23 trying to find ways that make for visibility and  
24 accountability about those very important decisions,  
25 in a sense a default position, because the way we

1 usually look to those sorts of reviews and oversight  
2 are not functioning in that sort of way. And so you  
3 get oversight, you get the other things that have  
4 been talked about this morning and now, and I guess  
5 the point that I would say is, and I think this is  
6 consistent with what the other speakers have said, it  
7 has to be done in a sensitive manner to the  
8 circumstances in which one finds one's self because,  
9 among other things, you are making things worse, not  
10 better, and in a sense you want to work in harness  
11 with those that are trying to do this as well as they  
12 can with the sort of capacity limitations that they  
13 may have; training, staff, and the like.

14           You know, I think the English system, and I  
15 have read the inspector general's reports with a lot  
16 of interest and I really want to compliment the folks  
17 that prepared them because it is pretty obvious that  
18 the degree of sensitivity that I alluded to is one  
19 that is brought to in many of those inspections and  
20 reports. It is not contentious, it is not you are  
21 bad and we are good, that sort of stuff, that tone,  
22 but I really think that is the spirit in which this  
23 sort of engagement has to come, because otherwise I  
24 think the first do-no-harm principle is very much at  
25 work here.

1 DR. GILLIGAN: I wanted to ask Dr.  
2 Casale if you could describe for us some of the  
3 details of the inspection process and procedures that  
4 the CPT follows in inspecting European prisons and  
5 then I would like to ask the other two panelists if  
6 they could describe how that compares with the  
7 inspection procedures we have in this country. I'm  
8 interested in whether we have procedures for  
9 discovering what actually is going on in our prisons  
10 that are as effective as the ones that you have in  
11 Europe.

12 DR. CASALE: I don't think Europe has  
13 any magic solution let me say, I think what we do is  
14 just hard work. Inspections are confidential, I  
15 think this is very important to note at the outset.  
16 Nothing becomes public at all until we have been  
17 through the dialogue and then the states, all of them  
18 voluntarily except for one, Russia, have agreed to  
19 publish all their reports. They don't have to but  
20 they always agree, and I think that's the measure  
21 that the inspection has somehow worked even though  
22 there are very critical things in it. What we do is  
23 we would arrive unexpectedly so you have to get over  
24 the first hurdle by having sort of a cook's tour,  
25 but -- you understand the concept cook's tour, it is

1 sort of -- I'm not sure what the -- it is not always  
2 the same English in America. But while you are  
3 having the cook's tour you are trying to figure out  
4 the places that you are not being shown, obviously,  
5 and after a while you get a nose for the things that  
6 are being intentionally missed. And, of course, we  
7 will have been armed by the ministry with a detailed  
8 plan of the building. Obviously prison maps are  
9 confidential and they're secure matters but we are  
10 entitled to them and we will keep them confidential.  
11 And so we know what's there and so you do your  
12 subtraction and you figure out where some of the  
13 people go while I as the president am talking with  
14 the governor and, of course, we can go anywhere  
15 because that's the mandate. And you don't barge in  
16 but when you find the place that has got 40 people in  
17 a room that doesn't allow them all to sleep at the  
18 same time and 14 of them say that they've got active  
19 T.B., then you know you found one of the places that  
20 they didn't want you to find and that's just one  
21 rather extreme example.

22           But what we do is we spend a lot of time  
23 talking with staff because in that example I just  
24 gave you that is a health risk for staff as well as  
25 prisoners, and we need to know how the staff are

1 trying to deal with that. Why is it that they push  
2 the food through the hole at the bottom of the door  
3 and don't go in? Well, it is obvious why they do it,  
4 because they're not sure what risk they're exposing  
5 themselves too. We will go in and spend a lot of  
6 time talking to the 14 people even though the  
7 temperature recorded by my thermometer, which goes  
8 with me everywhere, is, say, 36 degrees. But it is a  
9 process of demonstrating by what you do that you are  
10 prepared to understand what's happening in the most  
11 practical and concrete sort of way. And then we -- I  
12 mean, if there's an issue that the prisoners seem  
13 malnourished, we will look at the medical records to  
14 see if any weighing has occurred, we will do timed  
15 studies of what people weighed when they came in  
16 because everybody gets weighed on admission and what  
17 they are weighing now. We do surveys, we do in-depth  
18 interviews, we do corroboration because if some  
19 allegations are made we want to know whether they're  
20 true or not and we will pursue to find out that  
21 they're not as hard as we will pursue to find out  
22 that they are and we will present conclusions without  
23 giving names.

24 I mean, we have a lot of technical staff on  
25 our teams, people who know how to deal with vermin

1 or -- I mean, the whole gamut, really, anything that  
2 puts the staff and the prisoners at risk in one way  
3 or another, and the best of all methods is to know  
4 how to interview, to let people tell their stories,  
5 and then afterwards, of course, as we all know, you  
6 go over and you check on the details until they  
7 either match or they don't and if they don't, then,  
8 of course, you start wondering and you pick the  
9 uncertainties and it is just standard police  
10 procedure, but I won't go any further because I'm  
11 taking up too much time.

12           Then we report in confidence and we have a  
13 dialogue with the staff and the management  
14 acknowledging that they've got problems, asking them  
15 in your best case scenario what would you like to see  
16 happen next, because we're looking to the future.

17           Documenting all of that, then going to the  
18 ministers and saying look, how can you expect these  
19 people to do X when you are giving them Y, and we can  
20 be a powerful pressure for change in that respect  
21 because, of course, if you are talking to the  
22 minister who is in charge, ultimately who is  
23 responsible, then they have a case to answer and they  
24 must answer because they're obliged to.

25           MS. CHUNN: That's an interesting

1 approach to doing it that I don't think would work in  
2 this country. Corrections has been born in the  
3 cradle of politics and I don't see how with an  
4 average tenure of three years we could ever build  
5 enough trust to get to that point. However, I do  
6 believe that it would be a very interesting internal  
7 mechanism and, as a matter of fact, when I was  
8 Director of Youth Services in North Carolina I used  
9 it, I used it with a group of my central office  
10 staff. We would hit unannounced every institution  
11 and before one could call another everybody was in  
12 different places, but you would know then we only  
13 talked to kids on those days. You were accompanied  
14 by a kid who would generally tell you what was  
15 happening or what, rather, wasn't happening.

16 I think it is an interesting idea for an  
17 internal procedure, but I think even then there has  
18 to be enough trust so that people believe that you  
19 are going to help them to remedy the problem rather  
20 than to point them out as incompetents which further  
21 then makes people close ranks because they feel under  
22 attack. I like to think of myself as the poster  
23 child of new corrections. I am all the wrong things;  
24 I am black, I am female, I spent my career in  
25 juvenile corrections, but I was elected by some

1 20,000 members to be the spokesperson of this  
2 organization. We are better educated than we have  
3 ever been before, and I think to do this externally  
4 would suggest that there is no confidence which we  
5 already feel because we have been marginalized. And  
6 so I believe that while it might have some usability  
7 for internal monitoring, I do not believe we are at a  
8 point yet where we could do that externally without  
9 feeling like we have been manipulated and misjudged  
10 and actually betrayed.

11 MR. DICKEY: It might be useful to  
12 pursue the health care point. My personal experience  
13 is dated but I have no doubt that things are still  
14 probably the same in corrections.

15 As a group inmates have not taken care of  
16 themselves, haven't seen doctors, haven't had medical  
17 insurance, had lousy diets and basically abused  
18 themselves. Their physical condition, despite all  
19 the weightlifting and stuff, is actually not very  
20 good. And if you look at their teeth, they have  
21 never been to a dentist.

22 Now we spent an enormous amount of money on health  
23 care in the prisons in Wisconsin, though look at the  
24 state of health care of the country and you see lots  
25 of people that have insurance don't get health care

1 either. We spent a lot of money on health care, but  
2 I made decisions about what we were going to do and  
3 not do, we're not going to perform those kind of  
4 operations, and if it was me I would want it, let me  
5 tell you, and the facts of life are we didn't have  
6 the money or the capacity to do it. And we did a lot  
7 with people, dental work and stuff like that as well  
8 as we could but, again, were we providing the level  
9 of dental care we would like for ourselves? Not  
10 close.

11           Now if the inspector general came out --  
12 people in corrections know this, this is not a big  
13 secret -- but if the inspector general comes along  
14 and now looks at that situation, I guess the sort of  
15 interesting question is what would we expect to  
16 happen. They would discover that, and it is not that  
17 they want unhealthy inmates, they want healthy  
18 inmates, but the facts of life are they don't have  
19 any capacity to do any better than they're currently  
20 doing, making some decisions you might agree with,  
21 some you might disagree with. Now what happens. The  
22 inspector general goes to the legislature, says give  
23 us some more money so they can give more health care  
24 to the inmates. Well, that would be nice. Is it  
25 realistic? I think that's a way of trying to

1 approach things. There's visibility, right? There's  
2 accountability. I don't think the folks in  
3 corrections would be hiding that sort of stuff, it is  
4 not that they're deliberately denying people  
5 anything, those are what they are dealing with as  
6 well as they can. So what you really may be talking  
7 about is trying to generate support for different  
8 policies so that there's more adequate health care  
9 or, in a sense, let's have fewer people in prison so  
10 that we can do better by the ones we've got, right?  
11 That's an allocation of resources question. It might  
12 lead to that sort of thing. But, you know, I think,  
13 I understand that correctional associations worry  
14 about this. See, if it came out there they don't  
15 treat the inmates right when it comes to health care  
16 and sort of pointing the finger, they are awful and  
17 they're all cruel and that sort of stuff, I wouldn't  
18 be very happy with that. That's why I say it can be  
19 presented and approached in ways that are  
20 constructive, but there's also the possibility for  
21 destructiveness and I think the worry that  
22 corrections people have about this is an  
23 understandable worry. They felt that stuff has been  
24 used to sort of blame them for things over which they  
25 have no control. Again, it seems to me if it is part

1 of the momentum to make things better, then I think  
2 folks by in large would welcome that, but they're  
3 mindful of the risks.

4 MR. BRIGHT: Isn't the answer to that  
5 just to tell people this is all the money we have for  
6 health, this is all the money we have for dental  
7 care?

8 MR. DICKEY: We certainly hope that was  
9 the way it were read but, as I said, I think folks in  
10 corrections would say I can give you examples of  
11 situations in which the report certainly didn't read  
12 that way and sort of blamed us for a situation we had  
13 no control. You have to understand that that's --

14 MR. BRIGHT: But that's transparent,  
15 that produces a conversation, the democratic  
16 conversation about what ought to happen if you want  
17 to have that and not many public officials get to  
18 censor that by keeping them out of the public eye  
19 altogether.

20 MS. CHUNN: Let me give you a good  
21 example of what he is saying.

22 North Carolina was one of the last states  
23 to have a sex offender program for juveniles. All  
24 the literature suggests how many people will be  
25 victimized by people who are not treated for sexual

1 offending. I asked for the program through the  
2 proper channels. The governor's office said there  
3 were other priorities. Somehow or another one of my  
4 more aggressive staff people decided they would  
5 inform the press. I end up on the editorial page.  
6 The governor's office is angry with me because I'm  
7 trying to make an end run with his budget. Now  
8 nobody debates the merits of should we have a program  
9 for sex offender, particularly juvenile sex  
10 offenders, but sometimes you don't end up being able  
11 to get what you know is the right thing because there  
12 are other things beyond your control. And when we  
13 end up in that situation, we will more often than  
14 not -- remember now, we are appointed -- so we end up  
15 then swallowing whatever the issue is, trying to put  
16 a happy face on it, and you live, if you are lucky,  
17 to fight another day. Well, it just so happened in  
18 the end it did resolve itself but there were some  
19 tense feelings about the whole thing and who told the  
20 press and why did the press know this. And you can't  
21 sit there when the press calls you and says, "Is it  
22 true you've got 40 sex offenders?" "Yes." I can't  
23 say no because I do. And so you end up in a  
24 donnybrook in a lot of things and that's why we keep  
25 saying we've got to be very thoughtful as to how we

1 implement these things. Not that we cannot benefit  
2 from feedback that will help us to be more effective  
3 and efficient, rather let us do it in a manner that  
4 really predicts some forward motion.

5 DR. DUDLEY: Are you suggesting that  
6 there's a particular risk in this regard for  
7 corrections as compared to any other comparable  
8 government entities; Child Protection, Social  
9 Services? I mean, they would all run the same, the  
10 example that you gave is the same sort of thing that  
11 happens to --

12 MS. CHUNN: Well, yes, but I would say  
13 that the consequences of error when you are talking  
14 about corrections are greater because --

15 DR. DUDLEY: I'm not sure what you  
16 mean.

17 MS. CHUNN: By that I mean that if you  
18 don't take the appropriate action, because you have  
19 these people confined they have fewer avenues that  
20 they can exhaust to make a difference with this. And  
21 so to me, it is a more difficult situation because  
22 these people are out of sight, often out of mind,  
23 don't have people who want to champion their cause.

24 DR. DUDLEY: But the mental health  
25 commissioner would say the fact we don't have enough

1 money for outpatient mental health services and there  
2 are people who are mentally ill on the street and  
3 when one of those commits a crime I get all the  
4 blame, I'm not quite sure what --

5 MS. CHUNN: But a mental health person  
6 on the street --

7 DR. DUDLEY: I'm just picking it out.  
8 I'm saying what is it about corrections that would  
9 make the risk of transparency so much greater that it  
10 should be excluded in a way that other governmental  
11 organizations and entities are not, that's my  
12 question.

13 MS. CHUNN: The stigma of having been  
14 arrested. Even this morning the lady talked about  
15 white collar crime. She didn't say what kind of  
16 crime that was or whatever. If you are from a  
17 certain socioeconomic background that makes a  
18 difference, you don't want people to know you have  
19 been in this system. There are others who see it as  
20 a rite of passage; my brother, my father, my uncle,  
21 everybody else. And so when you began to try to  
22 program for two extremes and more on the low  
23 socioeconomic group than on the high end and try to  
24 be fair in terms of respecting people's humanity, it  
25 is much more difficult because you generally have

1 more power over where they are, what they can do. I  
2 think that's part of what's been implied here,  
3 there's no denying that, that many facilities are out  
4 of sight, out of mind, and many people are not that  
5 sophisticated. Your average inmate is not reading  
6 according to the level, nor does he understand often  
7 the process that he has been through that got him  
8 there. I mean, not only that, but the families don't  
9 understand it either. It becomes a very difficult  
10 thing to administer when you are thinking about the  
11 person, being the person in charge and trying to be  
12 fair. And so to me, corrections then carries a  
13 heavier burden than other agencies because often they  
14 are seen as being more worth saving than this group.

15 DR. DUDLEY: I guess I picked the  
16 mental health commissioner because they would say  
17 their clients are stigmatized in the same sort of  
18 way.

19 Professor Dickey.

20 MR. DICKEY: The way I feel about it, I  
21 worry every day about the inmates and staff in our  
22 institutions and about their safety. And I very much  
23 believe in -- I don't know if "transparency" is the  
24 word, visibility and accountability, and I think we  
25 ought to be applying the democratic principles to

1 correctional institutions. But I will tell you, I'm  
2 very mindful of the dynamics of institutions, they're  
3 fragile places, you don't want disorder and chaos,  
4 and how things are explained, how inmates view them,  
5 how staff view them can start dynamics that can have  
6 very destructive consequences. So when I said before  
7 do no harm and these are fragile things, what I meant  
8 was what you worry about, whether rightly or not, is  
9 unleashing forces and dynamics in institutions that  
10 are going to lead people to get hurt, that's what I  
11 used to worry about. And so when I tried to manage  
12 the information that we revealed to others, that was  
13 my primary concern I like to think, right? I was  
14 worried about trying to make sure we didn't do or say  
15 something that was going make things worse in those  
16 places rather than better and that's there, that's a  
17 fact of life.

18 DR. DUDLEY: Saul.

19 MR. GREEN: Is part of what you were  
20 saying kind of an admonition to us in terms of what  
21 this commission comes up with, what we recommend, how  
22 we say it? Because one of the greatest challenges I  
23 think relates to something that you said earlier, Mr.  
24 Dickey, if I heard you correctly, concerning people  
25 don't really care and so we have the problem of

1 trying to move people who would rather not even see  
2 or understand what's going on until we've got to do  
3 it in a way that has impact, but the impact could  
4 affect members of the profession in a way that  
5 they -- is part of what the message is for us to be  
6 very careful in how we communicate our findings and  
7 recommendations? I actually wasn't going to ask that  
8 question but I just kept listening to what I was  
9 hearing, I was really worried.

10                   And then I guess I wanted to ask Ms. Chunn  
11 about the issue of leadership. You talked about how  
12 important leadership is in effecting change and in  
13 accomplishing the greatest good in institutions and  
14 you talked about incentives.

15                   MR. DICKEY: Let me just say when I was  
16 at the prison system I had the luxury of tenure at  
17 the University of Wisconsin Law School so getting  
18 fired wasn't a big deal. You know, it would have  
19 hurt my pride and all that sort of stuff, but in a  
20 sense I had the luxury of being able to worry about  
21 the inmates in the way that I just mentioned and not  
22 have to worry about my job all that much.

23                   Now that's a way of saying you need to be  
24 sensitive to the people to whom you are going to be  
25 speaking. If what you want is acceptance by people

1 in corrections, some of the ideas that we're talking  
2 about, the steps toward implementation, you need  
3 legitimacy, right? I mean, because one question is  
4 why the hell should we pay any attention to what you  
5 say, right? And I think the answer is because we  
6 have considered and reflected and we have heard a  
7 little bit about walking in your shoes and what that  
8 all amounts to and we have a kind of an understanding  
9 that we think can help us advance the endeavor.  
10 In that spirit it seems to me there would be far more  
11 acceptance of this than, as I said, if you approach  
12 it we're going to tell you what to do. So, yes, my  
13 point is, as with anything, one has to be careful and  
14 cautious about how one presents one's self if one  
15 wants to be effective because you don't want your  
16 report standing on a shelf somewhere, you want it to  
17 be effective; therefore, you've got to be careful  
18 about how you frame it and who it is addressed to and  
19 how you say it. It just seems to me that too is a  
20 fact of life.

21 MS. CHUNN: I don't think that implies  
22 that we only hear what we want to hear, that all of  
23 this is for nothing, that's not it. We want to hear  
24 what you think we can do to improve the system, we  
25 want to be able to dialogue about what the logical

1 next steps are because, as I said before, good  
2 leadership wants to also, more than anything else,  
3 have the satisfaction of knowing I made the  
4 difference, I made some difference, at least. I  
5 liken this to a relay race where you take it to a  
6 certain point and somebody else picks it up, nobody  
7 does it alone. But I believe that as members of this  
8 commission you also want a feeling of having given  
9 this some careful scrutiny, to have heard what we  
10 have to say that explains, that also identifies some  
11 of the problems that are perennial problems that have  
12 always been there, and that you have made  
13 recommendations and suggestions that can be used by  
14 us in addition to what we are already doing to make a  
15 difference.

16           Now I believe conscience leaders -- let me  
17 drop back and say it this way. Most of the people  
18 who have bristled with this whole notion of this  
19 commission have done so because they have stabilized  
20 their systems, they have tried to be good leaders,  
21 and they routinely go out to make sure what the  
22 quality of life is. Now those people who aren't  
23 involved in any kind of accreditation process, any  
24 kind of professional development process, will feel  
25 like I must know it because the governor appointed

1 me. Those are the people that we're worried about.  
2 We are worried about Andy and Barney in Mayberry  
3 because they don't seem to ever talk to anybody else,  
4 so what we want here is some guidance that assists us  
5 in what we are already doing that begins to say to  
6 those people out there who are not involved; hey,  
7 there's a whole body of knowledge, there are all  
8 kinds of resources that can help you be more  
9 effective in what you do.

10 DR. DUDLEY: We have several more  
11 commissioners who have questions and we have about 10  
12 minutes left so let's try to keep our questions brief  
13 and to the point and try to answer as quickly as you  
14 can.

15 MR. KRONE: Ms. Chunn, I need some  
16 clarification, some understanding. Something I heard  
17 earlier was really concerning to me. As you know,  
18 we're going to write a report. It is important to us  
19 to get to the facts, to get something that is  
20 useable, workable, and we've had numerous employees  
21 and prison officials that have told us you don't  
22 understand the problems that we face. We have to get  
23 to that point to know what to write and know whether  
24 it is available, and something you said really  
25 concerned me and that was a statement you said that

1 the duration, their average life expectancy, if you  
2 will, is three years. That means that some of them  
3 serve five years but some of them only serve one year  
4 which is in that area where you said they even don't  
5 know what they're doing yet. How are we going to  
6 implement policies, practices and stuff that we are  
7 going to have to deal with people in a revolving  
8 door, such a floating morass, how do we deal with  
9 that problem and why is this happening.

10 MS. CHUNN: You are going to have fun,  
11 aren't you, you really are.

12 Yeah, that's the perennial problem, it has  
13 been, and that's what I mean when I say we often  
14 don't acknowledge the role that politics play in  
15 this. What I would like to see you do is to also  
16 begin to make suggestions to appointing authorities;  
17 the National Governors' Association, district  
18 attorneys. There needs to be constituent bodies who  
19 also hear what the issues are, that unless you've got  
20 somebody that has been in this business for a while,  
21 the probability of your getting a transparent system  
22 is greatly diminished because it will take them a lot  
23 of time to build some credibility. You are not only  
24 building credibility with constituents on the  
25 outside, you also are building credibility with your

1 staff, because if they don't believe, and a lot of  
2 people will say to you, "Look, I have seen  
3 commissioners come and I have seen them go,"  
4 if you can't get to the point where they think you  
5 can last, it won't make a difference at all, so I  
6 think you just need to keep that in mind.

7 MR. DICKEY: I think the answer has to  
8 be that you've got audiences beyond correctional  
9 commissioners. That is to say, you've got to be  
10 reaching to legislators and the like because they are  
11 the people that are going to implement this, they're  
12 going to have to pass something like that, so I would  
13 think you've got ultimate audiences for what you are  
14 going to do. Corrections commissioners are only one  
15 of them; legislators, governors, Governors'  
16 Conference and the like are the amongst the others,  
17 because they may have more staying power here and  
18 actually they're the political bodies that make the  
19 decisions here or they are going to take their cues  
20 from their commissioners, that's another real fact.

21 MR. RYAN: I would like to get your  
22 reaction to -- at the last hearing I gave a list of  
23 things and I want to kind of give you a list and see  
24 what your reaction to it is.

25 Set the stage with almost 25 years ago,

1 more than that, probably, there was a decision by the  
2 Supreme Court, KQED versus Houchins, which is a  
3 California case, which told the media that  
4 correctional administrators could restrict the access  
5 of the media to correctional facilities. Now I have  
6 been working under that all my life, in essence, in  
7 this business and so I thought how do I open it up,  
8 how do I make it more transparent and yet still keep  
9 my defenses where I needed to have more, felt more  
10 comfortable so we can put things together.

11           We have a citizens academy which allows  
12 citizens to volunteer, they have to come in every  
13 Wednesday night for three hours for 13 weeks, and  
14 they come and visit us. We have no restrictions on  
15 who can come in there other than they can't be a  
16 criminal. We have a T.V. program on the county  
17 channel that comes on once a month for a half an hour  
18 and at the end of that we ask a set of questions. We  
19 say what would you like to know that we haven't told  
20 you and they can send it to us, E-mail or otherwise,  
21 and the next show or the next show we will talk about  
22 those types of things.

23           Every new reporter that goes to the local  
24 newspaper or, if we can, T.V. is a little struggle,  
25 we invite them to come down without their pen and

1 paper in hand and talk to them about what we do for a  
2 living and what they may want to find out about our  
3 business.

4           With our staff, we have when they graduate  
5 from the academy, on the fourth night after they have  
6 graduated we invite the staff to come and meet the  
7 bosses and bring their kids and their spouse,  
8 significant other, to come in and visit where their  
9 significant other is going to be working for the rest  
10 of their career and say this is what we do for a  
11 living.

12           We're building a new building and we're  
13 going to give citizens an opportunity to come in and  
14 visit, touchy-feely and so forth, the entire new  
15 building before we get in there. We're going to have  
16 families do that.

17           We have a volunteer orientation program  
18 where we have over 700 people in the community that  
19 have the opportunity to come through and see, they're  
20 faith-based, normally, folks, but 700 of these people  
21 do it. We have a program called the Orlando  
22 Leadership Program and every six months they choose  
23 70 bosses, the leaders of the community, to go  
24 through the program and one day is spent at the jail  
25 saying okay, this is what you are spending your money

1 on.

2           Every new legislator that gets elected, I  
3 send them a letter and say by the way, I'm in your  
4 district, do you want to come and visit what's there.  
5 I had one in four years decide to do that.

6           I have been in the business 35 years and at  
7 this point, and bless all judges, I've had less than  
8 five of them that actually have come out to find out  
9 what happens when they sentence a guy to a year in  
10 the county jail, actually walk out there and see  
11 where they go. Now I know that's not in this room,  
12 but in my world out there, that's what happens.

13           I can go on with a list of other things  
14 that we do to expose our business to the community.  
15 The unfortunate part is my community doesn't  
16 necessarily want to find out about it. I have  
17 trouble getting people into my citizens academy. My  
18 new reporter only comes because the editor says you  
19 know what, you have the chance, go out and take a  
20 look. They don't want to be there either.

21           I recently had one of my T.V. reporters  
22 come out and sneak pictures of then jail when all he  
23 had to do is call my office; you want some pictures,  
24 come out and look. I guess reacting to that, I want  
25 to take baby steps. I'm not going to open up the big

1 sally port and let everybody in the world come in and  
2 do whatever they want to do. It is a jail and we  
3 have security.

4           What sort of baby steps aren't being taken  
5 in that litany of things, what sort of things should  
6 we be doing to open up where we feel comfortable, is  
7 there a way to engage the community in something else  
8 that I haven't talked about to say here we are, come  
9 and see us; if you want to see what's going on,  
10 please, let me invite you in to the extent I can.

11           MR. DICKEY: In a sense, though, the  
12 discussion has been at the commissioner level so far  
13 here until you made these points and so we have been  
14 asking about transparency as made from the central  
15 office. But I think in many ways when I used to go  
16 around and visit our prisons, and I did it a lot, one  
17 of things we always go through with the warden is  
18 what he was doing with the community, and by in large  
19 I think at the ground level you really see a lot of  
20 warden willingness to involve the community and to be  
21 transparent, at least about some of the things, and I  
22 think in part that's because the wardens feel that  
23 they need a certain amount of community support in  
24 order to function. They're in a community, they have  
25 got family members working there, concerned about

1 their safety and the like. And so another place at  
2 which to come at this from is the one you are talking  
3 about, though your experience, particularly with the  
4 legislators and the judges, is pretty typical in my  
5 experience, but that's coming at it from a, at a  
6 different level, and I think an important one. I  
7 would say this is a question that ought to be looked  
8 at from many different levels and that's one, where  
9 at the local level, the warden of the individual  
10 institution is trying to do this in the circumstances  
11 that he or she finds himself in and is trying to get  
12 people involved in and engaged. Though, again, the  
13 point I made earlier about people not caring and want  
14 out of sight, out of mind, is very much at work here  
15 and it is a terrible sort of challenge. You know,  
16 the thought that judges want to prescribe this  
17 medicine and then don't want to see what effect the  
18 medicine has on the patient, irresponsible from my  
19 point of view, but a pretty clear pattern. I don't  
20 know that you find many wardens will say, yeah, I  
21 have judges coming in all the time, want to see what  
22 our programs are, what we do and the like, so they're  
23 in a sense like so many others, they just don't  
24 appear to care, at least by their actions.

25 DR. DUDLEY: Last question.

1                   Judge Gibbons.

2                   JUDGE GIBBONS: There's a suggestion  
3 that corrections institutions are fragile  
4 institutions and, therefore, maybe we can't have too  
5 much transparency. The question I have is are police  
6 departments similarly fragile, are public hospitals  
7 similarly fragile, and does it follow that they too  
8 should have some lesser degree of transparency  
9 because of their fragility?

10                  MR. DICKEY: Well, let me answer your  
11 question.

12                  You see, suppose, how would you feel if you  
13 said look, we're going to have lots of transparency,  
14 we're going to open it up and all that sort of stuff  
15 and you did what I said I worried about before,  
16 started a dynamic where you had a riot and some  
17 people got killed. Would you put that in the one  
18 column? Right? We had transparency and a bunch of  
19 people died. I don't think that's a win. And I'm  
20 not saying we shouldn't have transparency and I'm not  
21 suggesting that we shouldn't be exposing what goes on  
22 in institutions to the public view and to other kinds  
23 of oversight, and the other kind of oversight is  
24 probably more important. My point simply was one  
25 needs to be mindful that there are risks involved and

1 one has to be careful about how one goes about this  
2 because it is not a freebie, right? It is not all  
3 good as a result just because you open things up.  
4 And, again, that's, maybe I'm real risk adverse and I  
5 just worried about that more than I should have, but  
6 that was very much on my mind and I think that's on  
7 the mind of people who work in corrections and,  
8 therefore, it needs to be done in a considered and  
9 deliberate and careful sort of way. It is not no  
10 transparency or visibility; on the contrary. It is  
11 maybe as much a matter of how you go about it as  
12 anything, but it seems to me that's something that's  
13 a problem; you can't act as if it is not there.

14 MR. BRIGHT: If it turned out that you  
15 learned that people were being sexually abused in the  
16 prison, that would be one on the other side, wouldn't  
17 it?

18 MR. DICKEY: That's true. And so  
19 there's ambiguity --

20 MR. BRIGHT: More likely, actually, but  
21 that's what you are going to find.

22 DR. DUDLEY: I'm sorry, we're out of  
23 time, but thank you very much for taking your time to  
24 be with us this afternoon.

25 (Recess)