

1 MS. ROBINSON: Our next panel is on
2 government oversight and I think it is a terrific
3 follow on to the discussions we just completed before
4 the break.

5 We're going to specifically be talking
6 about issues relating to government oversight of both
7 prisons and jails. We have before us this afternoon,
8 the final panel of the day, three expert witnesses in
9 the field; Professor Michele Deitch, Mr. William
10 Yeomans, who I have to say is a former colleague of
11 mine in the Department of Justice and delighted he is
12 here, and Mr. Matthew Cate.

13 Our panelists are going to be providing an
14 analysis for us of the strengths and weaknesses of
15 the governmental correctional oversight models that
16 currently exist in the United States. These include
17 ombudsmen, inspectors general, and offices of
18 independent review, and they're going to detail the
19 factors, including independence, transparency and
20 adequate resources, that are needed to sustain robust
21 governmental oversight. The role of government
22 investigation into litigation as a form of oversight
23 is also going to be examined in their discussions.
24 Let me introduce them specifically.

25 Professor Deitch is a 2005-2006 Soros

1 Senior Justice Fellow and teaches criminal justice at
2 the University of Texas's Lyndon B. Johnson School of
3 Public Affairs. Her research is focused on the issue
4 of independent prison oversight.

5 Bill Yeomans is the director of programs at
6 the American Constitution Society in the area of law
7 and policy, and I think, very importantly, he served
8 for 24 years at the Department of Justice in the
9 Civil Rights Division holding a series of important
10 positions there, including acting as an assistant
11 attorney general.

12 Mr. Cate has been serving as the inspector
13 general in California and was appointed in that
14 position in March of 2004 and was subsequently
15 confirmed by the California Senate for a six-year
16 term in that post. Prior to his appointment Mr. Cate
17 served as the deputy attorney general in the
18 California Department of Justice.

19 I want to thank all three of them for being
20 here to today to address what I think is a very
21 crucial topic in the explorations this commission is
22 undertaking, and we will go ahead and begin with
23 Professor Deitch.

24 MS. DEITCH: Thank you very much.
25 Thank you for the opportunity to appear before you

1 today.

2 As we talk about oversight, I think we
3 would all do well to remember that this is a term
4 that tends to be possibly too loaded and, more
5 importantly, misunderstood, it is misconstrued very
6 easily, and, as a result, it doesn't give us any
7 confidence that we're all using the word in the same
8 way when we talk about oversight. I actually find it
9 much more productive to reframe the concept of
10 oversight, at least non-traditional prison oversight,
11 as an umbrella term that actually encompasses at
12 least six distinct functions. Those functions are
13 regulation, audit, accreditation, investigation,
14 reporting, and inspection and monitoring. I think
15 that each one of these is essential but it is a
16 separate part of prison oversight.

17 When we talk about prison oversight, the
18 problem is that we tend to merge all those concepts
19 and we assume that they're somehow in competition
20 with one another or mutually exclusive or they're in
21 competition with each other as to which one is most
22 effective. What we have, what each of us has in mind
23 is a different one of those functions. It makes
24 communication about oversight very difficult because
25 oftentimes we're talking at cross-purposes; one

1 person has regulation in mind, another person has
2 inspection in mind, for example.

3 We need to begin talking about these as
4 separate functions and we need to figure out how to
5 make each one of them stronger and more effective.
6 There's no one entity that can meaningfully serve
7 every one of those functions. There are different
8 constituencies that are served by them. In a
9 nutshell, let me try to mention some of the
10 differences.

11 Regulation is a function that's served by
12 those governmental entities that have enforcement
13 authority, they have the ability to wield a hammer
14 over the agency in some way, whether it is financial
15 or some other kind of penalties; the ability to close
16 an institution, for example.

17 The audit function is concerned with
18 whether the agency is meeting certain established
19 performance standards, performance indicators, or
20 policies. It could be internal, it could be
21 external. It is extremely important and it serves as
22 a management tool, it is a critical aspect of
23 effective management. It is critical that agencies
24 have effective internal accountability mechanisms
25 that are part of this audit function.

1 The accreditation function is yet
2 different. It indicates accountability to fellow
3 professionals, it indicates a stamp of approval.

4 The reporting function has to do with the
5 role of the media or human rights organizations or
6 even temporary commissions in bringing attention to
7 prison conditions, helping draw public attention to
8 prison conditions or to a particular incident.

9 Then there's the investigation function.
10 That has to do with accountability for wrongdoing.
11 It is redress for past violations, it is reactive.
12 Critical, but it is very different from the other
13 functions.

14 And, finally, we're talking about
15 inspection and monitoring. Inspection and monitoring
16 is perhaps the one we're least familiar with. It
17 involves an independent outside entity, it involves
18 routine and regular review of every institution as a
19 preventive measure, it involves an entity that has
20 unfettered access to every prison and jail facility,
21 and it involves a holistic look of the impact of
22 prison on prisoners. There's no enforcement
23 mechanism that goes along with inspection and
24 monitoring. It relies on persuasion, on cooperation,
25 on public pressure for change, but, remember, there

1 are other functions served by other entities.
2 Independent monitoring and inspection provides an
3 opportunity for dialogue, it is not another layer of
4 management. As both Gary Johnson and Walter Dickey
5 indicated earlier, it is best seen as a partnership
6 between the agency and the monitoring entity.

7 Again in the last minute I have I would
8 like to stress that it is important that we not try
9 to compare and contrast these different functions,
10 the different mechanisms, but rather encourage a wide
11 range of oversight mechanisms, both inside and
12 outside of the agency. We need to look for ways to
13 strengthen each one of those critical functions.

14 MS. ROBINSON: Thank you.

15 Bill Yeomans.

16 MR. YEOMANS: Thank you, Commissioner
17 Robinson. And members of the commission, thank you
18 for having me here today.

19 I'm going to talk about two very dramatic
20 forms of external oversight involving the enforcement
21 of federal law by the federal government in federal
22 courts and, in particular, I'm going to talk about
23 how the Civil Rights Division of the Justice
24 Department goes about doing that. The first form is
25 criminal and the second would be civil.

1 The department enforces 18 USC 242 which is
2 a post-Civil War statute that allows criminal
3 prosecutions of individuals who interfere with
4 constitutional rights and federal laws. It does that
5 through the Criminal Section of the Civil Rights
6 Division which consists of about 45 attorneys in
7 Washington working in conjunction with U.S. attorneys
8 around the country. In the course of a normal year,
9 the division and the U.S. attorneys prosecute roughly
10 60 cases criminally. Obviously that's not very many
11 nationwide, and that involves all law enforcement
12 prosecution, so a good number of those are police
13 officers or other public officials. So in any year,
14 roughly a third of color-of-law prosecutions involve
15 people working in prisons and jails.

16 The most common type of prosecution is the
17 use of excessive force by a member of, staff member
18 in a prison or jail, and can frequently, it can
19 sometimes involve battery, sometimes sexual assaults,
20 frequently results in bodily injury. Generally the
21 FBI serves as the lead investigator under very tight
22 reporting deadlines that apply only in civil rights
23 cases. In part that comes out of history and
24 tradition, these are not popular cases, it is
25 necessary to have reporting deadlines to keep the

1 bureau moving forward. It is also important to
2 remove a cloud of suspicion from a corrections
3 officer as quickly as possible.

4 It has been a long-standing practice to
5 require an investigation whenever the facts, if true,
6 would make out a civil rights violation. That means
7 there are thousands of potential cases every year
8 that comes to the Civil Rights Division. There is a
9 preliminary investigation. A vast majority of cases
10 are disposed of through a preliminary investigation.
11 It is necessary to have a preliminary investigation
12 to winnow out the non-meritorious cases from the
13 meritorious cases. That's a difficult thing to do
14 because of the situations in which these cases arise.
15 Generally the victims are powerless, they have
16 difficulty acquiring and communicating the facts, and
17 so it is necessary to have an outside look to
18 determine what's really happening.

19 The cases are prosecuted under very
20 difficult standard. It is necessary to show that a
21 corrections officer acted with the intent to use more
22 force than was reasonably necessary in the situation.
23 That means that the corrections officer had to know
24 at the time that he or she used the force that it was
25 more than what was required at the time, so these are

1 difficult cases to make. Generally you need a
2 cooperating officer, a videotape, very strong
3 circumstantial evidence.

4 Criminal convictions are very important.
5 They're important because they send a message to an
6 institution, also to the inmates, that everybody in
7 the institution is bound by the rule of law and the
8 law will be applied both to inmates and people who
9 run the institution. But these are a very limited
10 tool. They have a limited impact because they
11 address very specific situations, they rarely get
12 into the underlying conditions that may have led to
13 violence, and so it is necessary to have the civil
14 enforcement as well.

15 And though I'm running out of time, let me
16 just mention that since passage of the Civil Rights
17 of Institutionalized Persons Act, actually starting
18 before passage of the act but certainly since passage
19 of the act, the Civil Rights Division has had the
20 authority to sue prisons and jails to correct
21 unconstitutional conditions of confinement and it has
22 done so. It has investigated roughly 400
23 institutions during that period. There is a very
24 clear progression in the number and type of
25 prosecutions since 1996 with the enactment of the

1 Prison Litigation Reform Act. There has been a clear
2 drop-off nationwide in conditions cases. There are,
3 I think, a variety of reasons for that that we can
4 talk about. But what you see in particular in the
5 Civil Rights Division is that in the last few years
6 investigations and prosecutions involving conditions
7 in prisons and jails has ground to a virtual halt,
8 and I see the inexorable zero.

9 MS. ROBINSON: Mr. Yeomans, thank you
10 very much.

11 Matthew Cate.

12 MR. CATE: Thank you, Commissioner
13 Robinson, and thank you to all the commissioners for
14 having me here.

15 To provide you with a little bit of
16 background of who I am, I was a career prosecutor at
17 the county level with the state attorney general's
18 office focusing primarily on issues of corruption and
19 wrongdoing by police officers and public officials
20 when I was plucked from obscurity two years ago and
21 plopped in this job. I obviously had a lot to learn
22 about corrections and being an inspector general and
23 I think I'm still learning.

24 What I found was that at the time I was
25 appointed the inspector general was an at-will

1 position who was hired and fired by the governor.
2 The audits conducted by the inspector general's
3 office were confidential, they were not available to
4 the public. Staffing at that time was minimal. The
5 inspector general's office funding rose and fell with
6 other agencies depending upon the state coffers, and
7 at the time I began we had only about eight auditors
8 and investigators in the office and as you recall, in
9 California we have 160 some -- five, 6,000 inmates
10 and 50,000 staff members, and we began to see change
11 immediately. In part it was due to cooperation
12 between the California legislature and the governor
13 but -- and I think that was in part due to the fact
14 that the conditions at the prisons at that time were
15 recognized to be poor, overcrowded, little
16 programming, health care, both mental health and
17 physical health care was determined to be broken by
18 federal courts, and the courts also deemed the system
19 unable to police itself, so part of the idea of
20 addressing those issues was to invigorate the office
21 of the inspector general.

22 I came in with the following priorities.
23 The first was to rigorously audit and investigate to
24 the extent that my resources would allow. The second
25 was to be transparent in everything we did which

1 meant advocating for all of our reports to be a
2 matter of public record. The third was to
3 collaborate with the correctional officials.
4 This isn't always as easy as it sounds because there
5 could be a natural tendency towards conflict, as you
6 might imagine, between an inspector general and the
7 appointed correctional officials. And the fourth was
8 accountability. In that I hoped that when we found
9 things wrong and made recommendations for change,
10 that those changes would actually occur rather than
11 the problems just continuing to proliferate. And,
12 finally, we hoped to do all of this with
13 independence.

14 So if I could, I would just in my brief
15 time explain what the California model looks like and
16 then answer your questions about how it is working.

17 As you know, I was appointed by the
18 governor. After my appointment as an at-will
19 employee the law was changed and now I was
20 reappointed with a six-year fixed term so I can only
21 be removed for cause. Secondly, I'm responsible only
22 for the California Department of Corrections and
23 Rehabilitation so I don't have oversight authority
24 over any of the other agencies in California. We're
25 organized as a separate agency, I'm not a part of the

1 department at all, I operate completely autonomously
2 from the Department of Corrections and
3 Rehabilitation, funded separately, et cetera, and I
4 report directly to the governor in that capacity.

5 Next is staffing and budget is now caseload
6 based. Again through cooperation with the
7 legislature and the governor's office, we're no
8 longer a zero-based budget agency but I submit a
9 caseload budget to the legislature explaining how
10 many matters we're auditing and investigating and
11 what areas we're providing oversight and expressing
12 those in dollar figures as far as the need for
13 funding. Now that's brand new, this will be the
14 first budget cycle under that system, so it is still
15 in experiment.

16 Next, the inspector general's office has a
17 golden key so my deputies and I can go anywhere at
18 any time and into any facility and speak to any
19 inmate or any officer, we can demand any document and
20 it has to be provided or it is a misdemeanor.

21 Finally now, as a matter of statute, all my
22 reports are a matter of public record so anytime I
23 complete an audit my staff immediately posts that on
24 our website and we issue a press release announcing
25 it to the public. We provide summaries of our

1 investigations of misconduct which don't include the
2 officer's name but does provide the basic areas that
3 the misconduct occurred.

4 We have two major parts of the office. The
5 first is what I would call the traditional audits and
6 investigation function. By law now we're required to
7 audit every institution every four years. Again,
8 that's brand new and so we are just beginning with
9 that.

10 We also vet every warden, so every warden
11 before they're appointed has to be evaluated by the
12 inspector general's office and we submit a
13 confidential report to the governor on the
14 qualifications of that warden. If we find the
15 individual unqualified and the governor appoints
16 anyway, then our finding is made public. We also, as
17 I said, investigate wrongdoing by public officials at
18 the highest levels.

19 And then I see I'm at zero but in the last
20 30 seconds I will tell you that we also have a new
21 function called the Bureau of Independent Review
22 which was, frankly, stolen from the Los Angeles
23 County Sheriff's Department, and what that function
24 involves is we have hired attorneys with expertise in
25 criminal law, employment law and civil rights, and as

1 teams they provide realtime oversight of all internal
2 affairs cases that reach a certain level of
3 importance and so they evaluate those cases as
4 they're conducted and then they publicly report on
5 the quality of those investigations and on the
6 discipline that's ultimately determined so that the
7 idea being that the public, and in this case the
8 federal court that's providing oversight, is
9 comfortable with the officer discipline process and
10 knows that if there are bad apples, that those cases
11 are being handled effectively and that the discipline
12 is fair to the officers also, so that's our function,
13 and we're all open to your questions.

14 MS. ROBINSON: Is that last function
15 you described the bulldog accountability, is that --

16 MR. CATE: Oh, that's different.

17 MS. ROBINSON: Okay. Can you tell us
18 about that? I know you mentioned that in your
19 statement.

20 MR. CATE: I'm slightly embarrassed to
21 admit, I invented that term.

22 MS. ROBINSON: I thought it was quite
23 catchy.

24 MR. CATE: Thank you.

25 And it is brand new so we will see how many

1 teeth that bulldog actually has as time goes on, but
2 here is the idea. Traditionally in an inspector
3 general's office or a state auditor will conduct an
4 audit and then a year later conduct a followup audit
5 to see how many of the recommendations have actually
6 been carried out and whether there's actual change.
7 The only thing that bulldog accountability adds is
8 that I promised my correctional administrators that I
9 work with if you don't fix it a year later, then what
10 I'm going to do is I'm never going to let that go,
11 I'm going to keep reporting that that same problem
12 exists again and again and again until they kick me
13 out and so that's the idea, and with the hope that if
14 my people go to all the trouble to find the problem
15 and bring it to light, they darn well better fix it
16 or I will try to embarrass you, that's it.

17 MS. ROBINSON: Let me step back as we
18 start questioning and ask the three of you to reflect
19 back on the last panel that we had and, in
20 particular, the concept that I think Walter Dickey
21 and really all of them talked about on the question
22 of kind of a partnership between an oversight or
23 monitoring person or persons and the agency, to what
24 extent does that, should that play a part. And I
25 suspect, Professor Deitch, that you might say it

1 might play a different part in different of the
2 sectors or roles that you laid out, but I would be
3 interested in reflections on that or any of the other
4 kind of major themes that the last panel brought out,
5 and, Professor Deitch, why don't we start with you.

6 MS. DEITCH: Sure.

7 I think the notion of partnership is
8 absolutely criticality but, as you suggest, I think
9 it plays out in the inspection monitoring function
10 and less so in, say, the investigation function. I
11 think it does play an important role in the
12 accreditation function as well and auditing.

13 Given that the role of an inspector or a
14 monitor is to aid in improvement, try to help the
15 agency move beyond where it is, that can only happen
16 through a collaborative process, through dialogue.
17 I think that both a monitoring entity and the
18 correctional agency share a set of values that has to
19 do with wanting safe and humane institutions and
20 wanting them to operate according to the rule of law,
21 and by working together they can point out ways that
22 that improvement can occur.

23 I think there's a lot that correctional
24 administrators would like about the inspection and
25 monitoring process. For example, the outside entity

1 is often saying the same kind of things that the
2 Department of Corrections has been saying for a long
3 time but coming from an outside entity it is going to
4 carry a lot more credibility with the public or
5 legislators, for example. Also information that's
6 produced by monitors can be an excellent management
7 tool for the agency. You can stave off lawsuits by
8 taking into account some of the things that are being
9 pointed out by a monitor or inspector. You are
10 solving problems before lawsuits are filed, you are
11 decreasing suspicion by letting the outside folks
12 know what's happening inside the agency, and you are
13 preventing problems because it is acting as a form of
14 informal social control over people within the
15 agency. It can help leverage resources for the
16 agency. That's a very important aspect of it being a
17 partnership. And I think it is really part of
18 professionalism in corrections to look for ways for
19 an agency to improve, to recognize that it often
20 takes an outside set of eyes to draw attention to a
21 problem.

22 This summer I was spending a lot of time
23 studying the British system and I spent time with the
24 director of operations for the British Prison Service
25 and I was asking him about this. And he said to me,

1 "If you ever believe everything is okay you shouldn't
2 be in this job, there's always ways that we can
3 improve," and that's what I think an inspector and
4 monitor can do and why it is such a partnership.

5 MR. YEOMANS: I certainly would never
6 come out against partnerships and cooperation, but it
7 does seem to me that it is, in the world in which I
8 function, sometimes important to maintain an
9 adversarial relationship, to maintain leverage, and
10 that can happen during an investigation. It is
11 important at times to insist that you are getting
12 what you need. It is sometimes important in
13 negotiations, in trying to develop a remedy for a
14 situation, to maintain an adversarial relationship.
15 Certainly it is good to be as cooperative as
16 possible, but not to the extent of coming up with a
17 weaker remedy than is necessary. But certainly,
18 certainly once there is a resolution, then working
19 together, cooperation, collaborative monitoring is
20 essential to make sure that the resolution is
21 properly and fully implemented.

22 MR. CATE: This is a touchy point.
23 I've had a good relationship with Secretary Hickman
24 who has been the only secretary since I have taken my
25 position, and I think that's been helped by the fact

1 that he knows that I'm required by statute to publish
2 every audit that I conduct and so we can on one hand
3 say on a collegial basis, you know, here is what I
4 think is wrong and here are my ideas for fixing it
5 and he tells me, you know, you don't understand the
6 complexities of X, Y and Z and we have a good give
7 and take in that respect, but I think because he
8 knows I have to publish in the end, that we maintain,
9 I think, enough independence. It is always the push
10 and pull. On one hand you want to collaborate and
11 help improve the system and, on the other hand, you
12 don't want to be co-opted by someone because you get
13 to know them and like them.

14 I think the same is true for other
15 stakeholders. Whether they're plaintiffs' lawyers or
16 advocates for reform or labor, each group has their
17 own agenda that they would like to see go forward for
18 what they see is the betterment of the system and so
19 I try to listen to those groups when they want to
20 talk and, again, because of resource or a difference
21 of agreement over what we should be looking into we
22 don't always agree, but I think it is having an open
23 door and an open phone and I think that's very
24 important.

25 MS. ROBINSON: Matt, do you find that

1 there are approaches that other states are using that
2 you have been able to pick up ideas from and model
3 some of your approaches on?

4 MR. CATE: Yes. To some extent
5 there's, in some respects this system, this model has
6 been put together through the political process and
7 either the governor's office or myself will implement
8 change and that would be codified by the legislature
9 or the legislature would implement change and we
10 would execute that change. Each system is so
11 different. For example, most inspector generals work
12 inside of the agency but have dual reporting to the
13 agency head and to the governor's office or to a
14 statewide inspector general, so it is hard to put
15 those together. There are good enforcement tools
16 that people are using to try to ferret out fraud and
17 abuse and I have learned from those and, thanks to
18 Professor Deitch, I started reading about what the
19 British inspectorate is doing and the tone of their
20 reports is terrific as far as using what I would call
21 least force necessary, they don't embarrass the
22 officials but just point out the problems in a
23 constructive way, so try to learn as we go. But
24 really this is kind of a new area of public
25 administration and so we're learning it as we go and

1 certainly don't claim to have all the answers because
2 we're just starting here in California.

3 MS. ROBINSON: Professor Deitch, as you
4 see this kind of emerging feel around the country,
5 are there any kind of suggestions that you could make
6 to us as a commission as we're kind of thinking about
7 recommendations that we can be including in our final
8 report.

9 MS. DEITCH: How long do we have?

10 MS. ROBINSON: I would say not forever,
11 we have a dinner tonight.

12 But, I mean, in terms of general
13 principles, I mean, obviously we're thinking about
14 kind of on the broader scale, but in terms also of
15 balance of trying to achieve objectives and
16 recognizing our goals, but recognizing also the need
17 for kind of the operational side and management
18 concerns.

19 MS. DEITCH: There's a couple ways I
20 could answer that question. My first point is to go
21 back to what I said before which is the need to
22 strengthen each one of those functions and I can
23 point out good examples of each one of those
24 functions and we can talk about things that are good
25 and bad about them. But if you are looking for a way

1 to structure some kind of entity, I can't tell you
2 there's one way to do it. I think that every state
3 has its own culture, every country has its own
4 culture, and you need to look at what are the options
5 in that state, what kind of entities exist there that
6 we can strengthened in some way.

7 When I started doing my research I assumed
8 there was going to be an ideal way to structure some
9 kind of entity. There isn't. I have seen it work in
10 ways as varied as a nonprofit organization doing
11 inspection work, to a legislative inspection entity.
12 The Ohio Correctional Institutions Inspection
13 Committee is based at the legislature but they have
14 inspectors that do work that looks a lot like what
15 the British inspectorate does.

16 You can have a body like what Mr. Cate was
17 describing. There are regulatory agencies such as in
18 Texas there's the Texas Commission on Jail Standards
19 which inspects every jail according to various
20 standards. It has the ability to decertify a jail if
21 it doesn't meet those standards. I can go on with
22 various other examples, but the point is there's no
23 magic way to do it, you just need to find out if each
24 of those functions is being served.

25 MS. ROBINSON: Bill Yeomans, let me go

1 back to you and your comments about the kind of
2 changing function of the Civil Rights Division in the
3 Justice Department and the degree to which the Civil
4 Rights of the Institutionalized Persons, the CRIPA
5 Act, is to a great degree being used to a much lesser
6 extent than it was in the past.

7 To what extent should or could Congress be
8 exercising a greater oversight function there? I
9 know you allude to that question in your testimony
10 and you didn't really have a chance to address it in
11 your oral remarks.

12 MR. YEOMANS: Yes. I think it would be
13 extremely important for Congress to do some
14 oversight. There has been a major failure of
15 oversight by Congress not only in the civil rights
16 area, but other areas as well, but civil rights has
17 suffered a great deal. There have been, obviously,
18 policy decisions made within the Civil Rights
19 Division that have never been explored and those
20 policy decisions have resulted in far fewer
21 investigations of prisons and jails and far fewer
22 cases filed. It seems to me that it would be well
23 worthwhile for Congress to take a look at what's
24 motivating those decisions. Certainly it is possible
25 that people have concluded there's been a lot of

1 progress and there simply isn't occasion to file as
2 many lawsuits, it could be that there are legal
3 impediments that need to be explored, but certainly
4 it is not a decision that should be made without some
5 public airing of policy.

6 MS. ROBINSON: But generally, Bill,
7 from the standpoint of oversight of prisons and
8 jails, even if CRIPA were used to a larger degree, I
9 think you used the term "lightening strike" in your
10 testimony which I thought was a good kind of term to
11 show that at best it is going to be kind of an
12 example or a highly publicized usage and not
13 something that's going to be kind of a regularized
14 use such as a regular monitoring of facilities. I
15 guess in the broadest sense, what is the role that
16 that kind of litigation plays in terms of government
17 oversight?

18 MR. YEOMANS: Well, let me just
19 distinguish. When I said lightening strike, I was
20 speaking mostly about the criminal side where it
21 really is a lightening strike because officers simply
22 are sort of stunned when they are singled out for
23 criminal prosecution, and it has become that way on
24 the civil side because there's so little litigation
25 being pursued. It seems to me that it doesn't

1 necessarily have to be that way. Now it may be that
2 the golden age of conditions litigation has passed
3 but surely the need for that kind of lawsuit has not
4 passed entirely and it is not a grand remedy, it
5 certainly is not the be all and end all in this area,
6 but it does seem to me to be a necessary component of
7 ensuring oversight, of ensuring compliance with
8 constitutional and statutory minimum, and that
9 component is being lost.

10 MS. ROBINSON: Let me turn to my fellow
11 commissioners. Margo.

12 MS. SCHLANGER: This is a direct
13 followup.

14 As you know, Bill, I used to work in the
15 Civil Rights Division and I did those CRIPA lawsuits
16 and I'm interested in your perspective on a question
17 that I never asked myself when I did that 10 years
18 ago.

19 It seems to me that when the Civil Rights
20 Division lawyers go into a new facility, that the
21 kind of inspection that they do looks a fair amount
22 like the inspection we heard about in Europe. They
23 come in with, you know, a forensic psychiatrist and a
24 correctional medicine guy and a sanitation person and
25 a couple of lawyers and in a cooperative jurisdiction

1 had pretty free ranged. It is announced but other
2 than that, it looks a lot like what we were hearing
3 about in Europe, and yet we heard from Ms. Chunn that
4 she thought that would be a terrible model for the
5 United States so I wonder if you think that, in fact,
6 that model, that confrontational model from the
7 outside of fighting federal against state government,
8 has had the kinds of bad effects that she -- I'm not
9 talking about the exact same thing but that she
10 thought might come from that same thing, or if, in
11 fact, it turns out that conflict gets managed and
12 progress is made, and I mean this very sincerely. I
13 didn't think in those kind of grand terms when I was
14 a lawyer doing this stuff and so I'm very interested
15 in what your thoughts are on that.

16 MR. YEOMANS: I think, of course, there
17 are a lot of variables that can play in whether or
18 not it works in any given instance, but I do think
19 that the approach to it, I agree with you that the
20 approach we go in with is very similar to the one
21 that's described, and it can produce, as you know, a
22 fairly informed and detailed findings letter which is
23 then shared with the jurisdiction along with the
24 suggestion that these are some things that you ought
25 to do and, by the way, if you don't do them, there

1 could be legal consequences.

2 It seems to me that that is a very good way
3 to lay out for a jurisdiction a blueprint based on
4 considerable expert opinion, expert examination of
5 what can be done to improve an institution. And I
6 think that, as I said before, some adversarial
7 contexts can be helpful in that it keeps the push
8 going and obviously some cooperation is also helpful
9 too. In a jurisdiction that is inclined to make the
10 kinds of changes that are necessary to bring the
11 facility into compliance with the law, it can be a
12 very cooperative and a very constructive process,
13 so I guess I would disagree with the previous witness
14 that it is a terrible model and I do think that, for
15 the most part, it has beneficial effects.

16 MS. DEITCH: Can I just add on to that
17 one point.

18 While there are similarities to the models,
19 I think it is important to point out that the kind of
20 inspection and monitoring we heard about from the
21 last panel was regular, regular and routine, it is
22 not once a problem has been identified.

23 MS. ROBINSON: Other questions from the
24 panel? Tim.

25 MR. RYAN: I never thought I would get

1 to this point, but one of my worst nights as a
2 supervisor in the jail was the night after CRIPA
3 investigators came in and had total chaos in the jail
4 because of what they said to the inmates. They said
5 lots of things. They wouldn't allow us in the room.
6 One of your words concerns me in that, if I heard it
7 correctly, that an adversary is good, that
8 sensitivity sometimes is not necessary or some words
9 like that. I'm probably not saying it correctly.

10 I believe that if we are going to take a
11 look at ourselves and allow the federal government to
12 come in, which we are required to do, and I was
13 required to stay outside the door where they went in
14 with a bunch of inmates, and then they proceeded to
15 leave at five o'clock, and my shift, my seven
16 officers and myself, and 1,200 inmates had to deal
17 with the repercussions of your office coming in.

18 My concern as a person who has had to live
19 through something like that which went on for three
20 nights until we got control of the place again is
21 that there needs to be sensitivity, there needs to be
22 an assessment of what the adversarial situation is
23 and what the goal is in accomplishing those tasks, so
24 I hope I didn't hear what I thought I heard.

25 MR. YEOMANS: No, certainly I didn't

1 suggest there that should not be sensitivity, there
2 should be sensitivity. Obviously there needs to be
3 sensitivity as to the needs of the institution and to
4 the continuing safe function of the institution, but
5 I do think there also needs to be sufficient
6 independence that the investigators can get to the
7 facts and that's, as you point out, a very delicate
8 situation that needs to be managed carefully.

9 MR. RYAN: Thank you. I got that off
10 my chest now after 25 years now.

11 MR. YEOMANS: I'm glad I gave you the
12 opportunity.

13 MR. RIPPE: A question for Matthew.

14 You talked to us about how you satisfy
15 yourself that standards are being in fact followed
16 and if they're not, how you can ensure that the
17 situation is corrected so the standards are followed
18 so my question is, what's the book of standards that
19 you all use. Is it ACA or something that because of
20 your culture in California along with ACA you
21 developed or how do you do that?

22 MR. CATE: Primarily we base our
23 standards on either the California Penal Code or
24 Title 15 of the California regs and then, third, the
25 department's own operating manual. And so our view

1 is what does the law say, what do the regs say and
2 what do you say you should be doing and then we judge
3 them according to their own standards, and the
4 department's operating manual is usually the one that
5 they get hung up on the most.

6 MR. RIPPE: Thank you.

7 MR. KRONE: In our criminal justice
8 system, if you are investigated by the police and it
9 goes to prosecutor and they believe that you are the
10 one that did it, from what I have read and understood
11 from you it sounds almost like they tell the guy you
12 better change your ways or we're going to put your
13 name on the Internet. I'm wondering, is there a step
14 that we can go farther to further enforce that rule?
15 From what I read it sounds like you do your auditing,
16 you find problems, you identify it to the warden. He
17 may or may not implement that and there's no system
18 where he has to with the exception of public ridicule
19 by your website. Is that true?

20 MR. CATE: Well, you have your choice.
21 You either are going to be a part the system, meaning
22 I would work for the secretary, and then have some
23 authority with the secretary to make change that way
24 but lose a degree of independence, or I work outside
25 the box of the administration and I have great

1 independence but little authority to say what happens
2 so I don't think you can have it both ways. I do
3 have a bully pulpit in that I can, whether it is hold
4 a press conference or just publish my findings, I
5 think that is powerful, and I have access to the
6 governor and so from time to time if I find something
7 that merits his attention I can go all the way to the
8 top and make my pitch and then the people that are
9 elected then decide whether they're going to
10 implement that or not.

11 MR. KRONE: To maintain that little bit
12 of independence or what independence you have so that
13 you don't kind of make waves for the groups that
14 don't have any further enforcement except passing it
15 on to higher-ups that can then take the proper
16 action; is that correct?

17 MR. CATE: I think so.

18 MR. KRONE: It is hard for me to
19 understand a system where you just say look, I wish
20 you would do this and if you don't, nothing is going
21 to happen.

22 MR. CATE: Well, that's the nature of
23 an outside auditor, there's no other way about it.
24 And I think the most -- again, it is early, and so we
25 may look back in five years and say you know what,

1 this independence thing is for the birds, you are
2 better off working inside the system, but I don't
3 think that was working very well and so my view is
4 independence is better, my view is transparency is
5 better, and I think that so far we're starting to see
6 change and it is too early to tell, admittedly, but I
7 think that's better than the alternative.

8 MR. KRONE: As to your initial figuring
9 out how to work that system, do you project down the
10 road that you will make changes, the asked for
11 changes, more power, strength to cure your findings?

12 MR. CATE: It is a Titanic-sized system
13 and I'm a little rudder, but it is my hope that we
14 are going to start, we will turn in the right
15 direction, and the think that the correctional
16 administrators are earnest in their desire to do
17 that. They have been forthright with me and I have
18 leveled 10 different broadsides into their ship and
19 they're still nice to me when I come in. I think one
20 of the things that was mentioned is that you have
21 this high turnover rate and that's another area
22 where, frankly, you look at the pros and cons of the
23 California system. On one hand I've got an at-will
24 employee in Mr. Hickman that I have oversight of and
25 so rapid turnover of that position probably isn't

1 conducive to progress. On the other hand, it is my
2 job to publicly, you know, yell about every problem I
3 see. And, of course, the media picks up on all of
4 those so that's a tug of war also that I think has to
5 be dealt with by the policymakers.

6 MS. ROBINSON: Let me leap in here,
7 Matt, and just kind of follow up on that.

8 We've had discussion off and on throughout the
9 course of the commission's life and today about the
10 importance of public attention to corrections and how
11 oftentimes the public isn't very interested. Do you
12 find that the public is interested when you issue
13 reports and is the legislature interested? We know
14 Gloria Romero, who is a member of our commission, is
15 interested, but generally are legislators interested,
16 is the public generally interested?

17 MR. CATE: The media, you would be all
18 surprised to hear, is more interested in the bad news
19 than the good it seems, but there was coverage
20 recently when the federal court announced that he had
21 seen, that Judge Henderson had seen progress in
22 health care, that made the newspapers, and so that
23 was a positive. And I can't cast the legislature all
24 with one role. As you said, some are very interested
25 in the issue and others appear to be interested in

1 other issues, I guess, to be generous.

2 MS. ROBINSON: And the public
3 generally, or do you have any sense about that beyond
4 the media?

5 MR. CATE: I don't have any more
6 insight than anybody else except that people always
7 ask me what do you do what is that, and it seems to
8 me that the general public just wants to be safe.
9 And there seems to be a rising tide of people who are
10 interested in making sure that everyone in our
11 society is treated in a humane way, even those that
12 are incarcerated, at least I hope so, but I don't
13 think we're anywhere near the majority and most folks
14 just want to be safe.

15 MR. SCHWARZ: This is to Mr. Yeomans.
16 You have, I guess, just recently joined a
17 really important organization and in terms of what
18 the public interest is in these issues, I wonder if
19 the American Constitutions Society has taken
20 positions on prisons, a yes or no. Indeed if they
21 have, what they are.

22 MR. YEOMANS: We have not simply
23 because the society as a society does not take
24 positions, we work through our members who speak out
25 on various topics, so we have not taken any positions

1 as a CS.

2 MR. SCHWARZ: Here is a very
3 progressive organization that for one reason or
4 another hasn't taken a position on important issues.

5 MR. YEOMANS: We don't take positions
6 at all.

7 MR. SCHWARZ: You do. You take very
8 enlightened positions on some things.

9 MR. YEOMANS: Well, we try to promote
10 people who take enlightened positions but the society
11 itself does not take enlightened positions or other
12 positions. For instance, Commission Schlanger is an
13 active ACS member.

14 MS. ROBINSON: Are there further
15 questions?

16 Let me then, let me shift the topic to
17 maybe a large extent. We really haven't raised this
18 subject today of privately run prisons and jails.
19 What do we do about government oversight there?
20 Obviously we have, you know, oversight of contracts
21 in contracted facilities generally, but does that
22 really do it as far as private prisons are concerned?

23 MS. DEITCH: Let me take a stab at
24 this.

25 First of all, when you talk about oversight

1 of privately run facilities, the most important thing
2 we have going right now is control over the contract
3 and monitoring process, contract monitoring process,
4 which means you have to have contracts that deal with
5 all of these issues. Most of them don't. Texas
6 actually has really a model system for writing
7 contracts and then for monitoring compliance with the
8 contract but that's all they have the right to do is
9 to monitor compliance with it. So most privately run
10 jails in particular and prisons in most parts of the
11 country do not have that level of specificity in the
12 contracts and, as a result, there's really very
13 little knowledge about what's going on in those
14 facilities.

15 I think it is a critical issue. I think
16 that any kind of entity that is set up to monitor
17 public prisons and jails needs to cover the private
18 facilities as well. It took a long time, for
19 example, in Texas before the Texas Commission on
20 Jails Standards, before the standards even applied to
21 private jail facilities, so they are often left out
22 of the decision and it is critical.

23 MS. ROBINSON: So are there examples
24 now of states where, I gather Texas is an example,
25 where it is including private prisons and other

1 facilities in those kinds of oversights or models?

2 MS. DEITCH: What I'm saying is the
3 Texas Department of Criminal Justice, when it
4 contracts with a private facility the contracts are
5 well written and allow monitors to be stationed in
6 each of those facilities to do contract monitoring.

7 MS. ROBINSON: I see.

8 Bill.

9 MR. YEOMANS: With us it comes down to
10 a legal question usually as to whether the person
11 involved or people involved are state actors on the
12 one hand or are acting under color of law and, for
13 the most part, certainly at least on the criminal
14 side, we have argued that they are; that they are
15 acting on behalf of, at the behest of the state
16 because they have this contract to perform these,
17 basically these state activities.

18 MS. ROBINSON: Is that settled law?

19 MR. YEOMANS: Not entirely. So it
20 imposes difficulty.

21 MS. DEITCH: Can I add one comment that
22 I was talking about prisons and not jails in Texas.

23 MS. ROBINSON: Right.

24 Matt, how do you deal with that here in
25 California?

1 MR. CATE: Well, first of all, I agree
2 there's oversight and we can go into the private
3 prisons. We have issued one audit on fiscal areas
4 involving private institutions, but primarily the
5 issue is resources from my office and these are Level
6 1 and Level 2 inmates at the most, and I spent I
7 think about 50 percent of our resources dealing with
8 the juveniles and the young people in our Youth
9 Authority, former Youth Authority, now Division of
10 Juvenile Justice, and so between that and prisons
11 with the highest level inmates, it is difficult to
12 cast those resources towards the private prisons
13 which they need. So although the availability is
14 there, frankly we haven't done as much of that as I
15 think is probably necessary yet.

16 MS. ROBINSON: Has the state
17 legislature focused at all on that question or has it
18 been too absorbed with what's already on its plate
19 with the public facilities?

20 MR. CATE: Again, it is a mixed bag.
21 Some are interested in what happens in the private
22 facilities and from time to time we'll have a riot or
23 something will happen and the question will be raised
24 are the private individuals, private security
25 sufficient to provide the necessary safety for the

1 inmates and staff and so you'll see that raised
2 oftentimes if there's a large fight or riot in an
3 institution and that will get legislative attention.
4 And then sometimes the funding issue comes into play
5 and you will see that grab the legislature's
6 attention because the question is always raised is it
7 truly less expensive to run a private institution
8 versus a public when you look at the level of inmates
9 that are there and long-term costs, et cetera, so we
10 see those kind of issues come up most often.
11 Conditions of confinement we don't see come up that
12 often.

13 DR. DUDLEY: Just a comparative
14 question of a different type. I mean, I realize we
15 have been talking about different types of government
16 monitoring and different aspects, but I'm wondering
17 when we look across the board at the range of issues
18 that should be considered when monitoring a prison
19 system through any of these methods, whether we're
20 talking about the health services or the mental
21 health services or whatever, do you find that, are
22 there areas, no matter which approach we are talking
23 about, which tend to be ignored or not adequately
24 monitored or explored when you look across the
25 breadth of the elements that go into corrections

1 systems.

2 MS. DEITCH: In terms of substantive
3 areas?

4 DR. DUDLEY: Right.

5 MS. DEITCH: I guess my feeling is that
6 there's so little monitoring that's going on right
7 now that you couldn't possibly narrow the scope of
8 that.

9 MR. YEOMANS: I'm not sure I can give
10 categories of things that are being ignored more than
11 other things. Certainly in looking at medical care,
12 issues can arise across the board from mental health
13 services to provision of basic first aid emergency
14 care, so I'm not sure that can I single out any
15 particular area.

16 MR. CATE: In California we have a
17 lawsuit for every issue almost so plaintiffs' counsel
18 and the federal courts have largely monitored the
19 health care area and so that gets quite a bit of
20 attention, at least it has recently, the officer
21 discipline process. The mentally ill also, that area
22 is monitored, and parole is monitored. The Division
23 of Juvenile Justice is monitored by the courts. I'm
24 sure I'm missing three or four.

25 So I think one area that I would like to

1 see more attention to is programming, and one of the
2 things I think the ACA is doing well or the ACA and
3 the administration of state correctional officials,
4 is they're working towards standards that can be
5 utilized by everyone on issues like who is really
6 being rehabilitated, what are the true rates, what's
7 a true level of comparison when you account for all
8 the different factors. No one really looks into the
9 programming issues because, frankly, I think, from
10 many points, as long as there's people dying on
11 condition of confinement issues resources have to go
12 to that, and once that is taken care of, then you can
13 probably turn to issues like inmate programming,
14 rehabilitation, and trying to prevent future victims.

15 DR. GILLIGAN: This is for Mr. Cate.

16 A few years ago I was invited by a
17 committee in the California senate to work with them
18 on formulating a law which the legislature and state
19 assembly passed to monitor violence in the California
20 prison system, particularly, of course, lethal
21 violence; homicides, suicides and so forth, to really
22 have a comprehensive summary of these sort of year by
23 year, how many occurred, who were the perpetrators,
24 who were the victims, what were the circumstances,
25 which institutions seemed to be most dangerous,

1 et cetera, with real investigations of each and every
2 case and a public reporting of what was being done to
3 reduce the level of violence.

4 They passed the law and appropriated the money for it
5 but, unfortunately, Governor Gray Davis vetoed it.

6 I'm just curious with the program that you
7 have in place now, is there any sort of systematic
8 emphasis on monitoring the sort of extreme violence
9 that occurs throughout that system and get a
10 systematic handle of what's causing this, are things
11 getting better or worse, what can be done, that sort
12 of thing.

13 MR. CATE: In some circumstances in
14 some areas, yes. For example, the department, the
15 agency is currently working on a new death review
16 process where they have a team of experts who are
17 going to, who have just started to review inmate
18 deaths and are going to triage those, if you will, to
19 Internal Affairs or to professional peer groups, to
20 licensing boards, et cetera, so they're starting to
21 get more systems in place there. But I think one of
22 the areas that the department has struggled with over
23 the last few years is that they really don't have a
24 great -- information technology is still in the real
25 rudimentary stages.

1 We do have oversight investigation of at
2 least the officer discipline process, and we're also
3 putting in place memorandums of understanding between
4 the various prisons and the county D.A.s and sheriffs
5 to try to get homicides investigated in a
6 professional way, that's an ongoing process, but
7 there's nothing as comprehensive as you described in
8 place, as I understand it.

9 MS. ROBINSON: Tim.

10 MR. RYAN: One of things that we do and
11 as a society is we're very credential of ourselves.
12 You go in and it feels like criticism, it may not be,
13 but obviously you will find things that have gone a
14 little bit sideways. A lot of our energy in this
15 commission has to be put forward to how do we make it
16 safe, how do we make it a safe organization, and one
17 of the things that I would be familiar with is the
18 National Institute of Corrections which spends a
19 great of time in training.

20 What sort of efforts can your agencies do
21 towards helping us getting better at what we do when
22 you see a problem out there? How do you educate me
23 as an administrator either through NIA, ACA, your
24 local state agency, how do you help us get better
25 when you find a bad thing, how do you help us get

1 best practices out there, what could you do to
2 educate me to be a better correctional administrator
3 today, tomorrow and in the future?

4 MR. CATE: Well, frankly you know a lot
5 more about this than I do so that's a challenge. I
6 think I take -- and that's true for most of the
7 correctional people that I work with. They have been
8 doing it for 25 years, I have been doing it for two.
9 But I can let you know where you are out of
10 compliance with you're own rules, I'm trained to do
11 that, and I can collaborate with you and as they used
12 to say use the brains that the good Lord gave me and
13 sit down with you and collaborate and say all right,
14 this seems to me to be broken and it seems like we
15 have a couple options here, don't you think that this
16 might be a better approach, but I think it is the
17 dialogue that is really the most effective tool. The
18 professor probably has a greater knowledge of many of
19 these things than I do, but my experience in
20 California has been when we sit down face to face and
21 we talk in a non-adversarial way, when we respect the
22 knowledge that you bring as a correctional
23 administrator into the dialogue, then we get further
24 than we do if I just sit down and tell you you are
25 wrong and here is what you should be doing.

1 MS. ROBINSON: Gary.

2 MR. MAYNARD: I've been thinking about
3 the advantages of state oversight or federal
4 oversight and most of us administrators who work in
5 the field, we work very hard to advise our
6 legislatures about the issues of mental health,
7 mentally ill in prison, substance abuse problems in
8 prison and also our congressional delegations, and it
9 seems that Congress has been reluctant to put money
10 into our dealing with the mentally ill and substance
11 abuse funds are being cut back and I'm just curious
12 as to how responsive they would be to oversight if
13 they would open up all those doors and create all
14 that cost.

15 MR. CATE: The first goal of oversight
16 is to figure out what's going on and try to identify
17 what the needs are. And you don't necessarily get
18 action out of oversight, but what you get is
19 transparency, you get an understanding of what's
20 going on, and then you think about whether there are
21 things that need to be done. And I agree with you
22 that it is unlikely at this point that the federal
23 government is going to be passing out increased
24 funding for a variety of programs, that seems to be a
25 budget reality at this point. But I do think that it

1 is important to find out what's going on, what the
2 facts are and what the needs are and whether the
3 federal government can meet them now or in the future
4 or whether they can be met now by states or some
5 other bodies. I think any way that they're met is
6 good.

7 MR. WOOL: I'm hearing Professor Deitch
8 talk about the rarity of independent inspection and
9 monitoring, perhaps two or three state systems only
10 across the country, and Mr. Yeomans is talking about
11 the diminution in civil litigation from the federal
12 government and we're going to hear tomorrow about the
13 Prison Litigation Reform Act, restrictions on private
14 litigation. I'm wondering if you could comment on
15 the causes, the reasons for this diminution, if
16 that's what we are seeing, and also the consequences.

17 MR. YEOMANS: I think the reasons are
18 broad and they go well beyond this specific area. I
19 think that we have seen doctrinal shifts obviously in
20 the law, we have seen a changing political climate
21 that has contributed to those shifts, and so that
22 there is at this point simply far less tolerance for
23 structural injunctive litigation than there was in
24 the past. Part of that is because the bench is more
25 conservative, part of it is that there simply is not

1 the kind of political will that once existed to
2 address those problems, and, frankly, it is
3 inconceivable that today Congress would pass anything
4 resembling CRIPA, that instinct simply doesn't exist,
5 and it is largely, I think, a political change. It
6 is also a result of, I think, political attacks on
7 courts and the way courts operate. We hear endlessly
8 about judges who legislate from the bench or judges
9 who read their own predilections into the
10 constitution and what that really means is that they
11 rule against you, but we hear that rhetoric over and
12 over again, and I think it has an effect. And
13 obviously because we have had conservatives
14 consistently appointed to the bench, there are fewer
15 judges now who approach this kind of litigation with
16 the kind of sensitivity and aggression which really
17 is necessary to make it effective.

18 MS. DEITCH: I would agree with all of
19 that and I would just add, I was a court monitor in
20 the Ruiz case, the big Texas prison reform case, and
21 so I have a personal sense of the extent to which
22 there was tremendous resentment among legislators,
23 among corrections officials, among really many
24 different layers of government, about the intrusion
25 of the courts into correctional affairs.

1 I think that the costs that, the financial
2 costs that resulted for the state as a result of this
3 kind of court intervention, while perfectly
4 appropriate, just led to a sense of we want to cut
5 this off, we can't have the federal government
6 telling us what to do in the states, we can't have
7 federal judges determining correctional policy, et
8 cetera. The whole reason why the courts were
9 intervening in the first place was that there were no
10 other mechanisms, the courts were all there was, that
11 was the problem and that's what needs to be remedied.

12 MS. ROBINSON: Matt, do you want to add
13 anything to this?

14 MR. CATE: Well, I guess I was kind of
15 mulling this over and I think that much of the
16 independence of the inspector general's office in
17 California has occurred over the last 18 months, two
18 years, and I hope the governor hasn't regretted it,
19 but I'm the bearer of -- the fact he calls, I don't
20 know if he remembers my first name, but he remembers
21 me as the guy who always brings bad news, and not
22 only that, but I always bring it publicly, and so
23 what worst combination could you have for an elected
24 official. And so it is difficult, I think, for an
25 executive to decide to sign off on someone to

1 publicly report on things that aren't working well,
2 that's the nature of the beast.

3 MS. ROBINSON: Any followup?

4 MR. WOOL: The consequences side, what
5 are the consequences for prison conditions for
6 prevalence of issues of safety and abuse of somewhat
7 weak systems of oversight, other than what's emerging
8 in California, as seen as generally the case across
9 the country at least in the prison systems, we
10 haven't talked much about jails.

11 MS. DEITCH: Well, one consequence is
12 that we have very little way to know what's going on,
13 we end up dealing with anecdotes. Whether people
14 think things are good or things are bad, we don't
15 have information, we don't get regular reports about
16 what's going on, we rely on what was reported in the
17 newspaper or an individual lawsuit, but to how much
18 widespread these problems are, we don't have that
19 kind of information.

20 MR. YEOMANS: I would second that. We
21 don't really have an empirical basis to know what the
22 consequences have been. I think we can speculate
23 that we wouldn't have been all engaged in these
24 activities if we didn't think they were reported and
25 they certainly had results in the past, and so you

1 can imagine a world where litigation and other forms
2 of oversight don't exist, and I think that would be a
3 world where prisoners were less safe and it was less
4 humane.

5 MS. ROBINSON: I think we're getting
6 near to wrapping up for the afternoon but I do want
7 to throw out one other question to you, we kind of
8 danced around it a little bit, but clearly there are
9 different challenges between monitoring and oversight
10 for prisons as opposed to jails and, Michele, I think
11 you allude to that in your paper primarily, you do,
12 but, Bill, clearly you have dealt with that issue as
13 well in litigation, and I'm wondering if each of you
14 can fairly quickly touch on that, what some of the
15 differing challenges are there, and, Michele, why
16 don't we start with you.

17 MS. DEITCH: Sure.

18 I think that jails in particular,
19 specifically smaller jails, more rural jails, a lot
20 of them fly under the radar screen, frankly. They're
21 not regulated and we get very little information
22 about what's going on, and these are jails that are
23 more likely to have people at the helm that are not
24 trained, they're not brought into national
25 associations, et cetera, et cetera, and the state in

1 many cases has very little control over what's going
2 on in these places; they're not brought before the
3 legislature. They're accountable typically only to,
4 say, in Texas the Board County of Commissioners,
5 whatever the county body is that funds them, but
6 those bodies don't have any expertise in jails. They
7 know they spend a lot of money on it but typically
8 their concerns are do we need a new jail, not what's
9 in fact happening in the jail. Those inquiries just
10 plain don't happen. So I guess the short answer is
11 we need to think of mechanisms that would allow those
12 jails to come under some body, some entity, whether
13 it is a state governmental entity or something else,
14 to find out what's going on, to ask the hard
15 questions.

16 MR. YEOMANS: I think it is important
17 to distinguish among jails and obviously there are
18 the kinds of jails that Michele was just talking
19 about that are rural, small, generally run by one guy
20 that has a lot of power, and those tend to be less
21 professional. They tend to produce for us a
22 disproportionate percentage of our criminal
23 prosecutions simply because they're not
24 professionally run and because a person who is there
25 is basically unchecked and is more likely to resort

1 to force and more likely to inflict unlawful
2 punishment. Obviously other jails, large, the L.A.
3 County jail, these are large institutions that are
4 much more professionally run and much more like
5 prisons.

6 I think one of the principal
7 characteristics, though, obviously that distinguishes
8 jails from prisons is the length time that inmates
9 are there, and I think that that has, and I haven't
10 seen a lot of empirical work on this, but I think
11 that has some effect of the likelihood of litigation
12 simply because inmates who are there for a shorter
13 term are less likely, first of all, to have the time
14 to try to change the institution but, second, to have
15 as much a need to change the institution. They know
16 they're moving on or getting out, getting released.

17 People who are in a prison facility for the
18 long haul and are living with the conditions are
19 going to think long and hard about how to improve the
20 living conditions that they may be with for years.

21 MS. ROBINSON: Anything to add, Matt?

22 MR. CATE: No, that's outside of my
23 jurisdiction and outside of my depth as well, I
24 think.

25 MS. ROBINSON: And you are not

1 volunteering to take it on.

2 MR. CATE: No.

3 MS. ROBINSON: On that note I want to
4 thank our panel, you have been very helpful.

5 We're going to wrap up for the afternoon.
6 I don't know if Jenni is in the room or if Alex has
7 any words for us. Any announcements that you want to
8 make before we wrap up?

9 MR. BUSANSKY: We have another day to
10 go, nine o'clock tomorrow morning. I think it will
11 be interesting and exciting in its own way, I hope
12 all of you will return, and hope to see you all
13 tomorrow. Thank you very much.

14 MS. ROBINSON: Thank you.

15 (Hearing concluded at 4:19 p.m.)