

Testimony before the National Prison Rape Elimination Commission
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I want to thank the Commission on behalf of myself, Robert Gangi, the Executive Director of the Correctional Association (CA), and the CA Board and staff for this opportunity to provide testimony concerning the role the CA plays in monitoring prisons in New York State. I will summarize the opportunities that our unique legislative authority provides us to assess the conditions and practices within New York's prisons and to advocate for improvements, and I will identify the limitations and restrictions that we encounter in performing these duties. I will focus on the challenges faced by any outside agency in monitoring the issue of sexual misconduct in prison. Finally, I will briefly summarize some of the findings and conclusions of our efforts to assess safety and violence issues in New York State prisons based upon surveys we obtained from more than 1,000 inmates and data we obtained from the New York State Department of Correctional Services (DOCS) concerning unusual incidents in the Department, and inmate and staff discipline concerning inappropriate sexual behavior.

A number of components are crucial to the operation of any outside organization that monitors and evaluates prison conditions, and fosters systemic change:

- ▶ The monitoring organization must determine its primary mission: should it provide individual advocacy to inmates, should it focus on working for systemic improvements, or should it engage in a mix of both activities? In addition, is it an advisor to the corrections department solely or is its work product for a much larger audience? At the CA we focus on systemic issues and advocate for change both with the department, other state policymakers and the public.
- ▶ The organization should have a substantial degree of independence both from the corrections department being assessed and from other institutions or funding sources that might compromise its ability to report freely on its observations and recommendations.
- ▶ The organization must have access to information. Such information should include not only prison policies and protocols, but more importantly, information that helps it assess prison practices. The organization must have unfettered access to individuals who live and work inside the facility it is monitoring, and ideally should have the ability to conduct conversations with staff and inmates in private settings. In addition, it must be able to obtain documents and data prepared by the corrections department and other agencies to evaluate systemic practices.
- ▶ The monitoring organization should make its observations, findings and conclusions available to public officials, including those outside the corrections department, as well as the general public. Moreover, the organization should interact with advocates and those adversely affected by prison conditions, both to receive information and to educate and organize those interested in reforming the prison system.
- ▶ The organization should have a dialogue with corrections administrators about the monitoring process and its observations and recommendations. This work should include an exchange between it and the department both prior to finalizing its report to eliminate errors and reduce areas of disagreement and after the report to review and monitor the department's corrective plan.

► The organization should have the ability to advocate for changes in policy and practices with public officials outside the prison system and the general public, particularly in instances when recommended remedies require action by governmental entities other than the corrections department to implement meaningful change.

The CA model has been successful in fostering reform within New York's prison system because it has most, but not all, of these components.

In monitoring sexual misconduct in prison, an outside agency faces even greater challenges than it does in investigating many other prison activities.

► It is crucial that the transmission of information about sexual activities in prison be conveyed in a confidential manner, yet this can be difficult to ensure in a prison context. Many encounters between outside monitors and inmates or staff occur in non-confidential settings; it is unlikely that inmates or staff will reveal information about sexual activities during these interactions. But even if the substance of conversations or correspondence are not disclosed, the very fact that an inmate is speaking to, or corresponding with, someone from outside the Department about sexual issues can cause retaliation from staff or at least heightened scrutiny from security staff and/or prison administrators.

► Disclosure of information about sexual activities within prison often requires the development of trust between an inmate and an employee of an outside monitoring agency, even when the outside agency is identified as sympathetic to inmates' concerns. In many situations, it is very difficult to develop an adequate rapport between agency staff and inmates so that inmates will feel secure in revealing such sensitive information.

► Staff from an outside agency investigating sexual activities in prison must be adequately trained to perform such inquiries in a manner that is sensitive to the trauma some of these individuals have experienced and to be vigilant in assessing whether the discussion of these issues has or may trigger adverse reactions in the inmate involved in the incident.

► It is difficult for an outside monitor to ensure that inmates who disclose information about sexual activities will be adequately protected if this information is revealed to correction officials. Although we can advocate for appropriate responses by correction departments to allegations of staff or inmate misconduct, an outside agency has no control over how the inmate-witness will be treated. Since sexual contact is a violation of prison rules and in certain contexts a violation of criminal laws, acts by law enforcement officials may also result from revelation of sexual misconduct. Similarly, if an individual suffers mental health problems as a result of disclosing information about sexual misconduct, the outside monitor must be prepared to advocate for appropriate mental health care.

► It is often difficult to obtain department documents and records concerning incidents of sexual misconduct. Normally, allegations of sexual activities by an inmate and/or staff will result in a correction department investigation. Under freedom of information laws in most jurisdictions, documents about pending investigations are exempt from disclosure. In addition, most correction departments will resist disclosing specific data about inmate's or staff discipline. Finally, often

medical information is a component of these records and therefore barred from disclosure by HIPPA regulations.

I will discuss how an outside monitoring agency could reduce these obstacles and investigate sexual activity in the prisons.

During our violence study, we attempted to obtain some information about sexual abuse in the prisons, but I believe that our results represent a significant underreporting of such activities. Moreover, our study was not designed to investigate specific incidents and therefore, did not involve monitoring protocols that would likely result in disclosure of such information.

The following describes the current CA monitoring process. It also provides an analysis of why we have had a positive impact on the corrections system and what more could be done to enhance our effectiveness.

Correctional Association: Background

The CA is one of only two independent organizations in the United States that have legislative authority to visit prisons and report on conditions of confinement. Since 1846, the CA has carried out this special legislative mandate to keep policymakers and the public informed about conditions of confinement that affect both inmates and corrections staff. As an independent citizens' organization, we are dedicated to involving the public in prison monitoring and advocacy. The Prison Visiting Project (PVP) of the CA, which I direct, is responsible for performing this monitoring function. One of the CA's central goals is to be an instrument for systemic change within the prisons by monitoring correctional policies and practices, developing proposals to make conditions more humane, educating the public, and pressing prison administration, state executive and legislative officials, and the public to take action. Because we critique what is happening inside prisons and reveal deficiencies or problems, we act as the public's eyes and conscience with regard to prison issues in our state.

Broadly defined, the work of the Prison Visiting Project¹ includes: (a) visiting state correctional facilities on a regular basis and issuing detailed reports of findings and recommendations to state corrections officials and state legislators; (b) preparing and distributing in-depth studies on critical corrections topics that include findings and practical recommendations for improvements; (c) advocating for reform at public hearings, in meetings with state legislators, at conferences and in discussions with the media; and (d) helping raise the visibility of corrections-related issues through publishing research reports and gaining media attention, posting fact sheets and prison reports on our website, and making presentations at academic and professional conferences.

Current PVP Activities

Prison Visits

The New York State Department of Correctional Services (DOCS) confines approximately 63,500 inmates in 70 facilities throughout the state, roughly 2,800 women and 60,200 men. The Project

¹ PVP monitors conditions within the male prisons in New York; the CA's Women in Prison Project performs a similar function for the five female state prisons.

conducts monitoring trips to one of these prisons approximately seven to ten times a year. These visits take the form of field research: full-day, on-site assessments during which members of the Visiting Committee, typically five to eight people on each visit, branch out to all corners of the prison including housing areas, the yard, the medical clinic, mental health units, program areas and disciplinary segregation units. The Visiting Committee consists of a diverse group of CA staff and board members, medical and psychiatric professionals, formerly incarcerated people, advocates and concerned individuals. Throughout the day we interview inmates using a standardized survey, and we hold meetings with the facility's administrative team, the Inmate Liaison Committee (a leadership group elected to represent the concerns of prisoners), corrections officers and civilian staff.

Data Collection

PVP also collects data about each facility we visit, providing us with more detailed information about the programs, services, disruptive incidents and disciplinary processes. We gather this information through a 50-question survey submitted to the facility superintendent prior to each visit. This data enables us to analyze systemic conditions, compare different prisons with similar inmate populations, identify model programs and areas in need of reform, and make informed decisions about future projects and priorities.

Report of Prison Visits and State of the Prisons Report

After each visit, PVP issues a detailed letter including findings and recommendations based on information gathered during the visit. We send the letter to the superintendent, DOCS officials and relevant policymakers. These letters are the bases for our individual prison reports, which we distribute to a larger group of policymakers, inmates and members of the public, and which are available on the CA website.

Periodically, we issue a *State of the Prisons* report, which contains an overview analysis of the entire state prison system and includes a summary of each of the prison visits conducted during the reporting period. These *State of the Prisons* reports are used to articulate recommendations for systemic improvements in prison conditions and practices, as well as to present specific information on each prison visit.

Inmate Correspondence

PVP receives letters from approximately 100 inmates each month requesting information or assistance and providing us with information about prison conditions. This correspondence directs our attention to prison-specific or system-wide issues and ensures our awareness of conditions at prisons that we may not be able to visit regularly.

Studies of Specific Prison Issues

In addition to our general monitoring work, PVP performs multi-year studies of critical issues concerning New York prisons, resulting in detailed reports analyzing the accomplishments and deficiencies we have observed and identifying recommendations to improve conditions. For example, the Project issued a report about prison health care in 2000, a study on disciplinary segregation in 2003 and a report on the treatment of inmates with mental illness in 2004.²

² *Mental Health in the House of Corrections: A Study of Mental Health Care in New York State Prison* (2004); *Lockdown New York: Disciplinary Confinement in New York State Prisons* (2003); *Health Care in New York State*

As part of these studies, the Project conducts focused visits to the prisons, compiling detailed surveys of the prison population and conducting interviews with the relevant prison staff and the prison executive team. In addition, through the state Freedom of Information Law, the Project obtains systemic data about the prison population and the issue being investigated. Finally, we visit facilities outside the state to identify model programs that could be replicated in New York.

These studies result in detailed reports containing our findings and recommendations. We distribute the reports to correctional officials, policymakers and the public. We conduct outreach and garner media attention to raise public awareness and to advocate for reform.

Education and Advocacy

The CA believes it is essential to publicize its findings and recommendations, educate public officials, the press and the public, promote the effective programs it has found and advocate for the correction of deficiencies in the prison system. Part of our public education is to bring ordinary citizens into the prison during our visiting process so they can learn, and tell others, what the prison experience really involves. We also have regular contact with legislative officials to report our observations and to learn about their work to effect change. We have ongoing relationships with the press, not only when we issue reports, but as a regular function of our educational role, and we encourage editorial boards to endorse our recommendations. We also make presentations in many public forums focusing on prison issues and participate in national and regional prison conferences and in professional organizations. These activities enable us to move beyond a narrow group of state policymakers to raise crucial prison issues affecting inmates and their communities.

But education is not sufficient to produce reform. Consequently, the CA undertakes several initiatives to promote its recommendations and develop meaningful remedial measures. For example, CA staff plays an active role in several statewide coalitions of advocates, formerly incarcerated individuals and their families working for systemic improvements. The CA has been instrumental in drafting and promoting the adoption of legislation to address prison problems. We also present testimony before legislative hearings and assist legislators in developing a record to justify the modification of policies and practices within the prisons.

Analysis of the Correctional Association's Visiting Project to Monitor Prison Safety

Overview

With the aforementioned description of the PVP as background, I would like to offer an analysis of the strengths and weaknesses of a private organization as the model for investigating prison conditions and in fostering remedial action to address deficiencies.

We have had a positive impact on DOCS policies and practices because we have compiled and presented compelling information and analyses to prison officials, the legislature, other policymakers and the public, and because we have been untiring in pursuing implementation of our recommendations. Prison reform is a slow and frustrating process that requires patience and

Prisons (2000). These reports are available on our web page, www.correctionalassociation.org, or by contacting the Correctional Association.

fortitude. Because of our independence, we can fairly and aggressively report our observations and can advocate for best practices. Although our statutory authority provides us with independence, it does not grant us any power to require change. Rather, it is only through the persuasiveness of our information and the effectiveness of our presentations that we can cause DOCS to modify its policies and practices. However, the more forcefully we advocate for change, the more difficult it is to have a congenial and cooperative relationship with the Department.

We have maintained a very strong relationship with the legislature, and we often assist legislators interested in improving the treatment of inmates in identifying pressing issues, compiling data to justify legislative action and fashioning appropriate legislative remedies. We have also been successful in garnering significant press and editorial support for our proposals. Through these efforts, we have been an important force in improving DOCS practices. For example, after our report on the treatment of inmates with mental illness, the Governor proposed, and the legislature approved, a \$13 million program to augment mental health services for state inmates.

To assess why we have been successful, it is useful to examine in greater detail each of the elements identified earlier as essential components of an effective outside monitor: organization mission; organization independence; access to information; publication of findings and recommendations; interactions between the prison system and the organization; and advocacy by the monitoring organization.

Mission of the Monitoring Organization

The first step is to define the role of the outside monitoring organization. At least four potential models are available. One is an advisory panel to a corrections department, which would likely include outside experts who may draft and/or review department policies. A second model is a monitoring board that reports solely to the department and is akin to an external quality assurance (QA) committee. A third model is one in which the outside organization acts as an ombudsman for prisoner complaints. The role of this entity is to investigate specific inmate complaints and to advocate on the inmate's behalf for corrective action.

The fourth model is one similar to that employed by the CA. It involves a monitoring process intended to analyze overall department policies and identify model practices and areas for reform. The collection of information and the analysis of data are directed toward assessing the frequency of a practice and whether mistreatment of inmates or failure to provide services is the result of (a) formal or informal prison policies and procedures or inadequate resources, or (b) an aberrant situation caused by individual staff misconduct, nonfeasance or neglect. It is equally important to recognize systems and programs that are working well, both to acknowledge individuals performing their jobs effectively and to urge the corrections department to replicate effective programs throughout the corrections system.

Independence of the Monitoring Organization

The CA has a great deal of autonomy and is not subject to significant limitations by DOCS or any state entity. The CA's Board is self-appointed and includes prominent citizens, lawyers, advocates, formerly incarcerated individuals, providers from community-based organizations serving inmates and parolees, and academics. Only 10% of the CA's funding comes from state monies. In the monitoring process the CA is free to determine what it considers to be best practices and to advocate for reforms it believes are advisable and feasible. Although we look to

national and international standards concerning correctional practices, we are not mandated to assess the prisons based upon any specific set of criteria. Although we regularly report to the legislature, it does not dictate our agenda or limit our findings and recommendations. The CA greatly values its independence because it substantially contributes to our ability to advocate for difficult, but necessary, reforms in the criminal justice system.

Some observers believe that it would not be feasible in today's political climate to replicate the CA statute. Accepting that assessment, however, does not mean that other models could not be adopted that could serve a similar function. One model could be an independent review board that is constituted to investigate and report to the legislature on specific prisons issues. For example, such an entity could be created to look at health care or mental health care, or investigate prison violence.³

Alternatively, it might be possible to have a review committee appointed by government officials with an executive board comprised of appointees by both majority and minority members of the legislature, and by the executive branch. The important issue would be to ensure that the executive appointees do not morph the committee – intentionally or not – into an arm of the prison administration. One mechanism that would help such a review committee maintain its independence is a designation in the authorizing statute that representatives of specific outside agencies must be voting members of the committee, such as representatives of legal services organizations, independent health organizations, non-profit organizations, treatment providers or religious organizations. If the reviewing entity consists primarily of government appointees, it is essential that the committee be required to hear public input, during both the investigative process and the reporting period.

Access to Information and Transparency of Prison Policies and Practices

In order effectively to critique a correctional system, it is important for an outside monitoring organization to gain comprehensive and reliable information about the policies and practices within the prisons. As this Commission knows, this is often a difficult task because prisons are generally closed institutions that few can penetrate.

The CA has been successful because it has unique access to the prisons. We can go anywhere in the prisons and speak to inmates and staff where they live and work. It is particularly important during the course of our visits that we speak to inmates who have not necessarily contacted advocates to raise complaints on their own. Litigators and outside advocates often obtain a somewhat biased view of a prison because they are primarily dealing with individuals who are motivated and capable of reaching outside the prison walls to raise complaints and advocate for themselves. In our experience, many inmates do not have the resources, information or skills necessary to advocate for themselves, and many are afraid of the consequences of raising complaints. Since silence does not necessarily indicate a lack of problems, it is important that a reviewing organization be able to determine the experiences of this silent inmate majority. In surveys of inmates in our study on safety and violence, we have found significant problems that inmates have come to accept as standard practices, which they generally feel powerless to change.

³ An example of a limited review panel is Florida's Correctional Medical Authority, established to review health care in Florida's prisons and to give independent advice to the Governor, legislature and corrections department.

In obtaining information from inmates, standardized survey instruments have been useful in assessing conditions and practices. These allow us to compare information from different facilities and to assess whether inmates' reports are systemic or anecdotal. For example, in our study of prison safety and violence, we have obtained responses to our 85-question survey from more than 1,000 inmates in 12 prisons.

Speaking to front-line corrections staff is also a crucial component of the visiting process. We talk to union representatives in a focus group meeting during each prison visit. We find these meetings very informative, revealing the staff's perceptions of the facility and the obstacles they encounter in doing their jobs. During our tour of the program and service areas, we interview staff about their jobs, obtaining additional data and gaining their perspective about the effectiveness of their programs.

The prison visits are invaluable in assessing conditions, but access to additional information, particularly from DOCS data and departmental records and documents, is also necessary to assess whether systemic deficiencies exist and to place the individual observations made during visits in the context of the entire system. We are less successful in this task because we do not have an enhanced right to Department documents and data.

In order to obtain information about the operation of the Department, we seek general information about DOCS pursuant to the state's Freedom of Information Law (FOIL)⁴ and request specific data about each prison in a 50-question survey provided to a prison before each visit. Both of these efforts, however, are somewhat limited. Although the Department has been cooperative in responding to most of our data requests, it is under no obligation to do so, and sometimes we have experienced delays in its responses and occasional refusals to provide certain information.

To overcome these obstacles to departmental records, legislation creating an outside monitor should include the unfettered right of access to all departmental records, logs and data. Privacy concerns could be addressed by limiting the publication of identifying data in the monitor's reports. Efforts should be made on a national basis, or in the states through legislation, requiring prison administrations to keep systemic data on sexual activity in prisons that is made available to the public. The PREA legislation has helped to start that process, but more information is needed to properly monitor practices in the prisons, particularly in large jurisdictions with many prisons. State-wide data can obscure problems that relate to specific prisons or specific prison populations.

The CA's efforts to reveal prison practices through the visits process and to compile data from the Department to evaluate systemic conditions are designed to make what happens in the prisons more transparent. Corrections departments on their own could share with the legislature and the public greater information about prison conditions and practices, but without greater public will to demand such information, monitoring agents may be the only source for such information.

Publication of CA Findings and Recommendations

As was the case with the Abu Ghraib scandal, remedial action often only happens when the misdeeds that occur inside our penal institutions are made public. If the graphic and disturbing

⁴ New York State Public Officers Law, Article 6, Sections 84-90.

photographs of mistreatment of the Iraqi prisoners were not available, it is unlikely that any investigation or corrective action would ever have occurred.

The incarcerated population has almost no political power, and inmates' families often come from poor, disenfranchised communities that have limited influence on state politics. Corrections departments are also unlikely unilaterally to implement reform measures, given the substantial financial burden that housing inmates places on states. Moreover, since many prisons are located in isolated communities that depend on the facilities for jobs, employees have little incentive to reveal improper practices. Consequently, there is no political power, institutional pressure or natural public constituency to advocate for improvement in prison conditions when they are needed. Given this dearth of power, it is crucial that outside monitoring agencies publish and publicly promote their findings and recommendations. Such publication is a necessary, but not sufficient, means to hold correctional departments accountable. Along with publication, monitoring agencies must educate policymakers and the public about what is happening in our jails and prisons, and help frame the debate about what is appropriate when confining individuals.

Corrective action to improve prison conditions will often require more than just efforts made by corrections departments themselves. Increased resources are frequently necessary to address prison problems. For example, low salaries, insufficient staff coverage, and the lack of educational and vocational programs all contribute to prison violence. In order to obtain these enhanced resources, a clear record of need must be developed to justify these additional expenditures. It often falls to individuals outside the prison system to make this case, because the prison authorities are reluctant to admit that their department is not adequately meeting the needs of the inmate population.

In the past, litigation often served the role of publicizing prison deficiencies. With the advent of the Prison Litigation Reform Act, it has become more difficult for lawsuits to successfully challenge inadequate prison practices. In addition, the constitutional standard imposed by the courts is not the same as well-designed and effective correctional practices. Monitoring agencies are free to promote best practices in the prisons, even if constitutional violations do not exist.

It is crucial that a monitoring organization's reports are fair and unbiased in discussing prisons and in presenting findings and recommendations. The purpose should not be to only detect failures, but also to note successes and acknowledge progress in addressing previously identified problems. The voices of inmates should always be included, as should the views and opinions of staff and prison executives. The credibility of the monitor will always be tested, and it is critical that the organization can fully support its conclusions and demonstrate that it is equally prepared to listen to, and present, the staff's views.

Corrections Department Accountability and Interactions between the Department and a Monitoring Organization

Reporting is only the first step in the corrective process. The ideal scenario is to have the corrections department review the findings and recommendations of the monitor and then initiate a process to address the monitor's concerns, permitting the corrections department the opportunity to determine how best to remedy the situation. The optimal process for communication and cooperation between the monitor and the corrections department should have three components:

- ▶ a dialogue between the monitor and the corrections department in which the monitor's preliminary findings and recommendations are discussed to permit clarification or correction of facts, to identify remedial measures the department is already doing or is willing to undertake, and to facilitate modification of the monitor's findings and conclusions accordingly;
- ▶ after the issuance of the monitor's report, an investigation by the corrections department of facts the department contends are in dispute, and the development of the department's written corrective plan to address deficiencies or improve practices, which is shared with the monitor; and
- ▶ a re-evaluation process by the monitor after the department has had an opportunity to address the problems to determine whether the department has implemented its corrective plan and to assess whether that plan adequately addresses the concerns raised in the initial report.

For several years, the CA did not have a cooperative relationship with DOCS and thus was unable to have an effective dialogue with DOCS about its monitoring activities. The Department had refused to comment on our reports, which we send to DOCS prior to their publication, to enter into any discussions with us about our findings and recommendations after the reports are issued, or to share with us what actions, if any, it intended to take to address the issues raised in our reports.

However, with the election of a new Governor and the appointment of a new DOCS Commissioner, the relationship between the Department and the CA has substantially changed. We have had a series of substantive meetings with the Commissioner and his executive team and have tentatively agreed to a process for dialogue between the Department and the CA about our prison and substance reports. We believe this will make our role more effective and will expedite measures to improve prison conditions.

It is predictable, however, that many corrections departments will not voluntarily undertake steps to discuss with outside agencies adverse findings and share with them any plans to address deficiencies. Therefore, authorizing legislation creating a monitoring entity should require a corrections department to respond to the entity's monitoring reports in a substantive fashion, to develop corrective plans and to engage in ongoing communication with the entity about its progress in implementing those plans. Such a requirement does not oblige the department to accept the findings and conclusions of the monitoring organization. Rather, it mandates that the department articulate its position on the validity of the findings and, where the department cannot dispute that a problem exists, develop a remedial plan.

The publication of a corrective plan would provide the monitoring entity with a blueprint of the areas it should assess when evaluating whether the department has effectively instituted measures to remedy problems. Such a process is commonplace in any quality improvement program and should be replicated within the correctional context.

CA Advocacy Efforts

Once we have issued a report, we undertake efforts to promote our proposals, including educating policymakers and the public, contacting media, urging policymakers to take legislative action and participating in criminal justice-related coalitions. While many coalition members speak about personal experience or the specific problems they have encountered in their jobs, the CA brings comprehensive information to contextualize anecdotes and add credibility to shared goals. The

CA's ability to gather and analyze systemic data empowers individuals, organizations and coalitions working for criminal justice reform.

Although the strategies employed by the CA alone can prompt reform, in our experience, the most effective way to spur change in the correctional system is through collaborations between multiple agencies, each with its own methods and tactics, on a single issue. The previously cited example of enhanced prison mental health services represents such a confluence of forces that produced significant results. The \$13 million of additional resources was likely the result of the combination of the CA's reports on mental health care and disciplinary confinement, litigation filed against DOCS focused on inadequate mental health care for inmates, and a vigorous lobbying, public education and media work by a statewide coalition called Mental Health Alternatives to Solitary Confinement. Moreover, the state legislature is about to pass a bill to divert inmates with serious mental illness from disciplinary confinement; this is a direct result of the concerted effort of many prison and mental health advocacy organizations. It is difficult to imagine such results being achieved without this perfect storm of pressure and coordinated activity from multiple sources.

We recognize there is a tension between (a) publicizing findings that are negative, issuing recommendations for changes in policy and advocating for improvements in prison conditions, and (b) maintaining an open dialogue with corrections departments about what occurs inside the prisons and what can be done to improve conditions. These purposes can be reconciled if a monitoring organization is rigorous in its investigative process to seek input from all elements of the prison community, remains committed to presenting the facts fairly and completely, acknowledges when the department has been successful in care for inmates or in improving conditions, and continues to seek opportunities to discuss with prison officials their concerns about the system. The CA thus makes it a priority to carry out each of the aforementioned activities.

Barriers and Opportunities to Monitoring Prison Sexual Activities by Outside Agencies

The CA has not undertaken a specific study of sexual activity in New York prisons, but as part of our recent study of overall violence and abuse in the state prisons, we have encountered some of the difficulties associated with obtaining information about sexual conduct. Because of the highly sensitive nature of this information, the risks to inmates and staff from revealing information about sexual activities, and the difficulties in getting documents about this conduct, we have learned very little about this hidden part of prison life during our monitoring activities. Although an outside monitoring agency can provide inmates who have experienced sexual abuse an opportunity to raise these issues in a potentially less threatening setting, I believe there are several factors that make it difficult for an outside entity to assess sexual conduct in prison.

First, it is crucial that means exist for inmates to communicate information about sexual activities to an outside monitoring agency in a confidential manner; this is sometimes difficult to do. As described earlier, most of our encounters with inmates are not in a setting that is completely confidential; security staff and other inmates are in the area during our prison visits and sometimes they can overhear our conversations. It is unlikely that inmates will reveal information about sexual activities during these routine meetings. We can have confidential interviews with inmates in a legal visit area, but this limits the number of persons we can speak to and focuses particular

attention on those inmates who agree to meet with us. All correspondence between our office and inmates is deemed privileged mail, meaning that correction officials cannot read the correspondence. But even if the substance of conversations or correspondence is not disclosed, the very fact that an inmate is speaking to someone from outside the Department about sexual issues can cause retaliation from staff or at least heightened scrutiny from security staff and/or prison administrators. Since confidential interviews with inmates require prior notification to prison officials, it is impossible to avoid revealing to the prison administration and security staff that an agency is meeting with an inmate. If surveys are sent to inmates, security staff will be aware of those inmates who choose to respond. In our experience, some correctional personnel will assume an inmate has a complaint from the very fact that s/he is in contact with us.

To assess sexual activities within prisons, an outside monitoring agency should design a protocol to investigate these issues that would minimize the barriers that exist in getting an accurate appraisal of this conduct. In order to maintain some degree of confidentiality for the inmates who will be seen, if at all possible, a monitoring agency should present the scope of its monitoring activities in general terms and should avoid identifying sexual misconduct as the primary focus. Specifically, prison line staff and other inmates should not know exactly why an inmate is being seen by the monitoring staff. For example, inmates could be interviewed to discuss violence generally in the prison and staff-inmate relations. It is important not only to speak with those directly affected by the sexual conduct, but also to other inmates who may be able to give some context and background to conditions in the prison that foster abuse or hamper adequate protection of inmates from sexual abuse. Those less engaged in specific incidents may have better insight into the broader forces at play in the prison and assist in identifying whether systemic problems that facilitate abuse. Speaking to many inmates, including those not directly involved in abuse, can give some measure of confidentiality to those who have been abused but do not want to disclose their situation.

Surveys can be an effective tool to get information about conditions in the prison. An outside agency must be vigilant to ensure that inmate responses are confidential and that no adverse consequences occur for inmate participation. We have also used standardized incident reporting forms that help inmates describe abusive activity and its consequences in an organized manner. Follow-up interviews should be conducted with inmates who agree to be seen by the agency. The agency should consider waiting to interview some individuals not in immediate crisis until they have been transferred to another facility or released from custody. In our experience, some inmates will not raise concerns about misconduct until they are no longer at the prison where they have been abused.

Second, many inmates will not disclose information about sexual activity until they have developed some level of trust and/or rapport with a representative of an outside monitor agency, even if that agency is generally identified as sympathetic to inmates' concerns. By design, most of our conversations with inmates are random encounters during our visits and of short duration. This has some advantage to the inmates, in that they will not necessarily be viewed by prison staff or other inmates as someone raising problems or making complaints about the prison, but rather just a person responding to questions. However, it is nearly impossible to establish a sufficient connection between the agency staff and these inmates during these encounters to develop the level of trust needed to discuss sexual activities. Inmates may feel more secure in revealing such information in a confidential survey. In our violence study, the rate of inmates reporting sexual

abuse beyond abusive pat frisks in mailed surveys (10.4%) was almost double the rate reported during oral surveys (5.45%). However, I believe many inmates responding to mail surveys are still reluctant to provide data that reveals specific information about their sexual activities unless the respondent has confidence in how the outside monitoring agency will use the information and will protect the disclosing party from retaliation.

In-depth interviews in a confidential setting can allow for a rapport to develop between the monitoring agency representative and an inmate. But selecting this method means that significantly fewer inmates can be contacted and therefore, those interviewed can be subjected to greater scrutiny and potential retaliation by those concerned about inmates talking about sex in prison. There is a clear tension between getting (a) wide participation of the inmate population in collecting this data but likely receiving information that significantly underreports abuse and lacks specificity about abuse, and (b) more intense interactions between far fewer inmates and the outside monitor, which hopefully will result in more accurate responses from the participants and the ability to secure greater detail about the circumstances of sexual activity. Given our violence study design, we opted for the broad coverage. I believe monitoring sexual activities would require including extensive confidential interviews in any investigative process.

Third, staff investigating sexual activities needs training in how to discuss these issues with inmates in an informed and sensitive way and how to assess whether the discussion of these issues may trigger adverse reactions from the participants due to their previous experience with sexual violence and/or other forms of physical and psychological abuse prior to and within prison. This should include training about: general education on interviewing individuals experiencing sexual abuse; posttraumatic stress disorder suffered by the vast majority of those experiencing sexual abuse; communicating with transgender inmates who are particularly vulnerable to sexual abuse in prison; inmates' perceptions of homosexuality and their reaction to same sex activity by those who perceive themselves as heterosexuals; and correction department's policies and practices concerning sexual activity, both investigative processes and treatment of inmates alleging abuse by staff or inmates. An outside agency must be able to advise an inmate on the consequences of revealing information about sexual activity to correction authorities. This should include referrals to other outside legal and advocacy entities that could inform the inmates of their rights and assist them in better understanding and dealing with the consequences of sexual violence. Since the outside agency will only have intermittent contact with inmates who reveal that they have been sexually abused, it should have some means to monitor whether the individual is adequately coping with his/her situation following disclosure of information about sexual activity. It is crucial that the staff encourage individuals who may experience adverse emotional reactions to their situation to stay in contact with the agency so that the agency can monitor the individual's safety and mental wellbeing. Periodic follow-up letters may be necessary to remain in contact with these inmates.

Fourth, once a monitoring agency learns about sexual abuse, it will inevitably face the situation whether to advise the inmate to pursue the matter with correction and/or law enforcement officials and to what extent the agency should act as an advocate for that person with these officials. The outside agency should have a clear policy on what they are going to say to inmates who allege that they have been abused by another inmate or staff and what role, if any, the agency will play with the correction department if an inmate files an allegation of sexual abuse. The outside monitor should fully inform inmates alleging abuse about their options to pursue the matter with prison

officials and/or to take legal action; however, the agency should also make clear that it is not representing that individual. I believe an outside monitor who learns about sexual abuse should discuss with the inmate whether s/he wants to raise this allegation with appropriate state authorities. If the inmate elects to pursue the matter, the agency should determine whether it needs to advocate with correction or other state officials for measures to protect the inmate from retaliation from other inmates or staff. Since the outside monitor may have limited influence on, and no control over, how the inmate will be treated by the correction officials, it may be difficult to advise the abused inmate on how to proceed. Moreover, since sexual contact is not only a violation of prison rules but also could result in criminal prosecution, acts by law enforcement officials may also result from revelation of sexual misconduct. Difficult issues could arise if the agency decides to act as an agent for the abused individual with the correction authorities prior to disclosing allegations of sexual abuse. Having a prior understanding with senior executive officials of the department about the outside agency's protocols in this regard and identifying the officials, ideally outside the immediate prison hierarchy, to whom this information will be communicated can avoid potential conflict with the corrections department and can hasten the department's response to protect an inmate who may be exposed to risks due to disclosure. To the extent the agency advocates for an individual who alleges abuse, it should be to ensure that the person is adequately protected, that s/he is receiving the psychological and medical services needed and that the complaint is fully investigated.

Fifth, it may be difficult for outside agencies to get correction department documents and records concerning incidents of sexual misconduct. Normally, allegations of inappropriate sexual conduct by an inmate and/or staff will result in a correction department investigation. Under freedom of information laws in most jurisdictions, documents about pending investigations are exempt from disclosure. In addition, securing documents about specific incidents can be challenging, even with a release from the victim of abuse. Finally, often medical information is a component of these records and therefore barred from disclosure by HIPPA regulations. It is important that an outside agency monitoring systemic practices has access to some of these records. This can be ensured in the authorizing legislation/protocols for the organization or by agreement with the corrections department early in the investigative process to resolve what documents and information the department will provide, even if some inmate-specific or staff-specific data is redacted. But even with these documents, an outside monitoring agency will not be aware of most incidents of sexual misconduct and therefore, access to general department-wide data, including PREA information, is important. We have not attempted to request New York's PREA data. It would be very useful if the Commission took a position on public access to underlying data submitted to the Bureau of Justice Statistics about sexual misconduct in the prisons.

In some respects, however, an outside agency may have some advantages over an official agency in monitoring sexual activity in prison. Inmates who are considering disclosure of sexual abuse can initiate the process with an outside agency prior to determining whether they want to start a formal complaint process; this could permit them the opportunity to get some advice about how to proceed before being exposed to the potential negative consequences of making a specific allegation. Inmates who are distrustful of prison authorities may feel safer disclosing this information to an independent authority and therefore, could be encouraged to come forward when they otherwise might never reveal the abuse they are experiencing. If a correction department is resistant to providing adequate protection for inmates alleging abuse, the outside agency may be more effective than the inmate-accuser in getting appropriate protections in place as soon as the

allegation is presented. Finally, investigating sexual abuse by an outside agency avoids the inherent conflict of interest arising when a state authority is investigating itself or a sister agency for conduct that could result in potential liability for the state if official misconduct is found.

Summary of CA's Safety and Violence Study Concerning Sexual Abuse in NY Prisons

In response to the creation of the Commission on Safety and Violence in the Prisons and to demonstrate the efficacy and usefulness of our monitoring work, we decided to undertake a project to assess safety and violence issues in New York's prisons. Unlike most CA studies which involve data collection for two years, we collected data for the project during an eight-month period. We presented preliminary results of the study in testimony before the Commission on Safety and Abuse in February 2006. We are currently preparing a final report on the study, which includes system-wide data obtained from the corrections department this year. The report will be published next spring, but I would like to share with this Commission some preliminary findings and conclusions concerning violence and sexual abuse in the prisons.

In order to evaluate safety and abuse in our prisons, we developed a survey instrument to measure inmates' perceptions about the level of violence both between staff and inmates and among inmates, and the factors that contribute to or reduce violence and abuse. The study's aim is not to determine whether specific physical confrontations between inmates and staff represent excessive uses of force, but rather to assess the level and causes of inmate-staff and inmate-inmate violence. The surveys contain self-reporting of personal experiences of violence and other abuse; the project has not, and realistically could not, investigate these reports to confirm their validity. We have also obtained and analyzed systemic information from the corrections department on violence, and this data will be compared to the results of our survey to ascertain if the general trends reported by the inmate-respondents are confirmed by department records.

We surveyed twelve prisons—five maximum security male prisons (Attica, Auburn, Clinton Eastern and Sing Sing), two male prisons (Southport and Upstate) which primarily confines inmates in disciplinary segregation, four medium security male prisons (Arthur Kill, Fishkill, Gowanda and Woodbourne) and one maximum security female prison (Bedford Hills)—with a combined population of 17,868 inmates, representing 28% of the entire state prison population. We have obtained 1,064 surveys from inmates in these prisons.

We have held separate 90-minute focus group meetings with Inmate Liaison Committees (inmates elected to represent the concerns of the prisoners) and civilian and security staff union representatives. During these sessions, we discuss each group's assessment of safety, violence and abuse issues, the causes or factors influencing the level of violence, and the formal and informal mechanisms that exist to curtail violence and abuse.

We have also obtained systemic Department records and data about: (a) use of force and unusual incident reports; (b) summary records of inmate grievances; (c) summaries of inmate disciplinary actions; (d) summaries of staff disciplinary actions; and (e) profiles of the current inmate population.

Based upon the data we have compiled and our focus group meetings, we can report the following preliminary findings and conclusions:

1. **Sexual Abuse by staff, including inappropriate pat frisks, occurs frequently at many prisons.** Twenty-seven percent of the respondents reported that they were personally subjected to some form of sexual abuse by staff, which, in our survey was defined as physical sexual abuse, verbal sexual harassment, or inappropriate touching in a sexual manner by staff during a pat frisk or other contact. Facilities with the highest percentage of reported sexual abuse experienced by survey respondents were Attica (56%), Southport (45%), Bedford Hills (40%), Clinton (38%) and Upstate (37%). The lowest rates of personal experiences with such abuse were reported by inmates at Woodbourne (5%), Clinton Annex (12%) and Eastern (13%). When asked if this sexual abuse included action other than inappropriate touching during pat frisks, 63% of the inmates stated that the abuse they experienced was limited to pat frisks. However, 29% of the respondents who had experienced some form of sexual abuse stated that their experiences with sexual abuse include conduct other than inappropriate contact during pat frisks, representing 7.8% of all survey respondents. Nearly one-quarter of the female survey respondents at Bedford Hills reported that they experienced non-pat frisk sexual abuse, a rate substantially higher than any of the male prisons. For the male institutions, the non-pat frisk sexual abuse ranged from no incidents at Fishkill and low rates at Woodbourne (2%) and Gowanda (2%) to much higher rates at Southport (18%), Upstate (11%), Attica (10%) and Auburn (9%). Overall, 21% of respondents said sexual abuse by staff was a frequent occurrence throughout the prison. But these figures varied significantly among the prisons, with high rates of frequent sexual abuse being reported at Attica (64%), Bedford Hills (53%), Southport (25%) and Clinton (24%), and low rates of frequent abuse at Woodbourne (1%), Eastern (3%), Clinton Annex (4%) and Arthur Kill (8%). Although our data does not permit us to define with any specificity the nature of the sexual abuse by staff, this data supports a conclusion that many inmates at some prisons perceive the pat frisk as sexually abusive and that 8% of the inmates who responded to the survey also experienced sexual abuse beyond inappropriate pat frisks.

2. **Sexual Activity among inmates, both consensual and nonconsensual, was acknowledged by inmates, but many inmates were reluctant to provide responses to general questions about such activity.** We asked inmates how often, if ever, does sexual activity occur among inmates at their prisons and how often is the sexual contact among inmates nonconsensual. To the first question, 58% of respondents did not provide a quantitative answer, including 43% who said they didn't know and 14% who failed to answer the question. To the question about nonconsensual sexual activity among inmates, 63% failed to respond with an estimate, including 34% who said they did not know and 29% who refused to answer the question. These rates of non-response were significantly higher than the response to most other questions, which generally had response rates of 90% or greater. The only other questions in our violence survey that had high rates of non-responses dealt with overall assessments of gang participation and drug use in the prisons, but these questions had non-response rates of 35% and 42%, respectively. For the approximate 40% of respondents who did reply to the question about sexual activity among inmates, 30% reported it happened frequently, 39% said it happened once or once in a while and 31% said it never happened. Of the 394 inmates who responded to the question about frequency of nonconsensual sexual activity among inmates, 6% reported these activities as frequent, 25% said they happened once or once in a while, and 69% said

it never happened. We did not ask any inmates if they had engaged in sexual activity with another inmate.

3. **System-wide data on inmate discipline reveals a significant amount of prison misconduct relates to sexual activity.** We obtained from the department a summary of inmate disciplinary actions for the period January 2003 through August 2006. The department summary contains four disciplinary categories for inmate sexual conduct: sexual offense; forcibly touching; stalking; and “other sexual offenses.” “Sexual offense” is defined as engaging in, encouraging, soliciting or attempting to force another to engage in any sexual act. “Other sex offenses” appears to refer to inmates who engage in lewd conduct or inmates who have inappropriate physical contact with another inmate such as kissing, embracing or hand-holding. For the three and two-third years covered by the data, there were a total of 1,152 sex offenses, 15 forcibly touching violations, 70 stalking violations, and 2,476 “other sex offenses.” The two large categories represent an annual rate of 314 sex offenses and 675 “other sex offenses” per year for a population of 63,500 inmates. The rates of sex offenses and “other sex offenses” at the female prisons were four times greater than for the male prison population.

4. **The data submitted by New York for PREA reveals few substantiated incidents of inmate-on-inmate sexual activity and an increasing rate of substantiated incidents of staff sexual misconduct.** The data published by the Bureau of Justice Statistics for the years 2004 through 2006 indicate few acts of substantiated inmate-on-inmate nonconsensual sexual acts; in 2004 there were two and only one each year in 2005 and 2006. In 2006, the first year it provided any significant data for this category, the state reported four substantiated cases of abusive inmate-on-inmate sexual contact. For staff sexual misconduct, there were many more allegations, substantiated cases and, unfortunately, many pending investigations, as the chart below indicates. It would be very useful for BJS to update the data from the previous year with the outcome of cases that were pending at the time of the report. The rate of substantiated cases is less than 10% of all the allegations of staff misconduct.

Summary of Bureau of Justice Data for New York from Reports on Sexual Violence 2004-06

Year	Staff Sexual Misconduct with Inmates				Staff Sexual Harassment of Inmates			
	Allegation	Substantiated	Unsubstantiated	Ongoing Investigation	Allegation	Substantiated	Unsubstantiated	Ongoing Investigation
2004	181	12	125	N/A	99	1	81	N/A
2005	138	13	60	65	20	2	8	10
2006	209	19	119	71	34	2	25	7

5. **System-wide summary of prison unusual incident reports about sexual misconduct focus on visiting room behavior and are far fewer than the inmate disciplinary records reflect.** We obtained computer summary of all department unusual incident reports for the period January 2003 through August 2006. There were 184 UIRs concerning sexual misconduct out of a total of 15,596 reports filed for these three and two-third years. A UIR is prepared for exceptional events in the prison, such as staff assaults,

serious contraband, fires, deaths, escapes and other disruptive events at the prisons. There were 55 sexual misconduct UIRs in 2003, 35 in 2004, 53 in 2005 and 40 for the period January through August 2006. Of the 184 sexual misconduct UIRs, 82 (45%) occurred in the visiting room with visitors. There were 36 UIRs that also alleged assaultive behavior by the inmate, which can be used to denote nonconsensual sexual activity. Of these 36 incidents, 15 involved assault on staff, 16 included assault on inmates and the remaining involved either visitors or non-employee victims.

6. **System-wide data on staff discipline reveals very few convictions for sexual misconduct by prison staff.** We also obtained summaries of all staff disciplinary actions completed during the period January 2003 through October 2006. There were 1,933 completed disciplinary actions taken against staff, but only ten involved sexual conduct: five for sexual harassment and five for improper dealing with an inmate of a sexual nature. There was one case in 2002, one in 2003, two in 2004, three in 2005 and three in 2006.
7. **Overall, there are a significant number of inmate-staff physical confrontations.** Thirty-eight percent of the inmates interviewed stated that they had at least one physical confrontation with staff during their current incarceration, and 18% reported having a physical confrontation with staff at the facility at which they were interviewed. Inmates had been at their current facility for a median of 10 months. We also observed significant differences among the facilities in the frequency of violence reported: at six of the facilities (Attica, Auburn, Bedford Hills, Clinton (Main), Southport and Upstate), the rate of physical confrontation with staff (25.5%) was more than twice the rate (11.0%) at the remaining facilities in the survey (Arthur Kill, Clinton Annex, Eastern, Fishkill, Gowanda, Sing Sing and Woodbourne). The highest rate of staff-inmate confrontations was at Southport, a prison containing almost exclusively inmates in disciplinary segregation who are locked in their cells 23 hours per day, in which more than 40% of the inmates reported having a confrontation with staff at that prison. In contrast, at Eastern, a maximum security institution that emphasizes programs and provides inmates with greater individual responsibility and autonomy, only 3% of the inmates reported having confrontations with staff.
8. **Inmate-on-inmate confrontations occur frequently at many prisons.** More than 50% of the study participants reported that they had a physical confrontation with another inmate during their current incarceration, and 23% stated they had a physical confrontation at their current facility. Again, there was significant variability among the prisons. Less than 10% of Eastern and Fishkill inmates reported being in a physical confrontation with another inmate at their current facility, whereas nearly half of the women at Bedford Hills and more than one-third of the inmates at Auburn reported having such a confrontation. Despite these levels of inmate-on-inmate confrontations, staff and inmates at many of the prisons we visited did not express great concern about the level of inmate-on-inmate violence. This information suggests that many confrontations arise from personal disputes between inmates, rather than from some extensive gang or other organized activities by groups of inmates.
9. **A significant percentage of inmates reported feeling unsafe in their prisons.** More than one-third of the inmates interviewed stated they feel unsafe frequently or very

frequently. For those inmates who reported feeling unsafe, nearly 50% said they feel “very unsafe.” There was also significant variability in the inmates’ responses according to their prison. At Attica, Auburn Clinton, Gowanda, Southport and Upstate, 50% or more of the inmates responded that they frequently felt unsafe, in comparison to significantly lower rates for inmates frequently feeling unsafe at Arthur Kill (16%), Clinton Annex (8%), Eastern (13%), Fishkill (25%), Sing Sing (30%) and Woodbourne (9%). In addition, nearly 60% of the inmates at Attica, Auburn, Clinton, Gowanda, Southport and Upstate reported feeling “very unsafe,” a rate twice as high as that for inmates at the other male prisons.

10. **Inmates were highly critical of the prison grievance system’s ability to resolve complaints of staff misconduct and expressed significant fear of retaliation for filing such complaints.** Nearly 70% of the inmates stated that the grievance system in their facility was poor, and only 12% said it was good. Inmates were particularly dissatisfied with the grievance system’s effectiveness for allegations of staff misconduct. It appears that many inmates pursue these grievances only to satisfy the procedural requirements for “exhausting their administrative remedies,” a pre-requisite for filing litigation; few have any hope of favorably resolving their complaints against staff through the formal grievance process. Staff were also critical of the grievance process, mainly because they believed that inmates abuse the process. Some staff members stated that they felt more than 90% of the grievances were inappropriate. More than two-thirds of the inmates who actually filed grievances reported that they had been retaliated against for making a complaint against staff, a response that was fairly uniform throughout the prisons we visited. For all inmate-respondents, 65% stated that retaliation for filing complaints against staff was common at their prisons, a response that was consistent for all prisons we surveyed. In focus groups with inmates, many stated that inmates are reluctant to file grievances against staff for fear of retaliation.

These preliminary findings suggest that there is a problem with sexual misconduct within New York’s prisons and that a small percentage of allegations of staff sexual misconduct result in disciplinary action, although those numbers appear to be increasing since PREA was enacted. It appears that the formal mechanisms to control sexual abuse and allow inmates to seek redress for violence are not effective. It is difficult to compare the PREA data to the information we have obtained from the department, and therefore, we urge that the underlying data submitted to PREA should be made public.

Conclusions

We appreciate this opportunity to describe the CA’s work and to offer our suggestions for how outside monitoring can have a significant positive impact on a corrections system. Given the generally closed nature of correctional institutions and the lack of political or public mechanisms to make these institutions accountable, it falls on organizations such as the CA to be society’s camera and report on what is actually happening inside prison walls. We urge the Commission to recommend increased outside scrutiny of prison systems, increased transparency and increased accountability for how inmates are treated and for the state of conditions of confinement. Violence and abuse, along with a lack of programming and inadequate general conditions, hinder inmates’ ability to learn and grow while they are

incarcerated – a reality that haunts society in high recidivism rates and bloated prison budgets. In too many cases, we return individuals to society in far worse condition to function effectively than when they entered. This is a lost opportunity. Reducing violence, particularly sexual violence, and increasing safety in our correctional facilities is not only a moral imperative, it is also fiscally responsible and a critical step in moving toward a more effective prison system.