

Testimony before the Commission on Safety and Abuse
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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. In addition, I will briefly summarize some of the findings and conclusions of our recent efforts to assess safety and violence issues in New York State prisons.

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?

▶ The organization must 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 the practical impact of 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 to evaluate systemic practices.

▶ The monitoring organization must make its observations, findings and conclusions available to public officials, including those outside the corrections department, as well as members of the general public. Moreover, the organization must 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 practice 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. 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 63,000 inmates in 70 facilities throughout the state, roughly 2,800 women and 60,200 men. The Project conducts monitoring trips to one of these prisons each month. 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.

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.

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 Biannual 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.

Approximately every two years 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

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.

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

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 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. In addition, an advisory panel could undertake a limited investigative role in assessing practices and/or might provide the department with feedback from the community concerning outsider perceptions about problems within the prisons. Although useful, an advisory panel has limited ability to address problems such as prison safety and violence.

A second model is a monitoring board that reports solely to the department and is akin to an external quality assurance (QA) committee. This type of body could have a more significant impact on department practices than an advisory board, but is limited both in terms of what it can review and, more importantly, what action it can take to foster change. The work product of QA committees is generally confidential, and it is entirely up to the corrections department to decide what issues to examine and what action, if any, it will take to address the identified problems. Moreover, there is usually very limited input into the QA process by outside agencies and individuals. Given the already closed nature of prisons, it is unlikely that such a role would be effective in reforming practices corrections departments are reluctant to change.

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. Such a role is extremely useful to the inmates who are served and important in addressing egregious situations, particularly in systems where the inmate grievance program is ineffectual. But individual actions can easily overwhelm an organization attempting to serve a prison population of thousands of inmates, leaving no resources to address more systemic problems. In addition, focusing on individual complaints generally precludes an organization from collecting and evaluating system-wide data, and in preparing comprehensive reports that evaluate systemic failures and propose remedial measures. Individual advocacy for inmates is sorely needed, but such advocacy often does not foster systemic reform.

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

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.

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.

The act of speaking to inmates during a tour, however, can expose them to some risks. The CA prison visits are monitored by security staff and personnel from DOCS central office. Although it is not common, some security personnel have listened to our conversations with inmates and, since they can see who we are talking to, there is the possibility that staff could retaliate against inmates with whom we have been in contact. Although we have received only a few reports of inmates being harassed for speaking with us, the intimidating environment can result in self-censorship. We attempt to insulate inmates from retaliation by speaking to as many inmates as possible and by presenting our findings based upon all inmates' comments, without identifying specific sources of information. For extremely sensitive information, we sometimes conduct confidential interviews in the visiting room used by legal counsel. These legal visits are difficult to arrange and would severely restrict the breadth of our contact if we used them for most inmate interactions. A reviewing organization must be sensitive to the risks to which cooperating inmates may be exposed, and the organization must be prepared to react forcefully when any individual is adversely affected. Ideally, a reviewing entity should have the authority to conduct confidential interviews with inmates.

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 600 inmates in eight 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

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

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.

Though gathering data informally has been mostly successful, responses to our FOIL requests have been more problematic. We have experienced significant delays in receiving large requests for system-wide information. Moreover, pursuant to FOIL law, many items that are requested can be withheld, particularly in the prison context. Most freedom of information laws exempt documents that are part of a pending investigation. In addition, many documents may contain information that state officials categorize as subject to privacy protections, such as medical information about inmate and staff injuries, inmate records or disciplinary actions against staff. These records can be withheld if the requesting authority does not have a release from the individuals involved. This can make it effectively impossible to look at systemic data. The result is that FOIL is an inefficient and, at times, ineffective tool to access some of this information.

But even if an outside organization has enhanced access to corrections department records, the data needed to assess prison practices may not be available because the prison administration does not record the information or does not store it in a manner that allows for effective retrieval. For example, many prison systems designate the types of use of force that must be documented. The threshold for such documentation may not include many incidents where inmates were in fact subjected to force, particularly if no significant injury occurred. More importantly, much of the most useful information about inmates and staff is buried in individual inmate and staff records. The corrections department can assert that it is unable to retrieve such information without reviewing thousands, and possibly hundreds of thousands of documents. Few courts would require such a review of documents to extract this information. By failing to summarize information or to keep logs, computer records or some system of record keeping to identify those involved in misconduct or adversely affected by prison conditions, corrections departments can insulate themselves from scrutiny.

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: use of force incidents in the prisons; inmate and staff injuries; allegations of staff misconduct; litigation concerning staff misconduct; and staff and inmate disciplinary actions. It would be useful for this Commission to suggest a national definition for "use of force" so that records from one jurisdiction could be compared to another's.

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

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.

In recent years, the CA has not had a cooperative relationship with DOCS and thus has not been able to include in its work many of these components. The Department has 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 intends to take to address the issues raised in our reports.

Although this is an extreme reaction to outside monitoring, it is predictable that many corrections departments will not voluntarily undertake these 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. 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.

Summary of CA's Safety and Violence Study

In response to the creation of this Commission and to demonstrate the efficacy and usefulness of our monitoring work, we decided to undertake a short-term project to assess safety and violence issues in New York's prisons. Unlike most CA studies, which are conducted over a one- to two-year period, we will complete this project in an eight-month period. We plan to produce a report on the topic in the spring but would like to share with the Commission some preliminary findings and conclusions.

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 themselves, 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 are in the process of obtaining and analyzing 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.

To date we have surveyed eight male prisons—four maximum security prisons (Attica, Auburn, Eastern and Sing Sing), one facility (Southport) primarily housing inmates confined in disciplinary segregation, and three medium security prisons (Arthur Kill, Fishkill and Gowanda)—with a combined population of 12,125 inmates, representing 19% of the entire state prison population. We have obtained 609 surveys from inmates within these prisons.

We have also 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. Within the next six weeks, we intend to visit four more facilities, including New York State's only maximum security prison for women.

We have also attempted to obtain systemic Department records and data about: (a) use of force and unusual incident reports; (b) documentation of inmate and staff injuries; (c) summary records of inmate grievances; (d) summaries of inmate disciplinary actions; (e) summaries of staff disciplinary actions; (f) summaries of litigation on behalf of inmates against the Department; and (g) profiles of the current inmate population. We expect to receive some of the requested information by early February and will include analysis of this information in our final report.

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

- 1. Overall, there are a significant number of inmate-staff physical confrontations.** Thirty-seven 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 11 months. We also observed significant differences among the facilities in the frequency of violence reported: at four of the facilities located in the northern and western regions of the state (Attica, Auburn, Gowanda and Southport), the rate of physical confrontation with staff (22.3%) was nearly twice the rate (12.2%) at the four facilities closer to New York City (Arthur Kill, Eastern, Fishkill and Sing Sing). 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 one-third 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.
- 2. There is little evidence that a significant number of inmates or staff are seriously injured in inmate-staff confrontations.** Although we have not received systemic information about injuries, based upon our surveys and focus group meetings, it does not appear that there have been many incidents of inmate-staff encounters resulting in significant injury to either staff or the inmate population.
- 3. At some prisons, there are significantly more incidents during the evening shift (3-11pm).** At most prisons we visited, inmates, and sometimes staff, acknowledged that inmate-staff confrontations are more likely to occur with younger officers who are less experienced and skilled at communicating with inmates and are sometimes more rigid in their application of the rules. Since the evening shift is less desirable, more senior corrections officers request, and are placed on, the day shift, when senior management are

also present. A significantly higher percentage of younger officers are thus on duty during the 3-11 shift. At some facilities, inmates described a substantial change in the operation of the facility during the evenings, when some officers impose arbitrary rules and seem more prone to commit acts of abuse. Staff suggested that more incidents occur during this shift because inmates are idle and it is a time when inmates can more freely mix with one another and can exchange contraband.

4. **Inmates reported numerous experiences of staff harassment and abuse other than physical violence.** More than 70% of the survey participants stated they had personally experienced verbal harassment, 50% complained of abusive pat frisk procedures, 56% of those filing a grievance reported experiencing some form of retaliation or harassment for filing a complaint about staff, 43% stated that their property had been improperly destroyed or stolen, and 41% reported interference with their mail or packages. As with physical confrontations with staff, there were significant variations in inmate reports about these practices from prison to prison.
5. **Inmate-on-inmate confrontations seem to occur fairly 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 nearly 20% 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 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.
6. **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, Gowanda and Southport, approximately 50% of the inmates responded that they frequently felt unsafe, in comparison to only 20% for inmates at Arthur Kill, Eastern, Fishkill and Sing Sing. In addition, 60% of the inmates who felt unsafe in the four upstate facilities reported feeling “very unsafe,” a rate twice as high as that for inmates in the prisons located downstate.
7. **Inmates reported significant levels of racial tension within some of the prisons.** The number of inmates who reported significant racial tension was particularly high in facilities in which there were few security staff of color. In our study, 59% of respondents were African American, 25% were Hispanic, 13% were Caucasian, and 3% were from other racial/ethnic backgrounds – demographics similar to the overall population in DOCS. The staff at these prisons, however, does not mirror the racial/ethnic background of the inmate population. At Attica, Auburn and Southport, persons of color on the security staff represent only 3%-4% of all security personnel, and at Gowanda people of color account for only 6% of the security staff. At these four prisons, 29% of the inmates reported that

racial tension was widespread, and 37% stated that racial discrimination contributed “a lot” to the staff abuse problem. In contrast, at Arthur Kill, Eastern, Fishkill and Sing Sing, there is much greater representation of security staff of color. Although DOCS has not yet provided the CA with complete data, we estimate that at Fishkill, Sing Sing and Arthur Kill, 25%-50% of the security staff are people of color. Eastern has a lower percentage of security staff of color, but a significant percentage of civilian staff, who also have extensive interactions with the inmate population, are people of color. At these latter four prisons, only 6% of the inmates reported racial tension as widespread, and only 15% stated that racial discrimination contributes “a lot” to abuse, rates two to five times less than comparable data at the upstate prisons. Moreover, inmates at the prisons with low numbers of staff of color also reported statistically significant higher levels of inmate-staff confrontations and other forms of staff harassment and abuse.

8. **Gang activity and contraband drug use are common in several of the prisons we visited, but were not necessarily strong contributing factors to the level of violence at all prisons.** Overall, 58% of inmate-respondents reported gang activity as very or somewhat common in the prisons, and only 8% stated that there was no gang activity. However, less than 20% reported that gang activity contributed “a lot” to violence, and 64% expressed the view that gang activity contributed very little or not at all to violence in their prisons. As was the case with other data, there was variability in inmate responses from prison to prison. At Auburn, over 70% of the inmates thought gang activity contributed a lot or somewhat to violence there, and 55% of Attica inmates reported similar opinions. In contrast, at Eastern, 93% of the inmates reported that gang activity had little or no influence on violence. In our focus groups, staff somewhat mirrored these results. Auburn and Attica staff expressed the view that gangs were a problem at their facilities, but at many of the other prisons, staff felt that gangs were not a major problem. The data for drug use and its effects on violence showed similar trends. Overall, 25% of the inmates reported drug use as very common, and 30% said it was somewhat common. Facilities with especially high numbers of reports of very or somewhat common drug use were Auburn (84%), Sing Sing (82%) and Attica (67%). In contrast, reports of such drug use were two to three times lower at Arthur Kill (25%), Gowanda (27%) and Fishkill (38%). Although there was significant drug use, many inmates did not feel that drug use and trafficking were major contributing factors to violence. Overall, 68% of the respondents reported that drug activities contributed very little or not at all to violence in prison, and only 12% felt it contributed a lot. At Attica, Auburn and Sing Sing, however, 47% of the inmates stated that drug activities contributed a lot or somewhat to violence, whereas at Arthur Kill, Eastern and Fishkill, only 16% reported drug activity as contributing a lot or somewhat to violence.
9. **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 three-quarters of the inmates stated that the grievance system in their facility was poor, and only 9% 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 half 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, more than 60% 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.

10. **The formal disciplinary system for staff misconduct does not appear to be effective in controlling staff abuse of inmates, and staff feel that the process for resolving inmate complaints takes too long.** The inmates in our focus groups were skeptical about whether formal disciplinary actions are ever taken against staff who physically assault or otherwise abuse inmates. We heard almost no examples of disciplinary action against staff for abusive conduct at any of the prisons we visited. In our survey responses, nearly 70% of inmates stated that the facility superintendent had little or no control over staff abuse, and 72% felt that the department's formal investigative unit had little or no impact. In focus groups, staff members were critical of the investigative and disciplinary process for staff because they believed the process took too long, frequently more than a year, and that even trivial inmate complaints triggered investigations. But staff focus group participants did not suggest that staff were inappropriately disciplined when the process was completed. Prison executive teams were reticent to comment on the formal staff disciplinary mechanism, but none expressed a strong view that this process was an effective tool to control staff misconduct.
11. **Informal mechanisms used by certain prison superintendents to counsel and reprimand abusive staff seem to have a positive impact. At other prisons, the prison administration seems to have little control over the staff.** At a few facilities, inmates, line staff and the executive team described informal measures used by the prison superintendent to control staff behavior. They reported that some superintendents take an active role in identifying staff who have frequent confrontations with inmates, counseling them about their conduct, and occasionally changing their job assignments in an attempt to alter their behavior. These efforts seem to be effective in some cases and to create a culture in the prison that fosters better staff-inmate relations. At several other prisons, inmates reported that the line staff behave as if they run the facility and that the administration has little power or control to curtail inappropriate behavior by rogue officers.
12. **Increased programs and reduction in inmate idleness were viewed by inmates and some staff as effective ways to reduce the incidence of violence inside prison.** Prisons at which the inmate population was permitted greater opportunities to participate in programs and jobs reported less violence. Survey-participants who were not in disciplinary confinement and were programmed were substantially less likely to report having had a physical confrontation with staff at their current facility (14%) than similar inmates without a program (21%). Several staff members commented in our focus groups

that they believed idleness played a significant role in the amount of violence at their prison.

These preliminary findings suggest that there is a problem with violence and abuse within New York's prisons, although serious physical injury is not the primary concern. It appears that the formal mechanisms to control violence and allow inmates to seek redress for violence are not effective. Strong leadership from the facility's superintendent and executive team, along with informal mechanisms to curb misbehavior, however, can create a more positive atmosphere and lead to significantly less violence.

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 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.