U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFINGS

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FRIDAY, FEBRUARY 8, 2008

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The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 9:52 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chairman
TODD GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLEN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

DR. ROBERT LERNER, Delegated the Authority of the Staff Director, OSD

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
TERESA BROOKS
MARGARET BUTLER
CHRISTOPHER BYRNES, Chief, Regional Programs Unit
DEBRA CARR, Esq., Associate Deputy Staff Director, OSD
DEMITRIA DEAAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MAJA JWEIED
MONICA KIBLER
SOCK-FOON MacDOUGAL, Acting Chief, PAU
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
LENORE OSTROWSKY
EILEEN RUDERT
KARA SILVERSTEIN, Attorney Advisor, OSD
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
RICHARD SCHMELCHEL
KIMBERLY SCHULD

PANELISTS:

CHAPLAIN JOSEPH PRYOR
STEVEN T. McFARLAND
CAROLYN ATKINS
FRANK CILLUFFO
GREGORY SAATHOFF
LANE DILG
IMAM ABUQUADIR AL-AMIN
ALEX LUCHENITSER
CHAPLAIN GARY FRIEDMAN
PATRICK NOLAN
REV. PATRICK MCCOLLUM
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9:52 a.m.

CHAIRMAN REYNOLDS: On the record.

I. INTRODUCTORY REMARKS BY CHAIRMAN

CHAIRMAN REYNOLDS: On behalf of the Commission on Civil Rights, I welcome everyone to this briefing on the Religious Discrimination and Prisoners' Rights. The testimony and materials gathered as a part of this briefing will become part of the 2008 Statutory Report enforcing prohibitions of religious discriminations in prisons. This project examines the extent and severity of religious discrimination in Federal/state prisons throughout the United States, Federal and state laws and regulations relating to the religious freedom of prisoners, the policies and practices of the U.S. Department of Justice in enforcing these rights and the ability of faith-based organizations to participate in providing services to prisoners.

At this briefing, a panel of experts will discuss the government's efforts to enforce Federal civil rights, prohibiting religious discrimination in the administration and management of the Federal and state prisons.

(Off the record comments.)
CHAIRMAN REYNOLDS: The record will be open until Monday, March 10, 2008 and the public comments will be mailed to the U.S. Commission on Civil Rights Office of the Civil Rights Evaluation, Room 740, 624 9th Street, N.W., Washington, D.C. 20425. 

This morning we are pleased to welcome two panels of experts that will address this topic. The first panel, will the first panel come up and take your place at that chairs.

SPEAKERS' PRESENTATIONS

PANEL 1 - FREE EXERCISE OF INMATES' RELIGIOUS RIGHTS VS. PRISON SECURITY

(Panelists are seated.)

CHAIRMAN REYNOLDS: Welcome. The participants in this first panel are Chaplain Joseph Pryor, Chaplaincy Administrator for the Federal Bureau of Prisons; Steven T. McFarland, Director of the Task Force for Faith-Based and Community Initiatives at the Office of the Deputy Attorney General of the U.S. Department of Justice; Carol Atkins, Warden of the Maryland Correctional Institution at Jessup; and --

Please help me with the pronunciation of your last name.

MR. SAATHOFF: Saathoff.

CHAIRMAN REYNOLDS: Saathoff. Well, I'm
sorry.

MR. CILLUFFO: Cilluffo.

CHAIRMAN REYNOLDS: Cilluffo. Okay.

Frank Cilluffo, Associate Vice President for Homeland Security and Director at the Homeland Security Policy Institute at George Washington University; and Gregory Saathoff, Executive Director of Critical Incident Analysis Group at the University of Virginia.

Now you all have very long bios and forgive me for chopping off some of your accomplishments, but I have to make up some time. First up, we'll have Chaplain Pryor who currently serves as that Chaplaincy Administrator for the Federal Bureau of Prisons.

He began his career in 1990 at the Federal Correction Institute in Tallahassee, Florida. His career has taken him to the United States Penitentiary at Lewisburg, Pennsylvania, South Central Regional Office at Dallas, Texas and the Federal Medical Center Causewell in Fort Worth, Texas. Chaplain Pryor also served as the Bureau's First Faith-Based Program's coordinator. He was instrumental in developing and implementing Life Connections, the Bureau's residential faith-based re-entry program.

Over the course of his career, Chaplain
Pryor has received the J. Michael Quinlan Director's Award for his work in crisis intervention and a Director Special Recognitions Group Award. He is an ordained Baptist minister and has served in churches in West Virginia, North Carolina and Texas.

Next will be Mr. McFarland who is the Director of the Task Force on Faith-Based and Community Initiatives at the Department of Justice. He was appointed to that position in May of `05. He chairs the Review Panel on Prison Rape. He is the former Chair of the Prisoner Re-entry Working Group that developed the model for what is now the Re-entry Pilot of the Justice Department's Comprehensive Anti-Gang Initiative in ten cities.

Previously, he's helped advised U.S. foreign policy makers regarding religious prosecution as First Executive Director of the U.S. Commission on International Religious Freedom, an independent advisory body of the Federal Government.

Next, we have Ms. Atkins who graduated from Johns Hopkins University receiving her bachelors degree in Business Management and Leadership. She has also obtained a masters degree in Business Management in 2002.

Since 1988, she has served with the
Maryland Correctional Services as a sergeant at the
Maryland Correctional Adjustment Center. She started
working as an institutional property officer, was
promoted to the rank of lieutenant and later in 1999
became a member of the Department's first security
audit team. In 2000, Ms. Atkins was promoted to
captain. She was the first female to hold the
position of Director of the Intelligence Coordinating
Unit for the Maryland Department of Public Safety and
Correctional Facilities.

Next, we have Mr. Frank Cilluffo, the
Associate Vice President for Homeland Security at The
George Washington University. Mr. Cilluffo leads the
University's Homeland Security's efforts on Policy,
Research, Education and Training. He directs the
multidisciplinary Homeland Security Policy Institute,
a unique nonpartisan "think and do tank" that builds
bridges between theory and practice to advance
Homeland Security through a multi- and
interdisciplinary approach.

And, finally, we have Dr. Saathoff who is
an Associate Professor of Research in Psychiatry and
Neurobehavioral Sciences and Associate Professor of
Emergency Medicine at the University of Virginia's
School of Medicine. He also serves as the Executive
Director of the University of Virginia's Critical Incident Analysis Group. In 1996, he was appointed to a commission charged with developing a methodology to enable the FBI to better access non governmental expertise during times of crisis.

So, with that, I want to welcome you all. Everyone has ten minutes. At the end of your ten minutes, I'll try to give you a warning when you're getting close. Once you go over, I'm afraid I'm going to have to cut you off. With that, first up is Chaplain Pryor.

II. Speakers' Presentations

CHAPLAIN PRYOR: Thank you. Good morning, everyone. First, let me thank you for this opportunity to participate in this very important dialogue. For the past 17 years, I've been privileged to serve as a chaplain in an organization that places a high value on the religious rights of incarcerated persons.

As a chaplain in the Bureau of Prisons, I have served in low and high security institutions, a female medical center, in regional and central office positions. At every stop along the way, I received total support in my efforts to minister to the men and the women in our care. I have myself and have
witnessed dozens of other chaplains offer pastoral comfort to grieving prisoners regardless of whether they were a person of strong faith or no faith at all.

I and my fellow chaplains have dined with prisoners as they celebrated holy days with a ceremonial meal. We have heard the call to prayer from Muslims and witnessed the blowing of the Shofar by the Jews. We have marveled at the meaningful dances of the Native Americans and the reverence of Mass by Catholics. We have tiptoed past the quiet meditation of Buddhist and rejoiced with Protestant Christians in songs of praise. We have smiled at the reggae rhythms of Rastafarians and appreciated the devotion to nature of the Wiccans. While we hold to our own religious faith, we are supported in our efforts to protect the religious freedoms of others.

So it is truly a privilege for me to be with you today to share some thoughts and to hopefully give you a fresh perspective on the delicate balance between the accommodation of religious expression and prison security. I would like to outline the challenge of accommodating the practice of religion in a correctional environment. To achieve this purpose, I want to talk a little bit about the history of religion in prison for just a minute or two.
Religion in the American justice system has its roots in the colonial period of the late 1600s and early 1700s. During this time, colonists adhered to the correctional techniques inherited from England and based on a Puritan philosophy. Crime was viewed as a sin against God and the criminal was seen as a person cursed by the Devil. Until the 1770s, imprisonment was for those waiting to learn their punishment or for the poor who could not afford their fines or debts.

During this time, the Quakers introduced the practice of incarceration as a punishment for crime. William Penn, the first Governor of Pennsylvania and a Quaker himself, had experienced the harshness and brutality of jail having been imprisoned himself for his own religious beliefs.

As a result, he developed what was known as the "Great Code." Under this code, capital punishment was only for murderers. The government paid for the food and the housing of prisoners and inmates were required to do useful work. Sounds familiar. Many of today's correctional practices can be traced to the Great Code.

A component of this new and radical correctional method required prisoners to attend
Sunday services and encourage them to read Scriptures. The goal was to reform the individual through helping them see the error of their ways, thereby, preparing them for a successful re-entry into society. Interestingly, the National Focus on Re-Entry Programs is still flourishing today and has been infused with new energy over the past decade. The right to practice one's religion during incarceration is pivotal to this re-entry effort.

In 1787, and I love the name of this group, I don't know what their acronym would be, The Philadelphia Society for Alleviating the Miseries of Public Prisons advocated to raise the humane conditions of prisons. I tried to do the acronym, but it didn't work very well. The organization sought better sanitation standards, quality healthcare, the separation of inmates by the severity of their offense, and a prisoner's right to community religious leaders. That was in 1787.

While over the decades correctional systems have evolved in many ways, religion has always played a role in the treatment and rehabilitation of prisoners. Recent laws such as The Religious Land Use and Institutionalized Persons Act, RLUIPA and the Religious Freedom Restoration Act, RFRA, have brought
to the forefront the natural attention between a person's free exercise of religion and the need of a correctional institution to operate in a secure and orderly fashion.

In 1987, the United States Supreme Court decided the *Turner v. Safley* case. In this case, two inmates in Missouri prisons wanted to write to each other and to get married. The requests were in opposition to prison regulations. The court decided that the inmates did have the right to get married, but their writing to each other was a legitimate correctional concern. More importantly, as a result of this case, the Supreme Court established a balancing test to be applied to future cases involving inmates and their constitutional rights.

The balancing test involves four questions. (1) Is there a valid connection between the regulation and the legitimate correctional interest? (2) Are inmates allowed other ways of exercising their rights? (3) How much will allowing the inmates to exercise this right affect others in the facility? (4) Are there available alternatives that accommodate both interests?

In the same year, the Supreme Court heard the case of *O'Lone v. Shabazz* in which a group of
Islamic inmates were suing for the right to leave their worksite in the middle of the day every Friday for Jumah prayer. The balancing test was applied and the court ruled that the inmates' rights were not being violated since they had other ample opportunities to practice their religion.

What the court acknowledged with these cases is the natural and daily tension that exists between the accommodation of a person's religious rights and the legitimate correctional interest of an institution. Outside of the courts, these decisions are made by chaplains and other prison officials multiple times every day.

On any given day in any correctional institution, the religious rights of inmates are accommodated without the attention of the courts or the general public. Inmates are given the opportunity to worship and pray, observe religious holy days, participate in ceremonial meals and adhere to religious diets.

In 1993, the Religious Freedom Restoration Act was enacted by Congress due in part to the belief by some that the balancing test gave the government too much opportunity to restrict the free exercise of a person's religion. With the set of two criteria,
the restriction must show a compelling government
interest and the restriction must be the least
restrictive means of furthering that interest.

In 2000, Congress passed the RLUIPA, the
Religious Land Use and Institutionalized Persons Act
and in it it further defines for prisoners their
rights under the law. It basically says the same two
criteria, but it specifically assigns it to prisons
and in my paper, I've highlighted several cases that
have come to light using RLUIPA and RFRA as a basis.

The Bureau of Prisons has policies in
place that guide chaplains. We have a technical
reference manual that also provides further guidance
to chaplains which has been adopted by many of the
state systems. Every institution in the Bureau has to
develop an institution supplement to the Policy on
Religious Beliefs and Practices in order for them to
apply the policy to the unique needs of their
institution. We also have religious issues committees
at the local institution, regional and central office
levels that deal with new inmate religious requests
for accommodation and if they are turned down at those
levels, they can go through the administrative remedy
process at both the institution, regional and central
office levels to gain an answer to their request
before it ever reaches the court systems.

The Bureau of Prisons has 7,000 volunteers from 14 different faith traditions, 209 contractors representing 10 faith traditions, 251 chaplains representing Protestant, Catholic, Islamic, Jewish, Buddhist and Orthodox faith traditions and, finally, in 2007, approximately 59,000 inmates participated in weekly religious observances while chaplaincy teams on average conducted 37 counseling sessions each week and delivered an average of seven emergency notifications each week.

We have a mission statement that I'll conclude with that says, "The mission of the Chaplaincy Services Department is to accommodate the free exercise of religion by providing pastoral care to all Federal inmates and facilitating opportunities to pursue individual religious beliefs and practices in accordance with the law, Federal regulations and Bureau of Prisons policies. The Chaplain shall provide religious worship, education, counseling, spiritual direction, support and crisis intervention to accommodate the diverse religious needs of inmates and when appropriate pastoral care may be extended to staff." And it is from this mission statement the chaplains in the Bureau of Prisons define their
existence as we are committed to the accommodation of legitimate religious practices with inmates in our custody.

Thank you.

CHAIRMAN REYNOLDS: Okay. Thank you. Mr. McFarland.

MR. McFARLAND: Thank you, Chairman Reynolds, Members of the Commission. It's a pleasure to be here. My following views are only my own. They're not necessarily shared by the Justice Department. My views are based upon several decades of work in Religious Liberty law, both at the trial and appellate stages, and all levels of state and Federal courts. And I co-lead with the ACLU the lobbying efforts of a broad coalition that saw Congress pass the Religious Freedom Restoration Act in '93 which will be discussed later as Pastor Joe or Chaplain Joe has just mentioned.

It's also been my privilege to serve as a officer of the world's largest faith-based organization serving prisoners, Prison Fellowship International, as well as to spend most of my time in the Justice Department on prisoner issues. So there's nothing I'd rather talk about that's nearer and dearer to my heart.
The first question that I thought might be helpful to address is how much religion do inmates have a legal right to. Must prisons limit religious gatherings and activities to those that are central to or required by an inmate's faith? Does the law forbid the government from providing inmates with anything more than chapel and the most compulsory sacraments?

The answer is the 1st Amendment requires that prisons try to accommodate religious beliefs that are sincerely held by prisoners, not just those beliefs or practices that are compulsory or what the government thinks are central tenets. In fact, obviously there are problems with the 1st Amendment if the government got into the business of deciding what doctrines and practices were central to each faith. On the other hand, the 1st Amendment prohibits government from promoting religion over secularism and from favoring one faith over another. So between these two bookends, there is a lot of space. There's a lot of religious activity between what is required as a minimum of the 1st Amendment and what is prohibited by the 1st Amendment Establishment Clause.

So the Supreme Court has recognized that there's plenty of room or "play in the joints" as one Justice put it between these two complementary clauses.
in the 1st Amendment. An example, the 1st complementary clause might not require that the Federal Bureau of Prisons as it has offer inmates the opportunity to volunteer for a faith-based program as Pastor Pryor, Chaplain Pryor, mentioned that he was instrumental in designing such a program. Arguably, it was not required, but it's certainly not prohibited by the 1st Amendment as long as it is furthering a secular purpose and effect and namely that purpose is to reduce recidivism.

Let me focus on those “God Pods,” if you will, on page three of my remarks that must the prison meet the religious needs of inmates who follow small or nontraditional religions or just those of mainstream or Abrahamic faiths. In other words, is it enough to provide for Catholics, Protestants, Jews and Muslims and leave the more minority religions or nontraditional faiths to volunteers?

As government officials, chaplains may not favor any religion including atheism or agnosticism over another. Neither may corrections personnel promote faith over unbelief regardless of the number of inmates that embrace either. The Federal Constitution as well as a Federal statute, namely, the RFRA and the RLUIPA for that matter requires state and
Federal officials to accommodate any sincere exercise of religion subject to the interests of institutional security, and inmate safety, health, correction or discipline.

Then what about these faith or character-based residential programs or God Pods, if you will? Does the law permit, not require, but permit the Federal Prison System and up to 22 different states that have such programs currently operating? Is that permitted? And I think the answer is yes. We can chart a course for such programs that respects both the 1st Amendment's free exercise as well as the establishment clause, based on recent court decisions.

In 2002, the Supreme Court ruled in the Zelman case that the 1st Amendment's religion clause permits the government to provide social service programs by funding faith-based organizations. The court said that government can use public funds to provide a secular social service, in this case education in Cleveland, even if it's offered from a religious point of view as long as four tests are met and these four tests would similarly be applied and have been applied to any kind of pre-release, residential, faith-based programming in a prison.

(1) The state must have a secular
religion-neutral purpose, in this case, improving the rate of successful re-entry by inmates. (2) The participation must be completely voluntary and available to many inmates regardless of their religion or the lack of it. (3) The inmates must be given a "genuine and independent private choice," I'm quoting from the Court Majority in Zelman, "between religious and secular programs." (4) There must be a secular alternative available to inmates with benefits that are comparable to those in the religious option.

So inside a prison, as you well know, the government controls everything that inmates do 24/7 and it determines all the options from which they can choose. They obviously cannot offer inmates of every faith the same program with all the same amenities. There may be over 3,000 faiths represented in the United States and many of them in state prisons, in the prison population. So they could not feasibly repeat or provide programming for all of those faiths. And relatively few religious groups are willing to volunteer or even be paid to work among inmates.

So how can prisons offer inmates a genuine private choice of religious and secular programs? A faith and character-based re-entry preparation program can meet this requirement of a genuine and
independent, private choice if inmates are given an option of choosing a secular version with all the same benefits.

This has recently been planned in the design of the Life Connections Program that Chaplain Pryor has been involved in. I've visited three of the six sites. As part of its latest iteration of these kinds of programs, it's now called the Residential Re-entry Program. The Federal Bureau of Prisons solicited bids last summer from non-governmental organizations that would train inmates 40 hours per week in secular topics, not spiritual development, but secular topics, how to use their leisure time, how to manage funds, how to be a responsible parent, how to get along with people, how to resist drug abuse. These topics are offered and will be offered from a secular, nonreligious perspective.

Now in another dorm, those same topics, secular topics, might be addressed from a Jewish perspective and everybody volunteering there knows that and they want to explore how to become a more responsible parent and hold down a job from that perspective. Another could be Native American perspective.

It's important that the Bureau and any
other prison doing this not provide any special
incentives or advantages or collateral benefits for
choosing a religious perspective over a secular
perspective. In other words, the God Pod inmates
shouldn't receive more family visitation. They should
not be living in better facilities. They shouldn't be
getting a higher per diem (if any) and there shouldn't
be any other incentives to choose any one option over
another.

So, in conclusion, the facts about
recidivism of America's prisoners, they demand
dramatic change, including in the role of faith among
inmates. We have about 700,000 people who will be
released this year from U.S. prisons (that doesn't
include jails), averaging over 1900 per day. That
means three times the U.S. Marine Corps worth of
individuals will be released just this year from
prison. As many as two-thirds of them will be re-
arrested within 36 months after release.

We spend $60 billion per year on our
correctional system. Yet it fails to correct more
than two-thirds of its targets. As the world's
largest incarcerator, America cannot afford, simply
cannot afford, to sterilize its prisons of the seeds
of faith and of free though limited religious
exercise. And the good news is that the law neither requires nor permits the government to do that.

Thank you for the privilege to address you.

CHAIRMAN REYNOLDS: Thank you. Ms. Atkins.

MS. ATKINS: Good morning and thank you for the privilege of being here this morning.

What I intend to do this morning is to tell you about my experience coming up through the ranks from an officer to an administrator and how that relates into the religion and security aspect of our prisoners at our facilities in Maryland. Initially, when I was an officer, I had the opportunity to be assigned posting situations where visitors or volunteers would be coming into the facility. Part of my duties may have been to search those individuals.

With that, coming in as an officer, one of the things that I was taught early on was to be skeptical of everyone and then, of course, you were wondering why are these people coming in to see murderers and rapists. What I learned throughout my career is that these individuals no matter what crimes they may have committed can be rehabilitated. The religious aspect can change a mindset and can make a
prison a more nonviolent place to be.

We go through -- Now as an administrator, I've had the opportunity to now manage an institution and what I do as a manager is to encourage my volunteers. At my facility alone, we have 300 religious volunteers. With that, I'm grateful for all the volunteers that come in. One of the issues we face is that it is very difficult to get volunteers from non Christian religions to come into the facilities.

So sometimes it gives the appearance that there is favoritism towards one religion over another. That is not the case. I personally meet with volunteers, try to participate in programs, encourage them to continue what they are doing because they allow me to run a less violent institution to help maintain security.

Part of what I have to do is to provide knowledge and information to my staff. When I came in as an officer, I didn't have a clue when it came to the different religions that we were by law have to acknowledge for the individuals that we house. Part of my duties as an administrator is to inform my staff so that they're open and they're acceptable and acknowledge what is going on when these volunteers and
visitors come in, to make it an environment where people want to come in to assist these people that are in need.

Mr. McFarland stated there by the thousands we're releasing these men and women back into our communities. My personal belief and what I've experienced is that individuals practicing a faith no matter what that faith may be are less violent, are more likely to participate in prison programs and hopefully throughout their incarceration are less likely to be involved in disciplinary matters.

I see it -- I have a legal obligation and I believe a moral one to uphold the law. With that, as an administrator, I do not determine which religious programs, which religions, we acknowledge. I have to follow the policy that is given to us. With that, in rolling along we acknowledge 15 religions and with those religions, they have at 40 sects and denominations with them. As an administrator, it becomes a policy and a problem how do you allow all of these particular religions and denominations to have adequate meeting time and practice time with a limited budget, with limited resources as far as staffing goes, because again we have to do property searches,
do these backgrounds for these individuals coming in
and once they're in our facilities, we have to ensure
their safety and that requires staffing.

So for a manager, it becomes a resource
issue a lot of times. But with that as a manager, I
cannot make the distinction. If there are only five
individuals participating in one religion and I have
50 in another, that that 50 have more time than that
five. With that, again, it's working with staff,
working with the volunteers, having good
communications, everything when it comes to
implementing religious programs in a correctional
facility.

We -- People are afraid of the unknown and
when it comes to different religions, when they are
unknown to you, and with the staff who are coming out
of the same community as the inmates that we house it
becomes very difficult. They are more susceptible to
want to cut the ties, when not to allow inmates out
because of things that they don't understand. So as a
manager, I have to be visible. I have to be
supportive to make my staff understand why this is so
important because it's so important because these
individuals when you can a mindset or change a
behavior.
That's not advocating any one religion over another, but what I found is most have some basic principles that are alike in what the religions practice and with that it's nonviolence. It's changing thought processes. It's not harming people. It's being productive individuals.

I could not run a safe institution without having religious programs. Religious programs impact the safety of the institution. With that, trying to adhere to and honor religious customs of individuals coming in. Particularly with the Islam religion, there are a lot of things that deal with female/male issues. Again, that's an education issue, educating staff on the attire, on the practices, on what is allowable. So if I have a religious volunteer who comes in and he's a male and he says he cannot be searched by a female, first thing a staff member wants to say is you can't enter the institution. I have to have good communication so that individual is not turned away from that institution, that I or one of my staff are aware we have a conversation and we'll deal with that situation by getting a male officer.

The same thing when it comes to dress, we have placed procedures in place because of religious customs. There may be dress issues where individuals,
staff members, who are not familiar may not want to -- will turn people away because they say they cannot remove a head wrap or something of that nature and be searched. It all comes down to communication again so the staff understand and are aware of what I require of them as a warden that we just don't turn people away because initially they don't meet our standards of what we allow in our institution.

Again, as a warden, as an administrator, I cannot, could not, run a safe, secure facility without religious programs. Thank you.

CHAIRMAN REYNOLDS: Okay. Thank you very much, Ms. Atkins. Dr. Saathoff.

DR. SAATHOFF: Thank you, Chairman Reynolds and Members of the Commission. For the past 17 years, I have consulted to state and Federal prisons and also taught medical students in that setting. In my brief remarks today, I will speak to the issue of radicalization from a behavioral science perspective and the relevance of the Religious Land Use and Institutionalized Persons Act of 2000.

We have the benefit of almost a decade since the RLUIPA was first established. Although some feared that it would produce a barrage of frivolous lawsuits, this has not been the case. Rather, I would
argue that this has had a salutary effect, providing a means for grievances to be brought forward and addressed. The existence of such a mechanism can actually limit the potential for religious grievances, thereby, preventing a descent into group humiliations that polarize and lead to radicalization.

Religion can be exploited within prisons if it's used as a means to advocate violence or antisocial behavior. While the Federal prison system has made strides in addressing the issue of religious radicalization and recruitment within prisons, our level of awareness and understanding is still quite limited particularly at the level of state prisons, community corrections and local jails. This is due to the dearth of research that currently exists within our state and local systems. This limited awareness is significant because the vast majority of the greater than two million incarcerated inmates are held in these state and local systems rather than the Federal system.

Those of us who are old enough to remember the politically motivated violence in prisons of the 1960s and 1970s should be aware that prison violence could again become a central point of discussion and could galvanize public opinion. But unlike the
politically motivated secular upheaval of the last generation, we may face a greater risk of religiously motivated violence in prisons. To the extent that it allows for genuine grievances to be addressed, the existence of RLUIPA may, in fact, serve as a means to limit the potential for violence and the cultural polarization that it can produce.

Prison inmates in general are particularly vulnerable to radical religious ideology due to their antisocial attitudes and the need to identify with other inmates sharing the same background, beliefs and ethnicity. Inmates may also be drawn to radical groups out of the need for protection or to gain status amongst other prisoners.

Focusing only on individual inmates though is not an appropriate solution because terrorism is a team sport. Social bonding is not only the magnet but also the glue that holds these groups together. Thoughtful comparisons between violent, radical religious groups and new religious movements reveal that we can best understand terrorist groups through an understanding of networks.

The most effective terrorists are team players who play different positions on a radicalized field. Our overcrowded prisons provide an opportunity
for a deep bench. Even more importantly, para-
radicalization occurs in prison. In this exploited
environment, inmates, visitors and even prison
employees can be unwilling players who can be cajoled,
bribed or coerced into transmitting messages and
materials without being aware of their real purpose.

I have consulted to Federal and state
prisons over the last 17 years. In closing, I would
like to relate an experience that I shared with the
Senate Committee on Homeland Security and Governmental
Affairs. I'll never forget one of the first
challenges that faced me in prison. A suicidal inmate
was to be placed in a strip cell without any
possessions and as he was led from my office, he
begged me to allow him to keep just one possession,
his Bible. At such a time it appeared obvious to me
that this request could and should be easily granted
and without hesitation I instructed the officer to
give him his Bible. Before doing so, the officer
flipped through the pages, reached into the book of
Revelations and pulled out a razor blade. "Doc," he
said, "do you want him to have this, too?" The inmate
smiled weakly and said, "I guess I don't need my Bible
after all."

Well, unfortunately, we're living in more
complex times than that. An officer who can easily identify and remove a razor blade from a Bible will most likely not be able to identify the razors of radicalization; jihadist material that advocates violent measures against innocent civilians, gangs who are willing to masquerade their violence as religion and radicalized individuals who are willing to take that last step towards terrorism.

Through my discussions with inmates and colleagues within corrections, it is my opinion that RLUIPA when appropriately accessed may, in fact, quell the potential for religious radicalization and polarization and that it represents a mechanism through which religious grievances can be addressed and corrected. Indeed, it may well decrease the likelihood that extremists will exploit otherwise unaddressed grievances in order to promote violence.

Thank you.

CHAIRMAN REYNOLDS: Thank you. Mr. Cilluffo.

MR. CILLUFFO: Chairman Reynolds, Vice Chair Thernstrom and distinguished Members of the Commission, thank you for the opportunity to testify before you today.

The subject you have chosen to study this
year is an important one with implications spanning the legal, national security, religious and civil liberty spectrums. The importance of this hearing's topic, inmates exercise of religion and religious discrimination, should not be understated. Within this larger context, however, the Commission may want to consider the security implications of prisoner radicalization.

To be clear, religious practice is a Constitutional right and neither the practice of nor the conversion to a religion poses a threat. As Ms. Atkins stated, it's also important to recognize the potentially positive impact religion can have on inmates. But we must be aware of the threat of prisoner radicalization, a phenomenon that often involves the perversion of religious beliefs and practices. Radicalization and to cut down the definition we use is the process by which inmates adopt extreme views including beliefs that violent measures need to be taken for political or religious purposes. Though difficult to quantify, the potential for religious radicalization of prison inmates poses significant consequences regardless of its magnitude.

Prisons have for centuries been places where extremist ideology and call to violence could
find a willing ear. Recall that Adolph Hitler wrote Mein Kampf while in prison. This spherical philosopher of al Qaeda, Said Qutb, wrote the radical Manifesto: Milestones Along The Road while in an Egyptian prison. And al-Zarrqawi initially merely a petty criminal recruited his followers while in prison. I might note there's a good story to tell also in Egypt right now where Abdul Kidar (phonetic) the former amir of the Egyptian Islamic jihad has written a book renouncing terrorism as well and that violent jihad is not the approach, nor does the definition of jihad necessarily incur violence.

Conditions in prisons such as overcrowding and prisoners' needs for protection are often conducive to radicalization. Unemployment, alienation, youth, the need to belong to a group, these and other characteristics are common factors to both prison populations and based on what we've seen overseas for terrorist recruit.

Of course, religious radicalization is not unique to Islam and remains the exception rather than the rule irrespective of the faith at issue. While radicalization both in prisons and at large has and continues to develop in many forms with diverse ideologies, I will focus my remarks on the potential
inmates to be radicalized by charismatic leaders using a cut-and-paste version of the Koran to promote what one imam who briefed our group referred to as "Jailhouse Islam" which incorporates violent prison culture into religious practice or "Prislam" where they join gangs for protection purposes.

Regardless of the significance of the threat posed by prisoner radicalization, I just want to reaffirmed that a prisoner's right to freely express religious beliefs should not be infringed. Indeed prison facilities bear the burden of proof if they wish to deny an inmate's request for an service or activity related to religion.

Radicalization within prisons or outside them is a greater threat overseas. But with the world's largest prison population, over two million and highest incarceration rate, 783 out of every 100,000, America faces what could be an enormous challenge, radicalized prisoners being recruited by or enlisting themselves into a violent movement.

Over the past several years, there has been growing consensus by officials and law enforcement officers at all levels of government as to the threat posed by radicalization in our prisons and some initial steps to counter the problem. Recent
cases here and abroad have helped create that consensus.

Take, for example, Jamal Ahmidan, one of the leaders of 3/11 Madrid train bombing plot. After passing through Spanish and Moroccan prisons where he had been exposed to extremist propaganda videos, Ahmidan developed an obsession with violent jihad. It wasn't long after his release in 2003 that Ahmidan became to organize the group that would murder those 200 people in March 2004.

Closer to home is the new terrorist prison plot. In July 2005, the FBI, thanks to efforts by state and local law enforcement, became aware of a Sunni Islamic extremist group in California operating initially in state prisons without any apparent connections to groups outside of the United States. Members of this group, the JIS, were involved in almost a dozen armed robberies in Los Angeles with the goal of financing terrorist operations. The founder Kevin Lamar James, an inmate at New Folsom recruited other prisoners to the JIS, one of whom went out and recruited a few others as well. Several of the group members had been successfully prosecuted for conspiracy to commit terrorism. Just as young people may become radicalized by cut-and-paste versions of
the Koran by the internet, new inmates, many of whom
have had no exposure to Islam prior to prison may gain
the same distorted understanding of the faith from
charismatic gang leaders and other influential
inmates.

In 2006, our institute along with the
Critical Incident Analysis Group at UVa investigated
prison radicalization. The complete report has been
submitted for the record if we want to get into some
of the issues during the Q&A. A primary finding of
our report was that the inadequate number of Muslim
religious service providers increases the risk of
radicalization. In fact, already radicalized
prisoners or extremists posing as volunteers often
take on the role of religious service providers and
prayer leaders. This solution is more not fewer
Muslim chaplains.

The threat posed by prison radicalization
does not end when inmates are patrolled or released.
Former inmates are vulnerable to radicalization and
recruitment because many leave prison with very little
financial or social support. By providing for
prisoners in their time of greatest need, radical
organizations can build upon the loyalty developed
during the individual's time in prison. Information
collection as Greg referred to earlier is integral to combating radicalization. While significant strides have been made at the Federal level, as we all know, the vast majority of prisoners and inmates, 93 percent, are at state prisons or county jails.

And I think we would benefit greatly from sharing of lessons learned not only in the United State, but perhaps most significantly overseas. Resource limitations both in terms of manpower and financing hinder efforts to combat prisoner radicalization. Understaffed and underfunded prison officials who must often deal with more pressing daily issues like safety of the prisoners and of themselves cannot follow every lead.

The result is insufficient research and data on prisoner radicalization to quantify the threat. No comprehensive records exist. In fact, perhaps the most comprehensive records were collected by a now banded group with suspected ties to international terrorism, the al-Haramain Islamic Foundation, who did collect data on individuals, what their susceptibility was to radicalization and when and where they would be patrolled.

No one profession alone is equipped to respond to this. A multidisciplinary approach that
includes perspectives of religion, criminal justice, intelligence, law and behavioral science is necessary. Knowledge must be translated into action and just to close it up since I've never had an unspoken thought. So I apologize for going over my time, but there is some good work being done and I think perhaps of most interest to this commission in particular is some of the work being done out of the Office of Civil Rights and Civil Liberties at the Department of Homeland Security. Rather than isolating, they're engaging the Muslim American community who has to be part of these solution sets. But they are understaffed, underfunded. They have three FTEs to cover the entire country. That's preposterous.

I commend the Commission for taking a multidisciplinary approach to the issue. Ultimately, religious faith and practice can be part of the solution and thank you for the privilege accorded to me to testify before you today.

CHAIRMAN REYNOLDS: Okay. Thank you all.

III. Questions by Commissioners and Staff Director

CHAIRMAN REYNOLDS: At this point, I'd like to open the floor for questions. Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. I would like
to ask Chaplain Pryor the role of chaplain. It seems to me that most chaplains --

VICE CHAIR THERNSTROM: Commissioner Melendez, you have to -- Slide your mike up.

COMMISSIONER MELENDEZ: The role of chaplains it seems when you look at the prison system across the United States is basically mostly Protestant it seems to me. Does that mean that the chaplains have to be more versed in other religions to basically treat everybody fairly? What's your position on that?

CHAPLAIN PRYOR: That's true and we constantly strive to increase the diversity among our chaplaincy core. As I said in my statements, we have Protestant, Catholic, Islamic, Jewish and Orthodox chaplains and we have one Buddhist chaplain in the Bureau right now.

When chaplains come into the Bureau of Prisons employment, they are trained and told from the very beginning that they are chaplains to all the inmates. That doesn't mean that they lead services that are outside of their own particular faith, but they will minister to the needs and accommodate the religious rights of inmates that are not of their faith. They'll do that either through supervision or
through the recruitment of contractors or volunteers.

We also provide four blocks of training for every chaplain. It's mandatory training. It's called "Inmate Beliefs and Practices" and each block of training rotates every four years and it's held in our training center in Denver. It's on a different group of religions and we bring in subject matter experts on those religions. Sometimes our own chaplains will teach. Other times we bring in people from the community. More and more because of budgetary constraints, we are also offering training electronically, web-based training through our system of communication in the Bureau of Prisons.

But by and large to answer your question, we strive to continually raise the professional level of our chaplains by continually giving them more and more information about different groups. The Technical Reference Manual which we have created is an excellent guide for that and that's one of the reasons that correctional departments around the country, state correctional departments, have picked it up and used it, some as policy.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I just have a factual question and anybody can answer. What is your
estimate of the percentage of inmates who profess to have some connection to some sort of organized religion and therefore participate in some way? What are some numbers here?

CHAPLAIN PRYOR: Well, the participation interestingly and this won't totally answer your question, but of those that profess any religious preference about, and it varies from faith to faith, 35 to 40 percent actually participate. In other words, if we have 1,000 inmates that claim to be a certain religion, then 35 to 40 percent of them will participate.

VICE CHAIR THERNSTROM: But there has to be a percentage of who profess to have no religious faith whatsoever now.

CHAPLAIN PRYOR: We do. We have records on that. It's approximately 25 percent professing no religious preference at all.

VICE CHAIR THERNSTROM: So you have 80 percent, say, identify themselves as belonging to one religion or another.

CHAPLAIN PRYOR: Seventy to 80 percent.

VICE CHAIR THERNSTROM: Seventy to 80 percent and of that percentage you have participation rates of what?
CHAPLAIN PRYOR: Thirty-five percent to 40 percent.

VICE CHAIR THERNSTROM: Thirty-five to 40 percent.

CHAPLAIN PRYOR: Right. So we have roughly 200,000 or so inmates in the Federal system and as I said, I think we had 59,000 inmates participate in religious programs. Now there's some duplication there obviously.

VICE CHAIR THERNSTROM: Right, and participation means -- Would you count as a participant somebody who shows up once to some kind of -- I mean as opposed to some kind of sustained involvement. I mean, I don't have a sense of kind of the magnitude. What percentage of prisoners you are reaching in some form in a sustained way since a number of you have made the point that you think religious involvement is in fact important to a prisoner's future life?

CHAPLAIN PRYOR: I think it's a misnomer to think that we only reach inmates through religious programs. Chaplains, for instance, in the Bureau of Prisons are required to make weekly rounds in special housing units. That's another way that we reach out and touch the lives of inmates. We are required to
make rounds in the housing units, not weekly, but have
a presence there. We do extensive counseling, on
average, 37 sessions per week per chaplaincy team, the
delivery of emergency notification messages, the
conducting of memorial services for inmates that die
in prison.

VICE CHAIR THERNSTROM: Okay. But when
you or whoever said that some kind of religious
commitment does have a long-term impact on prisoners
of a positive nature, you have to be talking about
something of a sustained nature. And so I'm just
curious what percentage of prisoners can you say you
reach in a sustained way.

CHAIRMAN REYNOLDS: Ms. Atkins.

MS. ATKINS: My comment is that initially
a lot of the inmates coming into our systems do not
practice any type of religious belief. There is a lot
of conversion that takes place particularly within a
maintaining facility. A maintaining facility is where
inmates are usually housed or stay there for at least
a year or more at a time. We're running anywhere
between 60 and 70 percent of continuous, some type, of
religious program participation.

Now religious programs are not the only
programs that we have. But for me, from my personal
experience, again when inmates do start practicing some type of religious belief or participate in, their behavior and their thinking start to change a little bit. But the biggest thing is generally through conversion. Most do not come in the door professing anything and the ones that do it's usually professing what they were, the faith they were raised in. They might not have practiced anything as an adult. But usually when you go through that orientation process and just who your mother is, who your father is, what faith, it's the faith that they were raised up in as an individual.

VICE CHAIR THERNSTROM: So when the prisoners are released, what percentage of them would you say are involved in religion in such a way that will affect that post incarceration?

MS. ATKINS: That would lie from, I think, institution to institution, let alone, state to state. My personal understanding upon leaving if they were practicing, I would say, about 50 percent and this is one of the conversations that I was having with someone when we were on break, is there isn't follow-up. Our re-entry programs do not involve religion and it's one of the visions that I personally have is that for individuals who have been practicing a religion
upon release just like we have someone want to meet
them at the door talking about employment and housing
and things of that nature, that someone from the
religious community of their faith would also meet
them.

Religion can be a very scary thing and
prison religion is totally different than going to a
church, a temple or a mosque in the community. It can
be very frightening for an individual who spent 10, 20
years who learned their faith in a correctional
facility just to enter that temple or that mosque. So
part of our re-entry process, our re-entry plan, is we
need to start including faith-based initiatives in
those organizations no matter what the faith is to
meet those individuals.

DR. SAATHOFF: I would like to also say
that one of the frustrations that we had on our task
force that I co-chaired with Mr. Cilluffo is the lack
of metrics when it comes to looking at these very
basic questions and because our prison system is so
disparate in terms of the local, state and Federal.
We can hazard guesses about these kinds of things.
But I think that your question is absolutely right on
with regard to looking at the numbers and metrics.

But at this point, the dearth of research
is really glaring and one of the things that would be very valuable would be to get a better understanding about the metrics of religion and religious practice within our prisons.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: I'm sorry.

CHAPLAIN PRYOR: I just wanted to -- I agree with him. We don't have a lot of statistics. There are some statistics coming on re-entry programs. For instance, as Mr. McFarland mentioned, the Life Connections Program that we offer in the Bureau of Prisons, there has been some in-house statistics that have been done that show that inmates who are participating in that program are 83 percent less likely to commit a serious institution offense while they're incarcerated.

What we're waiting is for enough inmates to be out of that program and leave prison and on the streets for a long enough period of time for it to be a true gauge of recidivism. Right now, we don't have that time factor yet, but we're close. We're probably within a couple of years of being able to have some verifiable, bonafide statistics that will be meaningful, a meaningful gauge of the success of this
type of re-entry program.

Now granted, it will be a snapshot because of 50 different state systems and then the Federal system. We're all doing something different. But it will at least be a statistical snapshot that our research branch in the Bureau of Prisons is keeping very detailed statistics on and we would be happy to share those with you all.

VICE CHAIR THERNSTROM: And obviously my line of question was directed at -- not at the involvement with programs that are in fact where inmates are in fact being radicalized in destructive ways.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes. I had two questions. One was directed at Mr. McFarland, but to everyone in general. In terms of the Zelman test, how in real experience has been the fourth prong, the secular alternative available to inmates that would be benefits comparable with that with the God Pod as you call them programs? Because I just wonder given the limited resources that institutions have, if you have a program that comes in ready-made with support from the outside community that's faith-based and that can come in, how do you create the secular alternative and
how do you make sure that it is comparable to the point where there's sort of no undue draw of the God Pod program versus the secular alternative program.

MR. McFARLAND: Well, the Life Connections Program in the BOP is a good example of that. Folks of all faiths or none all live together as volunteers and they meet jointly on the secular subjects. So when there's a talk about parenting or fatherhood or what have you, they're all there.

Then they split up according to their faith and I've sat in on their study groups, smaller groups. So you might have a -- You have a room with a Catholic priest who is leading the Catholics. You have a local Baptist minister who's on contract to come in and lead the Protestants. I've sat in on Wiccan, Rastafarian, Buddhist and Native American and agnostics. So they have the same programming, living in the same facilities.

COMMISSIONER YAKI: Is that all BOP funding or is there a combination of some BOP funding of the secular component and some other group helping to fund the religious component?

MR. McFARLAND: Chaplain Pryor can speak to the budget.

CHAPLAIN PRYOR: It's all BOP funding.
COMMISSIONER YAKI: Okay.

CHAPLAIN PRYOR: And we actually -- if there are individuals in the program, in the Life Connections Program, who are in the program because they like the topics, the life skill topics, that they believe they need to work on in their life, but they're not a person of faith, we will contract with an individual who maybe has a background in education or a background in counseling or somebody who is going to be faith-neutral to work with that group of inmates so that they do not have someone's faith imposed upon them, but that their right to have no faith is respected as well.

COMMISSIONER YAKI: Okay. The same question goes to this side over here because I'm fascinated by the notion of how you essentially, if you can or cannot pierce the religious veil for whatever purpose there may be ongoing for whether it's the, for me, it's the Aryan Brotherhood and other kinds of programs, not programs, but gangs in the prison. How do you deal with, and maybe this will be better for the second panel, for lack of a better word, false prophets who preach a different brand of, it could be Christianity, it could be Muslim, it could be Buddhism with knives or something like that has,
how should I put it, a more secular purpose in terms of what its real aims are versus the religion that it purports to be without violating the Free Exercise clause? How do administrators deal with it? How do people in security deal with it? It's a fascinating question.

MS. ATKINS: As an administrator, when I become aware of something of that nature, the program meetings will cease. I'll forward my information to my superiors who will make a judgment. If there's an individual who appears to be radical in trying to recruit other people and there are things of that nature it's isolated and it's dealt with on an individual basis. But the final judgment as an administrator is bigger than I am. The only thing I can do is gather the information, cease what is happening until it's been approved or disapproved.

MR. CILLUFFO: Mr. Yaki, if I could because that is the dilemma and she summed it up and, of course, it's across all religions and all ideologies. I think here we do have some --

COMMISSIONER YAKI: If your Blackberries are within six inches or so of your microphone, that's what's going to cause it.

MR. CILLUFFO: There are some lessons we
can learn overseas. I actually think prisons could potentially become hubs for de-radicalization. In post leaders in the counterterrorism and antiterrorism community from various countries, we have about 16 ambassadors come to talk about what their countries are doing and there are some very interesting programs in Singapore, in Indonesia, in Saudi Arabia, as well as many other countries where they actually bring in people of faith to be able to take it line by line to be able to show how others are hiding themselves around the issue. I think this is where religion could become a key enabler to the solution.

The other challenge though is quite simply we don't know, first we don't know, but more importantly, do we have the education programs, do we have the language skills. I thought the Standardized Library was sort of a backwards way to take it. Quite honestly, what we need to be able to do is have the linguistic and translational skills to know when someone is actually promoting violence and we don't have those skills. We don't have cultural skills.

I was delighted to hear what Ms. Atkins was saying in terms of bringing attention to that but that's because she's on the ball. I'm not sure everyone appreciates the significance of that and even
within, say, the Muslim faith in particular. Is a
jihad imam or is a Suni that has the issues of
discrimination being claimed in that perspective as
well?

DR. SAATHOFF: There's a simple concept as
well. I think of vigilance and transparency. Last
Sunday I was consulting in a prison and learned of a
situation where three inmates asked to practice their
religious faith in a classroom. The classroom was
opened up for them. They went into this classroom.
The correction officer went down the hall, was called
away, and came back to find one of these inmates
trying to break into the teacher's desk.

Now the issue is not whether or not
inmates should be able to assemble to practice their
faith. But I think we're obligated within a prison
system to have some degree of vigilance and
supervision so that these issues can be more
transparent. I think that is an issue that's not
always so easy for overstrapped prisons.

COMMISSIONER YAKI: Do you know how this
translates into the usage of private prisons at all?
What kind of programs there may or may not be with
regard to, you know, the private prisons out there,
CCA, other organizations? Mr. McFarland, you're

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nodding your head. Do you have any idea about how?

MR. McFARLAND: Well, the BOP has extensive language that they have to contractually agree to. So I don't think there would be a lot of distinction between your BOP-run facilities and the CCA or GEO or Cornell.

COMMISSIONER YAKI: Many of them are run with states. I'm just wondering how state controls are with regard to this or being used with regard to private prisons. None of you probably know.

I would just ask for one last statement and then I will go on with questions. And that is I think it's a fascinating topic especially when it comes to this issue because, of course, to go back in history everyone who has been a founder of great religion was thought of a radical, thought of as dangerous, thought of as preaching overthrow, whether it was Mohammed or whether it was Jesus, Moses, whoever and it gets really tricky as you go along that.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes. Thank you. Just to kind of follow up on Commissioner Yaki's question, this will be posed to anyone who chooses to answer, at what point possibly short of the direct
advocacy of violence does a participant in a religious
program or a religious leader that may come in to
minister to the prison inmates lose 1st Amendment
protection? I mean, is there a tipping point?

For example, if you have someone who is
not explicitly advocating violence but the run-up for
the logical conclusion to his ministry is something
that would necessarily result in violence, is there
some point at which he may lost 1st Amendment
protection and, second, are there any protocols that
are established to address that? Anyone who chooses
to answer. I --

CHAPLAIN PRYOR: The hesitation I'm
feeling is probably the same hesitation that everyone
is feeling is that it's really not an easy answer. I
don't know that -- the rhetoric is so broad and the
topic is often so subjective given the person who is
hearing it and their life situation and their
perspective that it's hard to set a certain number of
things. So what we do, and Mr. Cilluffo said, that
the Bureau, the Federal system, has made some strides,
we have over the last four or five years increased our
supervision so that no inmate-led group meets without
direct 100 percent staff supervision. We have placed
electronic monitoring in chapels so that we can see
what's going on. We have increased our training for volunteers and our scrutiny of the volunteers and contractors who are coming in.

And what we try to do is keep a handle on the content of the material that's being presented. Certainly, if it's written material that's coming in to be passed out to the inmates, that's something you can look at and read and it's not going to change. It's right in front of you. But when you get an individual who is coming in and just from my own experience I've had individuals who have come in for a one-time service and they've preached and it was uncomfortable enough for me in any environment but especially the prison environment to where I simply just did not invite them back.

But it's a judgment call on the part of trained staff that make that determination. We obviously look for things such as a call to violence, radicalization or rhetoric against the government, promoting a criminal activity, anything that would be deemed as a threat to the safety, security and orderly running of the institution. If they're talking about prison policy, for instance, and say, "I can't believe the warden and the correctional officers make you do that." Those are things that are going to upset the
order of the institution and those are certainly red
flags of things that we would look for.

MR. McFARLAND: Commissioner Kirsanow, I
wanted to note that the Turner v. Safley case back in
the late `80s had a lower bar for that kind of
intervention. It said that free exercise rights of
prisoners yielded to any "reasonable or legitimate
penalogical interest." And so anybody who could
articulate "Well, I had a bad feeling about that"
there's the penalogical interest.

In passage of RFRA, the Religious Freedom
Restoration Act, in `93, Senator Reid specifically
offered and failed to pass an amendment that would in
effect have excluded prisoners, incarcerated persons,
from the operation of RFRA. So Congress intentionally
ensured that the bar was higher than "legitimate
penalogical interest" for prisoners. Indeed, it was
and is in the Federal system "a compelling government
interest."

So behind that bar, though RFRA doesn't
apply at the state level in state prisons where RLUIPA
does, but to meet that level in the BOP, it has to be
a reasonable likelihood of acting on and inciting to
violence or disciplinary insubordination. So racist,
as Commissioner Yaki was suggesting, theology or
philosophy that is reasonably calculated to be acted
upon would meet a compelling government interest. So
I'd offer that it's not a lower bar of any legitimate
interest, but rather when it gets to the point of
inciting violence or insubordination regardless of
whether it's theological or philosophical or
political.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Thank you and I'm
the new guy here, first day on the job, and I've very
honored to be with the fellow Commissioners, but also
to hear from you. What I do know of this area, I've
learned from some of you previously but my ten years
with my colleagues at CLJS give me a great
appreciation for the great work that many of you have
done and I know I've served currently on the Critical
Incident Analysis Group.

I have two areas of questions. The first
I think is on the radicalization front. Are there any
lessons to be learned from our experience with the
camps, particularly to Mr. Cilluffo and Mr. Saathoff,
the prison camps in Iraq and Afghanistan? I
understand that there were some -- And, if so, are
those lessons transferrable to the U.S. prisons at all
about leaving them to worship in tents without any
supervision, the kind of supervision that Chaplain Pryor was talking about, and the consequences of that?

DR. SAATHOFF: Yes. Certainly, going back to this whole issue of supervision and transparency, whenever we have a situation where we don't understand or we don't know what's going on, it can certainly give rise to tremendous security issues. So I think there are some lessons and the issue is how do we best translate those lessons, translate those lessons that we're currently learning across the world. I think this gets back to the whole issue of research and having a better coordinated way of taking these lessons learned and translating it. It certainly isn't a direct one-to-one, but this broad issue of supervision, vigilance and transparency I think is something that goes across.

COMMISSIONER GAZIANO: Is there -- I'm a little bit curious why the BOP did not help our military with some of these lessons.

MR. CILLUFFO: I think that is a fair point and quite honestly if you look at the challenge of terrorism strategically we can't kill and capture our way to victory alone nor are we going to arrest away the problem. We need to really look at all the different instruments and state craft and I think we
would really benefit greatly from some of the Federal
BOP work as well as the Department of Justice at large
in terms of some of the initiatives and programs that
perhaps have been implemented here.

And I think that is -- And it has to go
even beyond that. One could argue that that
exacerbates the problem in terms of if we know who and
what and where and when. So I think that you raise a
very valid point. But I also do feel that there are
some lessons that can be learned, that can be brought
out and hopefully enforces in an even-handed way.

COMMISSIONER GAZIANO: Do you think that
the discussion, and Department of Justice officials,
too, now has improved over what it was at the
beginning of the war on the terrorists?

DR. SAATHOFF: Yes, I do. I think as a
result of some Senate hearings maybe as early as 2003
they really examined the issue that the Federal BOP
has really taken a lead and I should also mention that
the Federal Bureau of Investigation also has liaison
work that they are doing with the military in terms of
looking for a better understanding about these
detainee issues and also offering their advice and
support. So there is a -- I think we really have
moved. There is a long way to go, but the Federal BOP
has made an impressive start.

COMMISSIONER GAZIANO: Sure. And my final question along those lines to really anyone, has there been an attempt and is it fruitful to study the lessons that other nations have learned in this area?

MR. CILLUFFO: In academia, we're doing that to some extent independently and autonomously to be able to try to get some of the best lessons learned. Clearly, there have been. If you think about it, it's a transnational threat. It requires to some extent transnational solutions. So while work is occurring at the tactical level, I think that there's a lot more that can be done strategically. To be absolutely honest, I think solutions to a large extent if you're talking overseas and al Qaeda as a brand in particular, the solution sets are going to have to come from within. Quite honestly, you need people who have credibility, people who have for the communities that are potentially being seduced by this brand of ideology. I think we have a lot to learn there.

COMMISSIONER GAZIANO: Sure. Well, there is some transition, but also the British had to deal with IRA prisoners. So there are other countries with sort of domestic issues that may be similar, too.

MR. McFARLAND: I was just going to say,
Commissioner Gaziano, that in the 30 some odd countries' prison systems that I've been in they are a breeding ground for radicalism simply because of the inhuman conditions and the lack of due process. We wouldn't put dogs in most of the prisons that I've been in and frequently the only food they get are from outsiders if they have any family. So they are very receptive to a religious sect or community that is going to come in and treat them like a human being, bring them some food, take care of their spouse and their family on the outside who don't have a bread winner.

It's not rocket science and we don't need video cameras. It's sitting, providing, some affirmative support and visibility to the conditions in which two-thirds of the world, and I might add, due process is critical because most of the prisoners that I've been around have never had a trial. So there is no due process in West Africa, Latin America, frequently. So more courts, prosecutors, cars to take them from prison to the courtroom, pretty basic things, three meals a day, those are all luxuries that are presently not afforded to most prisoners abroad. And that's why they're a breeding ground.

CHAPLAIN PRYOR: All the communication
that you have mentioned that should be increased and improved, there's usually one word that puts a hindrance to that and that's money. Dr. Saathoff mentioned state systems in particular and even the Federal system. To some point, systems are strapped. So the desire is there to reach out and to communicate and to share ideas and to get together, but it still takes that green stuff to do that. So I know that state systems vary and I certainly don't even begin to pretend to speak for any state system. But I know that we network with as many as we can and we get just as many good ideas from them as they get from us. It's just a matter of having the resources to do the networking that we really like to do.

MR. McFARLAND: And speaking of money, in `08, Congress gave Department of Justice, they cut almost by 11 percent the budget and that translates into about a $400 million deficit for the Bureau of Prisons. So the first thing that's going to go would be any kind of the religious programming, extended chaplaincy and outreach that we're talking about. I just wanted to --

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. I had a question for either the Chaplain or Ms. Atkins. You
mentioned changing -- sets. Do you think that there's too much restriction as to religious materials that are prohibited from coming into the correctional setting? Because I know that there was -- it sounded to me like what was stocked in libraries was really minimal and do you think that's too much restriction on what people could actually read to kind of learn something?

CHAPLAIN PRYOR: We have 268,000 library materials in the Bureau of Prisons, 338,000 actual volumes. That's a lot we think. We are in the process, of course, of making sure that all of those things are appropriate to be in a correctional setting. We do have volunteers and contractors who bring in things for distribution.

In the institutions I've worked in and been involved with I haven't seen a limitation that has been harmful. Inmates can also order things themselves through what we call "Incoming Publications." I personally haven't seen that to be a level to where it's a detriment to the spiritual well-being. Certainly, sacred texts are welcome. We receive donations. We have a policy whereby the warden can accept those donations and we can make those available to the population.
COMMISSIONER MELENDEZ: The other question was based on the issue of inmates being transferred, if that's real frequent. Does that mean to accommodate their religious, what we're trying to accommodate, that they have to start all over if they should go to another institution and you don't really transfer anything that tells the other institution about their religious accommodations or needs?

MS. ATKINS: Well, state or Federal, any inmate that's transferred, once their preferences are made, that follows them. But security is number one and most of the time transfers are based on security reasons. When it comes to the religious aspect, what may be interrupted is that continuity that he had at the institution he was in. But wherever he's going, generally, he or she, there is some type of program under the same religious basis or faith that they were practicing that they would just re-enroll in that.

But they would not -- If you were a Muslim and you were at one facility and you transferred, it's not a whole process where you have to reidentify. That's all in there and each institution has a process for you to register to say, "This is who I am and I want to participate in the programs and services that you have for that particular group."
COMMISSIONER MELENDEZ: So we're not really uniform. For example, in Native Americans, I have read this case on sweat lodges in San Quentin. Basically, I was wondering if some prisons don't have sweat lodges and some do.

MS. ATKINS: Definitely. In Maryland, we actually are doing a test in one of our facilities on the eastern shore. The issue with sweat lodges and other things, structures of that nature for different religions, a lot of times come down to space and what's available. We don't believe we've had one in Maryland before and right now, like I said, on the eastern shore, they actually have created one and we're going through the process to see how can this be implemented throughout our other facilities.

MR. McFARLAND: Commissioner Melendez, may I just speak to that? I would respectfully disagree with my friend, Chaplain Pryor. Three hundred and thirty-eight thousand titles among 200,000 inmates means less than two each. So if you don't happen to be interested in the Bible or Pilgrim's Progress you're out of luck unless you can afford to buy on Amazon your own Native American faith book or you can persuade the chaplain that this is part of worship and therefore should be part of their worship budget and
for the financial reasons I just said, they're not
going to have much of a budget.

And as far as ordering off of Amazon, in
Texas, the second largest state prison system they
don't get a dime an hour. They don't get any money
for any activity. So unless they have a sugar daddy
outside or somebody sending them money, they have no
money to buy that religious material. And the most
you can make in the BOP is a little over $2 an hour.
So I think you put a finger on a problem. There
aren't enough materials.

MS. ATKINS: We found on faith-based -- We
found faith-based from the volunteers to contribute
and to make contributions to their particular place
that are in the prisons to provide materials and
things of that nature.

CHAPLAIN PRYOR: With all due respect to
Mr. McFarland, that's assuming that all 200,000
inmates frequent the library. In my experience in the
three prisons that I've actually served, it's a
relatively small percentage that come down and utilize
the library. I don't know exactly what it would be
but it's pretty small.

VICE CHAIR THERNSTROM: I was about to
raise that question.
MR. McFARLAND: Word gets around as to what isn't in the library. I imagine they don't waste their time if they know that comic books and --

VICE CHAIR THERNSTROM: It is probably not a high reading population.

MR. McFARLAND: Weekly.

CHAPLAIN PRYOR: We are creating a situation in a more systematic way where inmates can come to the chaplain and say, "Can you purchase this for the library" because we have a little better control, a lot better control, over what we have in our libraries now.

MS. ATKINS: I beg to differ that it's not a high reading population. What happens is the longer an inmate is incarcerated, the more involved he does become in his education and his religious practice.

VICE CHAIR THERNSTROM: What I was thinking of was I've seen literacy figures, levels of literacy figures, on people who come into prisons. So maybe that pictures changes.

MS. ATKINS: It changes and a lot of them I think are self-taught and it goes back to the amount of funding that we're putting in for educational programs to increase literacy levels. But my experience is again the longer an individual is in,
the more he'll read, the more he'll be self-taught and
the more he'll continue more in-depth practices with
whatever faith group he has become a part of.

MR. McFARLAND: And many state systems
require them to pursue their GEDs, their General
Education Diplomas. So like it or not, if they want
to get into the residential substance abuse treatment
program, they have to be working on their GED.

CHAPLAIN PRYOR: If they want to get into
Life Connections, they have to be working on their
GED.

MS. ATKINS: I don't allow an inmate to
have an institutional job without a GED. You have to
get your education first.

VICE CHAIR THERNSTROM: They have to have
finished their GED.

MS. ATKINS: In my institution, yes.

VICE CHAIR THERNSTROM: So working on one
is different than actually having a diploma?

MS. ATKINS: Yes.

CHAIRMAN REYNOLDS: Okay. I'd like to
thank everyone for these great presentations and at
this time, let's take a ten minute break and let's
meet up at -- let's make it 11:30 a.m. Off the
record.
(Whereupon, at 11:22 a.m., the above-entitled matter recessed and reconvened at 11:35 a.m.)

CHAIRMAN REYNOLDS: Okay, first one housekeeping matter, my fellow Commissioners, if you need to take a sidebar, if it's extended, please sashay out into the hallway. It is somewhat disruptive to have extended sidebars. You choose your mode.

COMMISSIONER YAKI: I will stroll, I will amble. I will not sashay.

PANEL 2 - FREE EXERCISE OF INMATES' RELIGIOUS RIGHTS VS. CHURCH STATE SEPARATION

CHAIRMAN REYNOLDS: Okay, no sashaying. Okay, folks, we can get started. Okay, for the second panel, let me introduce the participants. First up we'll have Patrick Nolan. Mr. Nolan is the President of the Justice Fellowship, a criminal justice reform arm of Chuck Colson's Prison Fellowship Ministries. Justice Fellowship works within the criminal justice systems based on the principles of restorative justice found in the Bible.

Mr. Nolan is the author or "When Prisoners Return", which describes the important role the church can play in helping prisoners get back on their feet after they are released. His opinion pieces have
appeared in numerous periodicals, including the Los Angeles Times, the National Law Journal and the Washington Times. He has testified on several occasions before congressional committees on prison work programs, juvenile justice, prison safety, offender re-integration and religious freedom.

Mr. Nolan serves on the nine-member U.S. Prison Rape Elimination Commission appointed by the Speaker of the House of Representatives. Justice Fellowship worked very hard to pass a legislation which established the Commission. Once again, all of our participants have very long CV’s and please done be offended if I truncate it.

Next up we will have Ms. Lane Dilg, a staff attorney for the American Civil Liberties Union. She is a staff attorney with the ACLU Program on Freedom of Religion and Belief, where she litigates a broad range of religious liberty cases before federal courts across the nation. In recent cases she has advocated the rights for Muslim women wear religious head covering while detained and argued against the application of reduced scrutiny to establishment clause claims in the present context.

Ms. Dilg received her law degree from Yale Law School and a Master of Theological Studies degree

She's also co-authored with Judith Resnik "Responding to a Democratic Deficit, Limiting the Powers and Term of a Chief Justice of the United States, published by the University of Pennsylvania Law Review in 2006.

Next, we will have Imam Abuquadir Al-Amin. Since 1992, he has served as an Imam within the Society of American Muslims. He served a Muslim Chaplain at FCI Dublin California from 1983 to 1984, offering religious services, counseling and re-entry classes. During the same time, he chaired the American Muslim Mission Prison Services Organization for the State of California. In 1984 he was elected as resident Imam of the San Francisco Muslim Community Sector and currently continues to serve in that capacity.

Next, sir, help me pronounce your last name.

MR. LUCHENITSER: It's Luchenitser.

CHAIRMAN REYNOLDS: Thank you. Mr. Luchenitser has served as litigation counsel for the Americans United for Separation of Church and State since 2001 and as a senior litigation counselor since
2004. Mr. Luchenister litigates church state cases all over the country and also periodically authors and edits Friend of the Court briefs that are filed in Federal Court of Appeal on behalf of Americans United. He's also worked on cases challenging governmental funding of religious, social service providers, cases challenging governmental religious displays on public property, cases challenging attempts to inject intelligent design into public school curricula and cases challenging other government sponsored religious activities such a prayer in public schools.

Next, we have Chaplain Gary Friedman. He was appointed as the Regional Coordinator for B'nai B'rith International Pastoral Care Agency for Jewish Prisoners and Their Families. In 1995 he was elected chairman of the organization and two years later led its transition into the Independent Jewish Prison Services International which he continues to chair. Chaplain Friedman has become a highly recognized authority in the corrections field. He is frequently featured at national and international conferences.

He sits on influential boards and committees of chaplaincies and corrects related organizations and finally, he's also regularly sought out for his expertise. Actually, finally, he was
honored with the correction industries Chaplain of the Year in 2005.

Finally, we have Reverend Patrick McCollum, who is the Director and Chair of the National Correctional and Chaplaincy Directors Association. As such, he advises and trains prison administrators all over the states in the United States about religious accommodation issues and current laws governing religion in corrections. He's also the chaplaincy liaison of the American Academy of Religion. As statewide Wiccan chaplain, California Department of Corrections he facilitates religious services and develops religious programs for approximately 2,000 Wiccan and Pagan inmates in 33 state correctional facilities.

In this capacity, he advises wardens, administrators and correctional staff on the specific needs required by Wiccan inmates for religious items and practices. Thank you all and let's get started.

Mr. Nolan.

MR. NOLAN: Thank you very much, Mr. Chairman and members for holding this very important hearing. As the Chairman said, I'm Pat Nolan, the Vice President of Prison Fellowship and I head up Justice Fellowship, their criminal justice reform arm,
served for 15 years as a member of the state assembly in California, four of them as Assembly Republican Leader. I was a leader on crime issues, particularly on behalf of victim's rights. I was one of the original sponsors of the Victims' Bill of Rights and received the Victims' Advocate Award from Parents of Murdered Children.

Then I was prosecuted for a campaign contribution that I accepted as part of an FBI sting. I pleaded guilty to one count of racketeering and served 29 months in federal custody. It's with this unique background as legislator and prisoner and now my current work in prison ministry, that I address you today. While in the legislature, I presumed that prison officials, even atheists, would encourage inmates to participate in religious programs. If nothing else, religious activities would seem a good management tool and a device to keep inmates out of trouble.

After all, I've never heard of a fight breaking out in a Bible study or during Mass. And in fact, many prisons offer inmates ways that they can practice their faiths. Chaplain Pryor and Ms. Atkins are typical of the many good people in the corrections field who do all they can to facilitate religious
needs.

At the other end of the spectrum, however, there are corrections officials that discourage it. One Secretary of Corrections told us that, "A man alone in his cell can worship God, and I don't have to do anything else to facilitate that".

During my two plus years in prison, I was shocked to find that religious activity was often barely tolerated and in some institutions even discouraged. I witnessed many occasions where corrections officers denied access to religious materials or made it difficult for inmates to participate in religious services or programs. For instance, I needed a study Bible and the Chaplain of the Legislature, Richard Cherry, mailed in an NIV study Bible to me, complying with every rule and federal regulations. Three times it was sent back to him stamped, "Does not comply with BOP Regulations". And I was denied a Bible for that time.

On one occasion we were gathered in the chapel and we could see the Baptist volunteers that had driven a couple hours from the local church. They had been coming to visit the prison for five years. There was a discussion with the officer and then they left. The officer came up and told us we had to
disband. And I found out later that the reason that they'd been turned away, again, after coming for five years, was that the officer told them that their paperwork wasn't in order. In reality, he'd been playing computer games and hadn't gotten around to running the list of the approved volunteers that day and we were denied services. When Bill Blass' Tournament of Champions came to our camp, a picture card count was called just as they were asking inmates to commit their lives to Christ.

Now, picture card counts are unusual in prison. During my two years there, there was only one other occasion when one was called. During a picture card count, all the inmates have to stop what they're doing, return to their dorms, stand by their bunks and hold out their identification card while a team from the prison goes one-by-one checking the ID’s of each prisoner through the entire prison taking a very long time. Obviously, Bill Blass was not able to finish his mission in our prison that day.

Such interference at ministry events is, unfortunately, common at prisons across the United States. When I came to work at Prison Fellowship, I asked the Head of our Field Operations if my experiences were unique and he chuckled and said, "No,
our volunteers don't think they've earned their stripes until they've driven hours to get to a prison, waited an hour or more in the rain or snow and then been turned away with no excuse.

Interference with religious practices isn't limited to Christians. Isaac Jucubavich was an Orthodox Jew with whom I served in prison. And he was a very kind man. I delighted in our conversations about our faiths and our perspectives on life. It was painful to me to see the say he was disrespected routinely by the staff.

As he went through the cafeteria line and asked for his kosher diet, the supervisor screamed at the top of her lungs, "What do you think this is Burger King? You're going to eat what we give you and get moving or I'll send you to the hole". Another time he was assigned to paint the inside of the phone booth. He went to relieve himself in the restroom. When he came back one of the other inmates had taken the can of paint and thrown it all over the floor in the hallway.

Isaac returned from the restroom to be screamed at by the officer. Why did he make that mess? When Isaac tried to explain that he had been in the restroom and that someone else had done this, and
this is in front of all the other inmates, he was chewed out and told that if he didn't shut up and not try to explain what had happened, he would go to the hole.

Now, prison culture is very unique. It's not like the rest of society. The inmates look for outcasts. They look for a way to disrespect other people, to think they're better than other people and when the staff singled Isaac out continually for harassment like that, they might as well have put a sign on him that said, "Kick me, I'm a Jew". The other inmates harassed him, too, because they had clear permission from the staff to disrespect him.

In preparation for my testimony here today I asked our field to tell me some of the difficulties they've experienced of a similar nature to this. Some examples, arbitrary loss of volunteer credentials or information in computers preventing long-time volunteers from coming in. Interrupting programs by yelling commands and having a cluster of radios very near the prisoners. Starting programs very late. Holding back prisoners who want to attend. Stopping a program in the middle without cause. Loud noise and blaring televisions near the location where the Bible study or activity was being held. Officers will pull
inmates randomly out of the sessions without cause.

Bring a medication cart into the middle of Bible study, stopping the study for 15 minutes. Stopping the program up to 30 minutes with no reason given. Officers showing disrespect to volunteers and clergy in front of the prisoners.

Another frequent tactic is the “slow walk to the mound” with paperwork. Some administrators don't say no, they just don't say yes, and in a prison environment without their permission you can't do anything. There always seems to be some new form to be filled out or perhaps done over because the old one got lost. One of our coordinators described this passive resistance of some officials. Quote, "He constantly requires differing protocols for submitting requests for time inside. One week it will be it has to be approved by the Deputy of Programs first. Then we will go through the process of getting our curriculum to the Chaplain, who then submits it to the Deputy of Programs and it's lost, which has happened three times. It goes on a volunteer coordinator.

However, the coordinator will then tell us we have to first have a list of the volunteers and that they won't allow us to submit a program proposal until we have that. But we can't submit a proposal
without the approval from the Deputy, so it is
constant confusion. In addition, the volunteer
personnel are not anxious at all to allow volunteer
in. They, quote, `don't understand why anybody would
want to come and see these women', so they don't act
on things quickly, efficiently, or pleasantly".

In one case, a prison in Oregon, we waited
10 years and have yet to be allowed in to provide our
program, even though we're willing hands able to help
them. Why would some correctional officers have this
attitude? It's not animus to religion. It's
bureaucratic lethargy. It's more work for them. Now,
many prison officials like you've heard today,
encourage religious activities. They know that a
changed heart changes the actions of inmates and they
do all they can to facilitate it, but also along side
them are many officers who make it difficult.

There are two troubling policies that
frequently occur. One is to limit inmates to choosing
one religion and only one activity for that religion
during a week. I'm a Catholic. While I was in
prison, I not only went to Mass, I went to Lutheran
services, Southern Baptist services, AME services, all
the Christian services. That's the only place there
was light in a very dark place. Under those systems,
I only would have been allowed to go to Mass. And if there were a Prison Fellowship program I wouldn't have been allowed to go to it because Prison Fellowship is not a religion.

The second thing that comes up, in the guise of equal treatment for all, they limit each religion to one night. So Monday night may be Protestant, Tuesday night Islam, Wednesday night Jewish and Native American, Thursday night Wiccan and that's all that they have. And you're limited in the amount of space. Now that's an arbitrary allocation of space, not based on the needs of prisoners and their ability to exercise their right, but it's arbitrarily assigning it one for each faith.

In some cases there is no interest of inmates in the faith and staff members have gone out and recruited people to participate in those religions, while turning down the more popular religions that want to have more Bible studies. Again, on its surface, it's fair, but it reality it discriminates against the needs, religious needs of the prisoners.

I'll end just by saying that there are wonderful people in prisons that have done a terrific job working with inmates, helping to transform their
lives, assisting outside groups, but there's also a separate culture that views inmates as manipulators and that every volunteer is a threat to security and therefore, a threat to their career. And I really hope that the Commission will address standards that will inform the corrections officials all the way down through their training to the lowest level that there's a constitutional right to practice faith and also it does great public good to allow religion to transform lives. Thank you.

CHAIRMAN REYNOLDS: Okay.

MR. NOLAN: I have to apologize in advance. I've had a long-standing lunch appointment. I need to leave here at 12:30 so I apologize. I mean no disrespect to the Commission but I will have to go then.

CHAIRMAN REYNOLDS: Understood. Ms. Dilg?

VICE CHAIR THERNSTROM: Should we open questions to him given the fact that he has to leave?

CHAIRMAN REYNOLDS: Good point. We're going to deviate from our normal procedure and since you will be leaving earlier, does anyone have any questions for Mr. Nolan?

COMMISSIONER MELENDEZ: Just a question, did you have any questions as to the last panel,
anything you heard that --

MR. NOLAN: Well, I thought your observation about the restrictions on religious materials was very apt. Some prisons say you can only have items purchased from the commissary, you can't order them from outside. Others put great restrictions, unless it's pre-approved you can't receive Bible studies. Well, a lot of religious materials are sent in by great religious groups that mail them in and they just throw them away when they come.

There was one other question you had that I also thought was apt and I'm sorry, I'm drawing a blank on it. Yeah, but -- oh, one thing, the restriction on materials, for any serious Bible study, you not only have the Bible itself, but you have commentaries, whether -- you know, the Jewish commentaries or Christian commentaries. We were restricted to having a maximum of four books in our possession and so the library was the only place we could go to for these deeper commentaries and studies of our faith.

And restrictions on libraries, where they don't have the broad range of commentaries, really restricted out ability to really get into and study
our faiths. And Ms. Thernstrom's comment that a lot of inmates are illiterate is true but it's fascinating, a study in Ohio just came out that showed the inmates that participate in religious programs gain literacy and the thesis of the person that wrote it is, in order to study the Bible, they learn to read, they learn to speak because they participate in Bible studies. By every measure, they exceeded the other inmates. They didn't start out that way but they ended up exceeding the other inmates because of their involvement in Bible studies.

So whatever we could do to encourage that has that salutary effect of improving their ability to communicate and get along in the world.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Two quick questions. One, what is the rationale given for restricting the number of religious services that an inmate can attend in any week? And the other question is, are there areas of research that the Commission could advocate in this report that you think are important, that is you know, areas in which it would be useful to know more than we do and the literature is --

MR. NOLAN: The reason given for the
restriction on the number of Bible studies or worship
services is space. However, space or personnel, as
the Chaplain said, they now require -- I think it's
salutary that an officer be present but there are
other ways to observe it.

One prison I was at, they knocked a hole
in the wall, where we met was right next to the
officer's station, and put a window in there and a
microphone, so it didn't require extra personnel to
allow us to have extra space to operate. I think
creative solutions like that. If a priority is to
facilitate Bible studies, the way to have adequate
supervision and to use space is there. A lot of space
in prison lies empty during the time that there are
Bible studies.

VICE CHAIR THERNSTROM: My understanding
was that even if a space had been created and there
was an activity going on that was religious in some
way that you nevertheless couldn't attend if it you
had already attended something else, so that can't be
a space --

MR. NOLAN: Right, okay, I'm sorry. In
some states, Maryland, for instance, you have to
declare your faith and frankly, I've never heard a
good explanation of why that is, why they're just
limited to one faith and then one activity for that faith. No one has been able to explain that, but that's a policy that's spreading as far as -- and interferes directly with people's practice of their faith.

The second thing I researched there are a couple of -- as was mentioned in the previous panel, a dearth of research in this. I think it's very important to look at the effects. There was a study done of a prison fellowship program called the InterChange Freedom Initiative by the University of Pennsylvania that found -- it was a residential program that studied them inside and outside. It's fascinating. What they found was there was no difference between the participants in our program and the comparison group for those who just attended the residential portion, but for those that had the follow-up, they completed the program and graduated, that stayed with the mentor, that kept their appointments with the probation officer, that showed up for work, in other words, that completed the program the recidivism rate was only eight percent.

And so what was said in the earlier panel about trying to meet people at the gate and trying to help them with that transition, is absolutely
essential. It's not enough to just study the Bible inside. There has to be that loving, moral person that the system can't provide that only the community can provide to come alongside them, help them with the decisions that they make, so research on the effect of that.

The second thing I would say is the -- as our mutual friend, Bill Bennett has said, "If you're walking down a street at midnight, and you know, 12 kids are coming towards you, would it make a difference if they were coming from Bible study", and the answer is of course, yes. And on a prison yard the same way. Studying the impact on the officers that accommodate religious expression and practice, those institutions I can guarantee you, we see it from our experience, the correctional officers have a much better life. Their retention is better, their days off, their beefs against their superiors are all less because it's a healthier atmosphere, because the last thing I'll say is, religion has inmates think about something outside themselves.

One of the problems with our culture is people are very self-centered and religion tells them there are things more important than you in life. And that's the benefit, getting their minds around the
fact that the world doesn't revolve around them. That there are certain things that have to -- they have to accommodate the rest of society and that's what comes from the faiths, the many faiths represented here is that idea of service other than self.

VICE CHAIR THERNSTROM: Thank you very much.

CHAIRMAN REYNOLDS: Okay, Ms. Dilg?

MS. DILG: I'd like to thank the Commission for inviting me to address you today. I am a staff attorney with the ACLU's Program on Freedom of Religion and Belief. Since its founding in 1920, the ACLU has worked to safeguard the constitutional rights of the American people. The Program on Freedom of Religion and Belief, we work to advocate for religious liberty in a variety of context, including prisons. We also work with the ACLU's National Prison Project which represents inmates seeking to secure constitutional rights of all kinds, including religious rights.

Our statewide affiliates also frequently represent inmates who encounter obstacles in exercising their religious liberties. I'd like to speak to you today about two aspects of the current law governing inmates' religious rights; first, the
substantive, and second the procedural. As Chaplain Pryor and Mr. McFarland said earlier, in the prison context the general First Amendment standard is that regulations are acceptable if they are reasonably related to legitimate penalogical interests. Since that standard was articulated, the Supreme Court handed down Smith which, of course said that government entities can pass general laws of neutral applicability even if they incidentally effect religious rights.

How Smith impacts the Turner standard is a little bit up in the air. The DC Circuit came out with a decision in 2002 saying, We don't really know, but it doesn't matter so much any more because the more protective law on religious inmates' rights is actually the statutory law passed by Congress in reaction to Smith. The first law is the Freedom Restoration Act which Mr. McFarland and the ACLU both advocated for before Congress and that law applies to Federal Government and officials including the Federal Bureau of Prisons and says that the government must have a compelling government interest in order to restrict religious rights and must use the least restrictive alternative in seeking to achieve that compelling government interest.
RLUIPA, the Religious Land Use and Institutionalized Persons Act, was passed in 2000 after the Supreme Court said that RFRA was not constitutional as applied to the states. Congress came back and said, well, in the context of prisons, even if RFRA doesn't apply, if you're going to receive federal funds, you have to comply with the same standard. So now any state or local institution that receives federal funds also has the same standard, the government must have a compelling interest to substantially burden religious exercise and must achieve that compelling interest through the least restrictive means.

Both of these laws are to be construed broadly in favor of protection of religious exercise and both define religion quite broadly. The religious exercise protected is any exercise of religion, whether or not compelled by or central to a system of religious belief. Courts do not inquire into the centrality of a religious belief. They will inquire into the sincerity of religious belief. So they will not call experts and say, "Is this really a Muslim belief"? They will ask the inmate or petitioner, "Tell us examples of how you've practiced this belief in the past", and other such questions to try to
determine sincerity of the belief.

So substantively, the law is actually quite protective. Applied correctly RFRA and RLUIPA provide substantial protection to inmates seeking to exercise their religions. Just a couple of examples from last year, the First Circuit in an ACLU of Rhode Island case dealt with a case where an inmate had been preaching for about eight years. He had experienced a religious conversion in prison and had begun preaching to other inmates.

Inmates liked his preaching and this had gone on under the supervision of chaplains and guards for about eight years. The prison became nervous leadership among inmates was trying to quell any sort of differentiation between inmates and passed a broad regulation saying, "No preaching by inmates". And this person was distraught said, "But I've been doing this, how can you say I'm a security risk? I've been doing this for eight years".

The First Circuit actually agreed with Mr. Spratt and said that the regulation was too broad, that the prison may have had a compelling interest in prohibiting leadership among inmates but that this couldn't possibly be the least restrictive alternative. They, for instance, were still allowing
Mr. Spratt to stand up and read scripture, and if he could do that, why couldn't he preach and there must be some other alternative out there to accommodate Mr. Spratt's preaching.

Another example is a Third Circuit case also from last year. The Pennsylvania Department of Corrections has a policy limiting or had a policy limiting the number of books an inmate could keep in his or her cell. There was an inmate who belonged to a religion that required him to read four different Afro-Centric books daily and spread Pan Africanism, he went to court and said, the regulations on the number of books he could keep in his cell didn't allow him to practice his religion.

The Court actually agreed and said absolutely, there's no reason -- if a prison has a regulation that limits the number of books but doesn't have a regulation that limits the actual volume of materials that the inmate has in his or her cell, that doesn't make any sense. There's no reason that this particular inmate can't choose to have books as opposed to magazines or other materials.

So in both cases you see that courts work hard to require prisons to present compelling stated interests and to look for the least restrictive
alternatives to achieve those interests. It's a good law and we, have generally been pleased. There are a few counter-examples and of course, any time a government institution goes in and says, "Our compelling interest is prison security", generally the court is going to agree. So it really comes down to least restrictive alternative. But generally courts have forced prisons to come up with the least restrictive alternative to achieve the government interests and also accommodate religious inmates' rights.

The problem that we see with RLUIPA now is actually procedural. Inmates are having a very difficult time getting to court and obtaining relief under RLUIPA. RLUIPA provides that a person may assert a violation of RLUIPA as a claim or defense in a judicial proceeding and obtain appropriate relief against the government. The big question out there, first of all, is what is appropriate relief? That's come up in a couple of contexts. There are general immunity questions. There's an 11th Amendment question

The Fourth Circuit recently held that although RLUIPA applies to any prison that received federal funds that doesn't necessarily mean that the state has waived sovereign immunity. So that an
inmate may not be able to sue officials in their official capacity because 11th Amendment immunity might not be waived.

That's an outlier decision. What's not an outlier decision is qualified immunity. If an inmate wants to sue people in their personal capacity to get around the 11th Amendment bar, they have to prove that their rights that were violated clearly established that the guard reasonably should have known about them.

So there are these immunity based bars out there to inmates recovering. Those apply across civil rights claims and are pretty ordinary. What's different in the inmate context is the Prison Litigation Reform Act, and this Act applies only to inmates. So if you want to bring a religious rights claim outside of the prison context, a totally different procedural set of rules applies to you than if you're an inmate trying to file a claim.

There are a few provisions of the Prison Litigation Reform Act that we in a coalition of religious and other organizations are particularly concerned about. The first is a physical injury requirement that prohibits prisoners from bringing actions for compensatory damages for mental and
emotional injury without proof of physical injury.

Whenever you're bringing a religious freedom claim, it's very unlikely that you're going to have a physical injury. So essentially how this has been construed most recently by the 3rd and the 11th Circuits, is to say that RLUIPA doesn't allow compensatory damages. That while you can sue for relief, you can't receive the same compensatory damages that you would if you weren't an inmate.

So that has been one problem. Compounding that problem is an attorney's fees provision that essentially restricts attorney fees to 150 percent of the damages awarded. So that means if you go in with an RLUIPA claim as an inmate and you file your claim and you win, unless you prove wanton disregard or something else that enables you to get punitive damages which is relatively rare, what you get are nominal damages which is one dollar.

Because of the attorney's fees restriction, the attorney's fees are limited to 150 percent of that award, $1.50. This has happened in two cases recently, a 7th Circuit case and also a 10th Circuit case. They said, "This is what the law says, the attorney gets $1.50". You can imagine it's hard enough for inmates to find representation but when the
attorney fee is almost certainly going to be $1.50, that presents a real procedural bar to inmates obtaining representation.

Another procedural hurdle in the PLRA is the exhaustion requirement. This is something that a lot of groups are focused on. When inmates file claims under the exhaustion requirement, they're required to exhaust such administrative remedies as are available. These are established by the states. Different state correctional institutions have different procedural requirements that inmates must go through. In a recent Supreme Court case they described Michigan Department of Corrections exhausting requirement the inmate had to -- let's say religious materials were taken from the inmate.

The inmate would have to go to the guard and make an oral complaint and try to resolve the problem within two days of the materials being taken. Then if that didn't work, within five days after the failure of the oral resolution, you have to file a complaint, again to your immediate supervisor. If that is denied and so far you haven't gotten outside of the person who actually did this in the first place, if that's denied, you then have five days to appeal or five days to obtain an appeal form and five
days to file an appeal, and then you have to go through one more appeal that goes up to the head of the Michigan Department of Corrections.

And if you fail to do all of that, then when you try to file in Federal Court, you'll be immediately kicked and your case will be immediately dismissed, whether it's meritorious or not. What we recommend is that that requirement be modified to allow federal courts to stay cases and return them to prison officials if they haven't been administratively exhausted. So it's not that we're trying to repeal the administrative exhaustion requirement, we're just looking for a little bit of reasonableness for inmates who are fearing retaliation or encountering other problems with the procedures.

All of these fixes, and I will provide more written material on this, can be made without undermining the PLRA's original goal of stopping non-meritorious claims from reaching federal courts in large numbers. You can keep the requirement that a frivolous claim be kicked without ever being served on the defendant, which is the key efficiency based requirement of the PLRA. Thank you.

CHAIRMAN REYNOLDS: Thank you. Imam Al-

Amin.
IMAM AL-AMIN: Yes, I am Imam Abuquadir Al-Amin from the San Francisco Muslim Community Center, also representing the organizations of Imams and Chaplains in the State of California, Arizona, Colorado, Nevada, Washington State and Oregon. Thank you, Commissioners for allowing me this opportunity to be here with you today to present an Islamic perspective regarding prisoners' rights and religious discrimination.

Firstly, I would like to state that it is the opinion of many Islamic scholars and thinkers that there is great compatibility between the United States Constitution and the Book of the Muslims Islam. I want to mention some things that are important to us regarding providing religious services in prisons. One, all chaplaincies experience varying degrees of difficulty in gaining access to scheduled religious services. Muslims, we experience some difficulties at a higher level than others because our religion is in some cases, greatly misunderstood by some of the correctional staff.

We also want to bring to your attention that sincere regular participation in faith based religious programs while in prison is a prime factor correlated to improve behavior both while in prison
and post-prison, there appears to be little or no appreciation of this fact. Other issues of importance are religious services are often delayed or cancelled for very little or no reason. Custody staff are very dismissive and sometimes ridicule those who participate in faith based religious self-improvement programs. Additionally, less familiar religious traditions, particularly Al-Islam receive inordinate amount of the above treatment.

Muslim chaplains often are given less than full time based employment requiring them to have to work at more than one prison in order to have a full time job. In some cases, the chaplain to Muslim inmate ratio is comparable or exceeds the same ratio for other chaplains who have full time positions at the same prisons. This requires twice the work and adjustments than working at a full time position at one prison.

This situation requires travel time between prisons and home and dictates many more hours away from home. Muslim inmate serviced in this situation are deprived the full religious accommodations.

And thirdly, Muslim inmates are not afforded access to religious required meals, meats
which we call halal, while Jewish inmates are afforded
the meats that their religious tradition required, kosher, at the expense of the prison. This is the
practice ruling every prison in the State of California. Proposals have been presented to acquire
the Muslim allowed meats at a cost below the cost of non-complying meats that are currently being provided to Muslim and all other inmates. Muslim inmates have been penalized for participating in religious services.

In some incidents, inmates are awarded good time credits for participating in educational programs and job assignments. However, when these programs coincide with religious services, particularly the Friday congregational services, if an inmate requests permission to leave his assignment to go to religious services, they may lose good time credit and this is done in a very arbitrary manner.

Prison security officers have been reported to have searched Muslim chaplain offices, confiscated religious educational materials and not returned them to the chaplains. In order to better understand the role of Al-Islam in prison settings mandatory in-service trainings for all prison staff could serve to promote a better understanding of
Muslim beliefs and practices.

Regarding separation of church and state, it actually demonstrates the far-reaching prudence of the framers of the United States Constitution that allows the freedom of religion to be an individual right. Understanding the plurality and diversity of this society, we're better off as a people when we can learn from a great variety of traditions that are practiced here. We also find an underlying universal thread of values and principles that recur in different cultural and religious expressions.

Religious discrimination is in many cases, the byproduct of ignorance and misinformation and in some cases manufactured or orchestrated circumstances to support personal or political positions. Litigation usually occurs as a result of the lack of solutions to requests being made by inmates who have the perception that they are being -- that they are having their legitimate rights violated. This also affects staff rights as well.

I would also like to point out that much of the information regarding Islam being a fertile ground for terrorists in America's prisons is really over-exaggerated. Some of the instances that we are aware of where individuals continue a life of crime
while having a very superficial relationship with the Muslim practices or with the Muslim community outside have been blown up by individuals who have a particular agenda that they're promoting. So we're very concerned about our image, the image of the religion of Islam being maligned as a result of political positions that people take.

As a community of Muslims in America that are predominantly African American in the prisons, most of them come to Islam or are attracted to Islam are coming from lives of dysfunction where they may not have had a faith-based practice that was initiated in their life at an early age and they are seeking solutions. And the religion of Islam offers a core system of beliefs and disciplines that allows that individual to internalize that information and work on themselves and improve themselves and become more viable and productive citizens upon their release. That has been the tradition of Islam in prisons in America for better than 50 years.

We also would like to point out that the first instance of Islam being spread in America's prisons was as a result of Muslims who objected to participating in World War II when the early followers of what was then the nation of Islam led by the
Honorable Elijah Muhammad, himself, and adult male members of his organization who were at draft, put in prison for their refusal to go into the military to fight. The same thing happened with Muhammad Ali when he took his conscientious objector status regarding the Vietnam War and there were other Muslims that also objected to participating in a war that they thought was ill-conceived and not deserving of their support and participation.

And I think that that factor should be explored and should be looked at very carefully, that individuals have a right also not to participate in war. The underlying idea in the religion of Islam is peace and then to paint the picture of Muslims because of some policy in another place and another part of the world, is very I think dangerous for us to paint with a broad brush that all of the Muslims in American's prisons are potential terrorists.

CHAIRMAN REYNOLDS: Thank you. Mr. Luchenitser.

MR. LUCHENITSER: Yes, sir, I'm Alex Luchenitser, Senior Litigation Counsel, Americans United for Separation of Church and State. Americans United is a nonpartisan, non-sectarian organization dedicated to the preservation of religious liberty and
the separation of church and state. Our members include people from a wide variety of religions, as well as people without any religious affiliation.

One thing that protection of religious freedom of prisoners requires is that prison inmates be affirmatively permitted to freely exercise their faiths. For this reason, Americans United supported the initial enactment of RLUIPA and we also filed a brief in support of the constitutionality of RLUIPA when that issue reached the Supreme Court in 2005.

Protection of the religious freedom of prison inmates also requires that inmates not be coerced to submit in any manner to religious proselytization and the inmates not be discriminated against in any manner based on their faith. It is this type of protection of religious freedom that I would like to focus on in my statement. There are several key principles of constitutional law that apply in this context. First, the government must not coerce any person to take part in religious activity. Thus, the government must not provide individuals any incentive to modify their religious beliefs and practices or to undertake religious indoctrination.

Second, the government must not discriminate among persons based on religion. Third,
the government must not delegate governmental power to religious institutions and the government must not become excessively entangled in the affairs of religious institutions. Fourth, the government must not sponsor or finance religious indoctrination or otherwise provide any direct aid to religious organizations that use the aid to support religious activity. Now, of course, in the prison context, there's the exception to this last rule that allows the government to fund chaplains in prisons and religious programs under the supervision of the chaplains.

And the reasoning behind this exception is that the government is responsible for restricting prisoners' freedom of movement so in order to allow prisoners to fully exercise their religions as required by the First Amendment, the government needs to provide prison chaplains and related religious programming. But the courts have made clear the funding of prison chaplaincy programs is constitutional only to the extent the following requirements are met. First, the religious program must be reasonably necessary to enable those whose movement is restricted to fully exercise their religions.
Second, the chaplaincy programs must be non-sectarian and must be provided to all religions on a non-discriminatory basis. Third, the chaplain's services must be non-proselytizing and finally, the chaplaincy services must be provided only to the extent desired by the recipients of the services. The growth over the last 10 years of programs that aim to rehabilitate prisoners by intensively immersing them in the teachings of one religion has created great risks that these constitutional principles and inmates' rights will be violated.

Until the last 10 years, most faith-based organizations that have provided services in prisons have focused on more traditional programs such as discrete Bible study classes, classes that inmates were free to attend or not attend and classes that were not linked to any aspect of prison conditions, classes that were privately financed. And this type of programming did not raise serious constitutional issues. The new kind of programming we've seen over the last 10 years involves the placement of prisoners in a separate prison unit controlled by a religious program that immerses inmates in religious teachings, often those of a particular religion, day and night.

The most well-known example of this kind
of program is the InnerChange Freedom Initiative Program which I will focus on. I happen to know a whole lot about this program since I am the lead counsel for the plaintiffs in litigation over the constitutionality of the program. However, the constitutional and policy issues presented by InnerChange Program, have also arisen with various other faith-based prison units and faith-based prisons as discussed in detail in my written statement.

The litigation over InnerChange's program in Iowa showed that the operation of the program violated inmates' rights in many ways. First, participation in the program was linked to numerous material benefits and privileges including more desirable housing, quicker access to treatment classes that were required for parole, greater contact with family members, increased access to computers and computer training, guaranteed jobs in the prison and various other privileges. This violated the constitutional prohibition on coercing inmates or giving inmates incentives to take part in religious programming. Second, the program itself discriminated among inmates based on religion and though it claimed that it would take inmates of any faith, inmates in religions different from what the program teaches
could not in practice enroll in the program while staying true to their own faiths.

This discrimination was overt in some ways. In the litigation, we uncovered numerous instances in which InnerChange personnel or materials made statements denigrating other faiths and I give a number of specific examples in my written statement of those. The discrimination is also inherent in the nature of the program. The program intensively immerses inmates in one particular form of Christianity 24 hours a day, seven days a week and all the program's Christian activities such as classes and worship services are required, mandatory. So the program is intrinsically inappropriate for inmates of other faiths.

The program's discriminatory features, when combined with the fact that inmates who enrolled in the program received special benefits, created an environment where the state itself was discriminating based on religion in the allocation of benefits and rights to inmates. Third, the state delegated to the program its power to direct the daily lives of inmates, including authority over discipline of inmates, and the program would often discipline inmates by requiring the inmates to complete religious
exercises.

The result was that state power was used to coerce inmates to engage in religious activity. And the provision of state power to religious institutions as we had here, not only threatens the rights of inmates, but it also threatens to corrupt the religious institutions themselves which is one of the main concerns underlying the principle of church/state separation.

Finally, until the middle of last year, the state of Iowa made direct cash payments to the program that the program used to support its religious activities. This was a clear violation of the rights of taxpayers not to have their tax payments used to support religious indoctrination. To protect the rights of inmates as well as to prevent improper unions between religion and government from corrupting both, we recommend that prison officials adhere to the following guidelines.

First, participation in religious programming should not be tied to where an inmate lives, to how an inmate obtains release or to other material benefits or conditions. Second, authority over the movement, activities and discipline of inmates should be fully retained by governmental
employees and should not be delegated to any personnel of a religious program.

Third, public funds should not be used to support religious programming beyond what is reasonably necessary to enable prisoners to freely exercise their religions. Following these guidelines will be the best way to insure that inmates' rights and our constitution are respected. More details on all these points are included in my written statement and we very much appreciate the opportunity this commission has given me to testify before the commission, thank you.

CHAIRMAN REYNOLDS: Thank you.

Chaplain Friedman.

CHAPLAIN FRIEDMAN: Yes, again, thank you for inviting me here. I'm not going to read my entire written report but I want to hit some of the highlights here. Disclaimer first, I'm going to be describing some incidents. I'm not going to use specific names, places or dates relating to these examples of religious discrimination because those are better saved for another time that permits fuller examination. And except for where otherwise necessary, I'm going to use the generic term "prison" or "prisons" to refer to all adult and juvenile
prisons and correction systems or facilities. So it shouldn't be any surprise that religious discrimination abounds in prisons. After all, these places they have neo-nazis and Christian identity supremacists and the other and the like who've been convicted of religion-related offenses. Moreover it is the nature of the prison beast that in order to secure protection, inmates often ally with an affinity group and so that there's a lot of association with gang and ethnic affiliations and so therefore, even though anti-Semitism has always been a fact of life in prisons, it's views are far from the old ones who were experiencing religious intolerance these days.

Now, what would be a revelation to many however, is that religion-related discriminatory acts against inmates are less often attributable to other inmates than they are to staff and outside ministries as you've been hearing here today. And on the staff side there has been a paradigm shift from people being sent to prison as punishment to being sent to prison for punishment. And staff feel like they've been handed this mandate, public mandate to punish. So they do so in part by instructing religious practices that they perceive to be perks rather than necessity. Further exacerbating the situation are continued
conditions of prison overcrowding, staff shortages, et
cetera, that have resulted in only the least demanding
practices being permitted for the safety and
convenience, and you've heard other references to
that.

So this default supported and even
couraged by some bigoted ministries, obstructs
religious exercise in numerous faith groups that
require much more than just a Bible and a weekly
prayer service to be properly observed. Prison
ministries, particularly those that are proselytizing
them, find prisons to be fertile turf. Proselytizing
is officially permitted -- prohibited, excuse me, on
most government property, in fact, universally, but
prison officials often turn a blind eye to such
activity or allowed it to occur under the guise of
sharing one's faith, if you will.

But make no mistake about it however,
spreading the good news by the likes of evangelical
prison ministries, their staff allies and most
importantly their inmate disciples, are -- have
blatantly crossed the line into overt proselytizing.
So in addition to placing constant pressures on
inmates and family members to convert to this so-
called majority faith, which in fact, is a plurality,
I would point out, their tactics often include highly divisive denigration of other Christian denominations and minority faced, most notably Muslims these days. This spawns physical altercations and other negative incidents. So in the midst of all this mess, you have the chaplains and staff chaplains, the best of them are highly trained professional employees whose skillfully manage the religious activities of all faith groups and maintain a balance between disparate factions who working the same turf.

The worst of them are unqualified volunteers with their own agendas who only manage to contribute to and amplify prison problems and that's particularly prominent local county and local jails where a self-appointed pastor with no other qualifications than being friends with the local sheriff, becomes the chaplain at the local facility.

In preparing for this briefing I solicited input from experienced professional chaplain colleagues from across the country and immediately received the following two responses. A staff chaplain in a large county jail in the Northeast wrote, "My initial thoughts are that we need to overcome our mentality that develops religious and spiritual provisions in prison from out of a
presumption of Protestant, Christian and American
civil religion," and he refers to work by Will
Herberg, "Protestant, Catholic and Jew".

A staff chaplain at a moderately sized
West Coast Prison facility, a state prison facility,
writes, "I believe there is a bias in favor of
fundamentalists or evangelical Christian programming
that pervades the thinking of some chaplains and
prison administrators". Interestingly enough, both of
these chaplains are from a conservative Protestant
persuasion, not what you would expect. In any case,
their comments go directly to the foremost driver of
religious discrimination in prisons.

Now, religion in prisons does largely
reflect what's going on in the general community in
the way of attitudes and conditions but there's one
major, major difference and that is the inmates are
literally a captive and vulnerable audience or
population. So in order to really understand what's
going on, you have to put yourself in an inmate's
shoes.

Okay, for example, if you walked in with a
cell mate who's haranguing you constantly being taught
in Bible class that you're going to hell if you don't
accept Jesus, you can't just walk away from him like
you can out there on the street, okay? If your prison warden orders that every inmate participate in a corrections department sponsored proselytizing evangelical event, orders everybody to sit on their bumps and watch the TV or whatever, the monitors or physically participate, you can not refuse, okay.

You can't avoid repeated showings of a passionate Christian movie on every TV monitor, its audio blasting from every speaker in your housing unit. You can't access your religious service provider whose volunteer status has been revoked on the pretext that he violated prison policy by driving a released offender to a rehab facility. You can't properly participate in worship service that has been relegated to a noisy prison yard area by a chaplaincy administrator who justifies it by reasoning that Orthodox Jews at the wailing wall in Jerusalem appeared to be focused on their prayers.

You can't refuse to eat when a prison special activities coordinator denies you a religiously acceptable Bible on the warped conclusion that you're insincere in your faith because you committed new offenses while you were out on parole. You can't escape murderers and inmates to whom you've been thrown by a prison major because you question his
authority in constantly cancelling Jewish activities.

And you can't do anything about it from your grave when that prison system sanctions that major by moving him to another facility and promoting him to an assistant warden's position, all actual occurrences. Jewish Prisoner Services International's files are deep in these documents, very well documented abuses. They also contain instances of inmates being accorded privileges for complying with or conforming with faith dictates of their keepers. They get everything from advantageous work assignments because they are of good Christian character to actual preference in front of parole boards for having participated in specific Christian programs when similar programs are not available for other faiths or in a secular context.

So what's happened here is that what this all adds up to is that this is -- all this preferential treatment has come to constitute the establishment of a preferred faith in America's prisons, that simple. There are four things that I've noted in my written testimony that I'm particularly concerned of at this point. I'll just note them quickly. One is regressive chapel requirements, and what's going on is that a lot of professional
chaplains' positions are being eliminated and very often at the urging of certain ministries that are offering free chaplains, who you can imagine what their agenda is and in fact, I describe one of those.

The reason they're able to do this is there are no required national standards for chaplains, not minimum qualifications and what little regulations are and I've sat on some of the -- for example, the American Correctional Association Standards, the religion standards are part of the mandatory -- the mandatory sections of the accreditation process and accreditation is voluntary anyway. Okay.

Proliferation of these God Pod proselytizing machines, I could go on and on about that. I totally agree with Mr. Luchenitser and we certainly have many, many examples of what's going on with them. The private -- and by the way, you know, multiple-faith, no problem but single faith proselytizing machines, no. You asked about the private prison industry, somebody. Absolutely, there are problems there because you know, they cut programs, they cut costs to make more money, and persecution of Muslim chaplains and inmates. So, I've also made some notes about some things that you can
read in my written testimony about RFRA and RLUIPA because the Committee had asked about it, the Commission had asked about it. The most disturbing thing is that the Justice Department has done very little toward authorizing its authorized enforcement of RLUIPA, at least the institutionalized portion of it and as far as I'm aware, no single governmental agency has been sanctioned for violating it.

So I've painted a really grim picture here, I know, but I'd like to close by sharing that while the predominate, these conditions are not universal. In fact, where enough professional chaplains employed, it can and does make a world of difference and you can take, for example, the Federal Bureau of Prisons but they only represent less than nine percent of the population and there's even been some problematic issues with some changes in their policies over the past 10 years or so.

So I understand that the Commission is going to be sending out questionnaire to facilities, to selected facilities, but you know, I serious doubt that self-reporting is going to produce admissions for prison officials that these things actually occur.

However, I can and am more than willing to produce documentation that details all of this and the
only thing, you're going to have to come to us because we've got rooms full of files relating to these kinds of things. And I would ask that the Commission urge the Justice Department and other federal law enforcement authorities to fully investigate them and take appropriate action. Thank you.

CHAIRMAN REYNOLDS: Okay, thank you, Chaplain Friedman. Chaplain McCollum?

CHAPLAIN MCCOLLUM: Well, good morning, everybody. I'd like to thank the Commission for giving us the opportunity to be at the table both as a member of the Wiccan community, who seldom ever gets a voice, but more importantly, as a voice of minority faith, because I'm really the voice of minority faith here. And I'm going to talk about discrimination against Wiccans in the prisons. I'm going to give you some specific examples of things like that but it's very important that you understand that you could insert the name of any other minority faith in place of Wiccan, it could be Buddhist, it could be Johovah's Witnesses, it could be Mormons, whoever you want to put in and their experience is exactly the same as ours and I traveled to prisons all over the United States for years and years and years, interact with them, and I see all these things first-hand.
So I'd like to begin by giving you a few examples of discrimination to sort of show you the severity of the problem that takes place. A Wiccan inmate has cancer and the prison guards refused to transport him to his chemotherapy unless he removes his religious pentacle medallion that he's wearing which they have objections to. The inmate chooses to forego his chemotherapy and keep his pentacle.

Another Wiccan inmate has been trying to go to Wiccan religious services for months, but can't get out because the guard in her dorm says it's better for her soul if she doesn't attend. A dying Wiccan who is trying to get a hold of his volunteer Wiccan chaplain wants to connect with him before he actually passes away, the chaplain is making constant phone calls to the prison to be able to connect with the inmate who's dying and the prison administrators refuse to return any phone calls, but worse, the prison mailroom actually tosses out the letters the chaplain writes to the inmate to explain why he's not coming to see him before he dies.

For more than a decade, I've had the opportunity to interact with administrators and inmates on religious accommodations all over the place. I can tell you that the religious
discrimination against minority faiths is major in the
prisons.

The reason for all of this is what I call
the Dominant Religious Lens Factor. The Dominant
Religious Lens Factor is a process whereby
administrators and security staff view all faith
practices from the perspective of the dominant faiths
only, leaving no consideration that there are
different ways of practicing religion.

And the Dominant Religious Lens Factor is
exacerbated by the fact that almost all of the
administrators and the people who make the decisions
about religion belong to the dominant faith and view
everything that takes place in making religious
accommodations decisions based on their own faith.
The process of using this manner of looking at faith
and determining who gets rights and who doesn't and
what things they do get to have and what things they
don't are exactly the very specific type of things
that our forefathers and foremothers left Europe to
come to this country to get away from, the ability for
there to be quote, "a ruling government connected
faith that turns around and tells you what you can and
can't do and gives rights to some people" and not
rights to other people. I'd like to show you how the
Religious Lens thing works. I'm going to give you an example.

One morning I arrived at a prison and I came into the chapel and I set up for religious services and I had the inmates all move the chairs into a circle so that we could hold the Wiccan religious service. Immediately, security came in, stopped us and told us we could not sit in a circle because it was a security concern. They told me that as my responsibility as a chaplain that I had to stand at the pulpit and that the inmates had to sit in the pews and that I had to preach to them from there.

Now, I informed those people that in Wicca we don't preach to people and we don't stand at a pulpit and that the circle represents our sacred space. They would have none of it and they forced me to speak from the pulpit itself and conduct my services that way which totally negated any possibility of the Wiccans actually having a real Wiccan religious service.

I can tell you that eventually I did end up being able to start performing regular Wiccan religious services but the staff at that institution to this day still talk about the inappropriateness of us worshiping in a circle instead of having me up at
the pulpit and the other people down below and because of that, they negate Wicca as a religion and discriminate against the individual Wiccans who participate.

So let's take a look at how this Religious Lens Factor actually effects how these administrators and people who work in prisons work. I had an inmate whose wife died. He was called in by a staff chaplain and given the news. In the course of the conversation, the inmate was told that perhaps the reason his wife died was because he was attending Wiccan services. That same chaplain told the inmate that if he attended real religious services, he, himself, might still have a chance of averting that possibility.

These kinds of interactions are common in minority faiths in prison. They happen all the time. Often administrators and chaplains and other people involved in the programs don't even realize that they're operating from this position because they don't understand the faith that they're looking at and so what they see looks foreign to them and so they think of it as being something different.

Another thing that I've observed causing great difficulty for the Wiccans is to try to gain
access to their religious items, their scared religious items. And always these things are denied on the basis of security. So here's that they do.
Wiccans typically use an altar adorned with various religious items. The items are composed of a chalice, a few candles, incense, typically a few natural objects, like a feather or a flower and sometimes a little statue of deity or a little painting or something like that of deity and generally a religious book of some sort.

All these things are highly sacred to the Wiccans but are denied all of the time, across the nation, at prisons everywhere, not just in one particular state but everywhere, yet in every single case that I've investigated, every single institution who denied those items to the Wiccans, allowed them for use for all of the dominant faith groups. Example, Catholics use a chalice during communion. Muslims and Catholics use incense. Protestant and Catholics use candles. Both of them have sacred art in their things. Depictions of Jesus and Mary are prominent in chapels in prisons. And they all have holy books, which they all use in their practices.

So why is it that these dominant faiths get all those things and the exact same specific items
are denied to Wiccans? I'll tell you the reason is because when staff and security look at it, they look at it through this Dominant Religious Lens Factor and they go, "Hmm, that looks like the Protestant Christianity" or whatever the particular dominant faith is, and then they see the Wiccans all sitting around in a circle with the same items, they go, "Wow, that doesn't look like the dominant faith, you know, faith practices, so that's suspect and we need to stop it or deny it."

Also, another area where some of these problems take place is in the factors that involve accommodation where there are significant resources. For example, the allocation of regularly employed chaplains. This is a really important one. This is a problem throughout the country and California is an example. Even though there are more Wiccans attending religious services at some institutions than there are of the dominant faiths who already have employed chaplains, the state has told Wiccans that they have to prove by their religious faith tenants that they require a chaplain before the state would consider hiring one. The odd thing about this is that proof requirement isn't taken to the Protestants. They don't have to prove that they have to have a chaplain.
They never have had to prove that. But more important is that in Protestant Christianity, the fundamental principle underlying is says they don't need any kind of clergy or faith chaplains. That's the whole idea of the Protestant reformation. They have no need to have a chaplain or a person intercede with them at all. All they need is a Bible, yet they get all these other things.

So let's clarify the situation so you see what I'm talking about here. If the same standards that are being required of the Wiccans were applied to the Protestants, you guys would have to fire all the Protestant chaplains right now because they don't have any ground to stand on at all in all the services that they're getting. These same issues flow over into religious programming.

So for example, Protestant congregations in most prisons have Bible classes, read Bibles, videos, have choirs. I even went to a prison where Bikers for Christ brought full dressed Harleys and inmates got to ride around on them if they would come to Bible study. At the same time, they won't let Wiccans have a place to practice. They won't let them have their books. They won't let them have their religious materials and they say it's all because of
security, even though they've given the same thing to the people who are the dominant faiths.

So the question is, is why is that? I mean, you can see this sets up a very unfair situation where resource allocations are not accomplished by an equitable formula. All of the issues I've discussed involve clear and obvious violations of the Constitution and RLUIPA and RFRA as they directly violate the civil rights of the Wiccans involved. Yet, no one ever questions that. Why is that? You know, some people think that maybe the government has established religion which was brought up by a couple other panelists here, that there are preferred faiths in our prisons.

Here are my recommendations to the Commission. If we want to achieve religious equality in prisons, then we have to restrict the hiring of administrators into gatekeeper positions for religion and limit it to people who do not see it as their duty to have a particular religion succeed in a prison over another one. This should be a bonafide occupational qualification, that's a government term. The people have to be screened to determine they're not these kind of people before they get into their positions. And then we need to educate those people about
pluralism, about different types of religion, about how religion is practiced and about the responsibility as administrators for prisons and government institutions to follow the law, our Constitution and the law. And in the end, I think that one of the most important things that we need to do is to get rid of administrators and chaplains who believe that breaking the law and violating inmates' religious rights is justified by faith, because I run into hundreds and hundreds -- I've been into 22 states' correctional systems and the Federal Bureau of Prisons and these are issues that take place everywhere. So thank you very much.

CHAIRMAN REYNOLDS: Okay, thank you. At this point, I'll open up the floor for questions. Okay.

CHAPLAIN FRIEDMAN: We were that good, huh?

COMMISSIONER HERIOT: To Ms. Dilg. You mentioned and I've written here in my notes and I can't find it now, that two out of the 3rd and the 11th Circuits have taken the position that compensatory damages are not available. Were there any courts that went the other way on that?

MS. DILG: I don't believe so.
COMMISSIONER HERIOT: Do you know of any case where somebody has been awarded compensatory damages?

MS. DILG: In an RLUIPA case, I don't believe so but I can send that information to you if you'd like.

COMMISSIONER HERIOT: Could you? Yeah, also at some point, I'm quoting you here saying it's a good law. There are a few counter-examples but you didn't give me the counter-examples. What were they?

MS. DILG: I can give you those. The 5th Circuit recently had -- and all of these are fact-based determinations. The 5th Circuit recently dealt with the case of a Jewish inmate who both wanted to observe the Sabbath through services and have kosher meals. And that inmate -- the 5th Circuit found basically that an outside volunteer had to be present to run the Sabbath services because they didn't have anyone on staff who could run it and the outside volunteer was only available once a month. And therefore, that was a -- that it was the least restrictive alternative to only provide the services once a month. And in terms of the kosher meal, they said that because vegetarians import free meals were available, administrative and budgetary interests made
those two options the least restrictive alternatives
and kosher meals were not required.

So I may have spoken too strongly to say
that there are bad decisions but there certainly are
decisions going against inmates based on -- it makes
me personally particularly nervous when they say
administrative concerns. When you're talking about a
compelling state interest and the least restrictive
alternative, any time a court has administrative
concerns, I -- it makes me think really we've got the
least restrictive alternative.

COMMISSIONER HERIOT: There has to be some
way, doesn't there that --

MS. DILG: Of course.

COMMISSIONER HERIOT: You know, how much
in terms of resources, you know, in money terms even,
you know, where is the line? Do you have any sense of
where that ought to be?

MS. DILG: You know, the first thing I've
observed in reading all of these RLUIPA cases is that
they're really not clear lines. It's very prison
specific and it really is a fact-based determination.
So I unfortunately don't have a lot of guidance there.
I think least restrictive alternative is a great
standard to have out there and I think that courts
attempt to apply it correctly and generally do.

COMMISSIONER HERIOT: Thanks.

CHAIRMAN REYNOLDS: Todd?

COMMISSIONER GAZIANO: Let me ask Chaplain Friedman about you know, we're discussing a lot of the examples that you've discussed but I'd also like a sense for when these problems are reported and I understand that it would be difficult to report them up the chain, how often there is appropriate correction discipline both staff and whatever, in a huge prison system you include state, local and national. You know, I'm not surprised that there are some bad actors, but I'd like to -- if you could elaborate on those sort of facts.

CHAPLAIN MCCOLLUM: I'd like to start. The issues of religion and taking up grievances about religion in prisons is just basically a waste of time.

The grievance process that we talked about earlier most prisons have the policy of throwing away or automatically denying the grievances at the first several levels. So there's an automatic system set up so that if you have a legitimate grievance and you're grieving against him, he's been told to automatically deny you. And then when he gets a second one, they've been told --
COMMISSIONER GAZIANO: Well, if you have evidence of that, then --

CHAPLAIN MCCOLLUM: Yes, I absolutely do. Now, let me give you an example of this. Five years ago --

COMMISSIONER GAZIANO: The higher --

CHAPLAIN MCCOLLUM: I've been already involved in a case that's been going on for five years in Federal Court where this exact information was brought out and the Federal Judge in the 9th Circuit overseeing that case said he really didn't want to hear about how the grievance process and evidence that was brought forward about the grievances that all disappeared and all the stuff we got -- this was in the State of California, to bring forward, because he didn't feel that was an issue that was an issue that was appropriate to think about or, talk about in court.

What he wanted to know is if the inmates themselves had exhausted their remedies and then in the end he said they hadn't even though they had proved in Court that their things were thrown away, that we found actual state memos issued saying, "Throw away inmates' grievances". Even though all those things took place, he said by the letter of the law,
the inmate still had other means or ways to come forward.

COMMISSIONER GAZIANO: I'm interested in whether the exhaustion requirement is intentionally or unintentionally burdensome.

CHAPLAIN MCCOLLUM: In the end --

COMMISSIONER GAZIANO: But I can understand the reason for it under the law is to have the system correct itself first.

CHAPLAIN MCCOLLUM: But it doesn't. It's a joke. And so here's the thing; in the Federal Bureau of Prisons, I'd like to give them a positive comment, because I work with all the states and then I work with the federal system and they really take this stuff serious and when a law is passed, they go, "This is the law. We're going to do it now", and they train everybody to do it.

I go to states like Ohio, who just finished the Cutter v. Wilkinson case and met with an official there and he said, "We're going to defy the Supreme Court", and I go to Texas and they say, "Let them send the National Guard. We're not going to do this". There's a real problem and no one ever actually takes it upon themselves to do anything, so no one is going actually send the National Guard nor
go to Ohio and make them do it. They're going -- it's going to be 10 years down the line in court case.

CHAIRMAN REYNOLDS: Chaplain Friedman?

CHAPLAIN FRIEDMAN: You know, I have to agree with Patrick on some things but yeah, it depends on what system you're dealing with. Just by virtue of the fact that -- the thing occurs in the first place because, whatever the incident is, because there wasn't proper supervision. So you didn't have professional chaplains and that's what -- you know, that's reflective of the system that you're dealing with.

So that's pretty much -- that's pretty much the answer to that. I mean, these people -- you know, most people in the system where some of these things were going to happen, you know, they're going to partner up. The superiors are going to partner up with the line officers and whatnot and they're going to instruct them. And I'll tell you what, you know, we've had instances of where clearly where corrections officers, for example, were involved in murders and you know, religion-related, and you're not going to find a jury -- first of all, you're not going to find a prosecutor out in some small prison town where that's the only industry, that's going to prosecute
another -- prosecute them, in the first place. Second of all, there's no way that a jury is going to convict them. Right? So you know, that's --

COMMISSIONER GAZIANO: Well, I would hope that that's not a --

CHAPLAIN FRIEDMAN: Well, I'll tell you again, we can --

COMMISSIONER GAZIANO: Because there are certainly some wardens, and again, I don't know but I've had some good meetings and discussions with wardens, who want more chaplains themselves. So, yes, they don't have the number they want. They don't have the number they want but -- I'm just trying to get a sense. I have no basis to --

CHAPLAIN FRIEDMAN: I'll give you another one. A lot of administrators don't know what's going on right under their own noses because of this, you know, they trust the religious provider. They trust the religious volunteers. They got, you know, bigger fish to fry. They don't have the staff to properly supervise and so a lot of them don't even know what's going on at all.

I called a county jail and I got a recording of it in fact, and I called the chaplain's office and this is supposed to be the chaplaincy
office for the whole place, and it says, "This is the
country jail chaplain's department where Jesus lives".
You know, this is on the prison's -- on the jail's
recording.

I got to the administrator of the
facility, the superintendent. He didn't have a clue
that any of this was going on. Now, this is often the
case, too. If you can get to the right people, you
have the relationships or you've got the clout, you
can get something done about it, you know.

CHAIRMAN REYNOLDS: Mr. Nolan.

MR. NOLAN: Yes, I cancelled my lunch
because this is such an interesting discussion. And
first of all, a lot of the complaints that we’ve heard
today are not just against minority religions. It is
an insensitivity, the need to accommodate any faith
and absolutely -- and for a face the people are not
familiar with, there's a lack of training and
sensitivity as you've said, but I think, the proper
role for this Commission would be to highlight to
prison officials how important it is that they
accommodate these faiths, that there be enough
chaplains, that there be enough space.

You know, prison officials are so swamped
dealing with over-crowding and the lack of ability to
even hire officers that religion just slips off the
table. Dealing with discriminatory complaints becomes
just -- it's just not in the hierarchy of what they
think is important and yet, to an inmate who is
totally dependent on the government for access to
their church, nobody can come see him, they have no
access to any religious thing that isn't approved by
the government, we need to emphasize to prison
officials, this is important.

And so I think that's where this
Commission can play a role. As far as the grievance
procedures, it needs to be changed, but I have to say
in the religious context, especially, it's a problem.

Just two quick things, a Catholic Mass was cancelled
in the women's jail in LA. And Sister Suzanne Jaboo
said, "This is a holy day of obligation". It was Mass
on Christmas Day. And the Lieutenant said, "Well,
we're short-staffed, so we've cancelled all programs".

Now, think of the mind set. He's putting
Catholic Mass in with ping pong tournaments, Toast
Masters, other activities. Fortunately, we had a
sheriff then, Sherm Block. As soon as he heard about
it he said, "We're going to have Mass for the ladies
in the jail, period". But in other prisons, if you
don't have a sensitive administrator like that, it's -
- and the grievance process is too late. By the time you file and work your way up, if it isn't tossed away which I've observed, but even when it isn't tossed away, the -- Christmas has come gone and you've been denied that.

In Northern California an inmate was forced to work on Easter even though the Muslims were given time off for Ramadan and by the time he, of course, appealed that, Easter had come and gone. He just had to work on Easter. So the grievance procedure isn't always good when there's a denial, a timely denial. And we have to look -- we don't want the court's flooded with lawsuits about whether I got creamy rather than chunky peanut butter. Obviously, this is a thumping pain in the neck to the administration and the Prison Litigation Reduction Act has actually reduced those.

The problem is, it's set the filter so fine it's screening out some of the legitimate cases.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, then Commissioner Taylor.

VICE CHAIR THERNSTROM: Actually, I'll let Commissioner Taylor go first.

COMMISSIONER TAYLOR: Imam Al-Amin, a question. You heard the first panel talking about the
radicalization in prisons.

IMAM AL-AMIN: Yes.

COMMISSIONER TAYLOR: And I heard you loud and clear on the blurring of that issue with those who practice your faith.

IMAM AL-AMIN: Yes.

COMMISSIONER TAYLOR: but I'd like to hear your comments on the comments made by the members of the first panel and what you think what role you and groups like yours could play, if any, with respect to the issue. One, whether you recognize it as a valid issue and two, if you do, what role you think you all could play to help.

IMAM AL-AMIN: I do believe it's a valid issue. I believe that there is a potential for people to be radicalized. That's a human condition that exists in different faiths and different circumstances. I believe with the radicalization if Islam in America's prisons, that the potential for that has been over-blown to support political positions and even funding of activities, like I heard this group saying now what they want to do is focus it on normalizing Islam and helping to bring a more balanced view. Well, that's already being done.

But I see themselves positioning
themselves so their resources will flow in their
direction. And I believe that the individuals who are
in the circumstances who need resources to assist them
to better prepare themselves for being released, I
think those resources could be better utilized in that
regard. And I see it as a situation that's being
exploited.

For example, I believe it was in 2005 when
they had Senate hearings around that particular issue,
and they had news clips of chaplains in California
prisons of which I believe there are 32 chaplains,
full time Muslim chaplains, and they show two
immigrants, which the majority of the chaplains are
indigenous African American chaplains, they show one
from Palestine and one from Egypt, to give a picture
that these immigrants are foreigners, you know, whose
language you want to choose, are here in America's
prison proselytizing and attracting people to radical
Islam and that's not true. There's not evidence
there.

And then there are some instances where
individuals have gone out and committed crimes and had
some superficial relationship with Islam and those
situations have been exploited to you know, paint a
negative picture of what Islam represents in America's
CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes. If this Commission issues recommendations to Congress about legislative changes to stop religious discrimination, what do you think are the most important changes we should recommend to Congress because that's what we do here at the Commission.

CHAPLAIN FRIEDMAN: I don't think that we necessarily need changes. I think we need enforcement of what's already available to us, the tools that are already there. We -- I don't know how many times, we've given up on calling the Justice Department at this point. You know, they're not interested in -- we say, "Look, we've got this steward here, you know", they're not interested. You know, on the land side, that's a whole different matter, but on the institutionalized person's side, no. You know, somebody has got to light a fire under them and others.

IMAM AL-AMIN: I don't think it's as simple as making a recommendation to the Congress. I think it's a much more complex issue that we're dealing with. For example, the attorney who initially contacted me about information for this proceeding,
didn't want me present, they only wanted my comments. And they actually told me that the Wiccan was going to represent the Muslims. And I said, "That's the kind of discrimination that we're talking about". So it doesn't just exist on the level of the prisons discriminating. In the general society, there's a level of ignorance that exists that has to be -- there has to be an educational process that takes place where we learn more about each other on every level, so that we can respect the sensitivities and the needs of other people without assuming that other people have a right to represent your interests. You know, so those are some of the problems that we're experiencing.

CHAIRMAN REYNOLDS: Ms. Dilg?

MS. DILG: The recommendation that I would make obviously is to reform the PLRA so that it weeds out frivolous rather than meritorious religious discrimination claims and I think that would --

COMMISSIONER GAZIANO: How do you do that?

Sorry for interrupting.

MS. DILG: I think the two key provisions would be the physical damages requirement because religious injuries don't involve physical damages, and also the exhaustion requirement, to give Federal
Courts just some ability to stay a case instead of dismissing it. We're not actually asking for the exhaustion requirement to be totally abolished, just a stay.

CHAPLAIN MCCOLLUM: I would agree with the Rabi and with her that I think we have the tools in place. RLUIPA is great. I mean, it has great possibilities but it needs to be enforced and there's a couple of suggestions I'd have for ways that it might be enforced or might be told to Congress. One of them would be that it should really be stressed that -- there should be a something powerful that removes qualified immunity from government officials who are directly informed about issues in religious discrimination and then do not take action or continue to do that same thing.

Because if they were actually going to get hit personally, with whatever it was, I think it would bring a lot more people on board. Secondly, on the grievance process, I actually think that they should establish an additional grievance process just for religious accommodation issues and that grievance process should include people from minority faiths and other groups that are typically ones who are grieving most of the time, including like Prison Fellowship and
things like that because then it wouldn't have to go
to the court. I mean, this could still be in the
correctional system but then, you know, those issues
could be looked at in a legitimate way because I will
tell you, I don't know how it is in other states, but
in California, far more money is spent denying
religious practices than is spent in you know, the
accommodation and things like that, tremendous amounts
of money. And I think that a lot of those problems
could just go away if they just handled them properly.

CHAIRMAN REYNOLDS: Okay.

MR. NOLAN: Let me speak to the
legislation. Washington State where I was in prison
the second part of my time, I was a chaplain's clerk
and they had compiled a manual and I think the Federal
Bureau of Prisons now has too, that's working with
leaders of all the different faiths. It's a handbook
so that the chaplain, the warden, has a resource to go
to. Now, it's not perfect but I'll tell you, that
really was helpful. We had a Disciples of Christ
Chaplain but he accommodated every -- he built a sweat
lodge. I mean, he really took his responsibility
seriously to accommodate and this was absolutely
essential to him so he didn't have to learn about it
on his own. He could go to this manual compiled by
the Department of Corrections in Washington that equipped him to do it.

The Department thought it was important enough to develop this manual, convene the meetings and provided it and that was a great tool. So I think suggesting to Congress they might encourage the states, each state to do that would help some of this.

CHAPLAIN FRIEDMAN: I participated in the writing and the subsequent revisions of that manual that at one point was used by over 40 jurisdictions in the country and hundreds of local jurisdictions, and I'll tell you this; when that went out to all those various jurisdictions, you know, we set a trend. What they did is they got their red pens out, right, okay?

What you're dealing with here is prison culture. Okay? You know, the culture of prison administrators, all right, and that's what really needs to be changed. That's what we need to effect and that's a whole other discussion.

CHAIRMAN REYNOLDS: Okay, next up, Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: We're all concerned about discrimination in any form and we've heard a lot of -- we've heard descriptions of incidents. We've had a lot of antidotal information
given to us here, but I have what you will regard as a kind of predictable question given my question to the last panel; how many incidents, what level of severity, with respect to which religions, how many grievances, how many are not responded to, inadequate enforcement, how inadequate, levels of inadequacy. I mean, I could make quite a cynical statement and say, "Look, there are always going to be problems, and there is always going to be a prison culture.

I mean, that's -- it's a very tall -- yes, you can make inroads on the culture through, you know, through the kind of booklets and so forth, that you described and we can keep trying to education prison officials, but you're not going to entirely get rid --

CHAPLAIN FRIEDMAN: Of course not.

VICE CHAIR THERNSTROM: Pardon me?

CHAPLAIN FRIEDMAN: Of course not.

VICE CHAIR THERNSTROM: Of course not. So I'm left with wanting to have some very basic data on the severity of the problems that all of you are talking about and then Chaplain Friedman, I have -- well, I have a very specific question for Chaplain Friedman. On the God Pods, now would you -- I just want to see if I've got your testimony straight here. Would you support a Jewish God Pod if the state only
provided in kind, no direct funding for one? I mean, what is your concern here -- well, you should spell out --

CHAPLAIN FRIEDMAN: Actualy, we had been invited by the Federal Bureau of Prisons until they dropped that plan, to possibly bid on putting together a Jewish God Pod in a facility. No, I actually, no. I would support multi-faith programs, moral and character based programs that have moral and character based development programs, whatever you want to call them, that have the opportunity for the individual faiths to break off into their own group and work with their people. The problem, though, is this; you know, there are some out there that are claiming to be multi-faith.

And in fact, they're transparently not. And probably the best example is the very first entire prison in the country that was opened up, you know, faith-based prison, the government owned, state, the inauguration, you know, lauded it for all these different faiths that were supposedly going to participate in it and without missing a beat said, "And what a great time to reflect on the love of our Lord Jesus", and the message was right there, you know, and inmates said, have taken to call it fake-
based instead of faith-based.

So even a lot of these multi-faith programs are actually multi-fake. What they are is they're put together with the appearance of being multi-faith to -- so that they can get around the laws. They can appear to be constitutional, okay. I think that the Federal Bureau of Prisons, for example, they have two programs, the Life Connections Program and the Threshold Program, are the type of programs and really what they are is, they are moral character-based with the individual components, you know, religious and secular components, available. You know, I think that that's the way to do it.

VICE CHAIR THERNSTROM: And on the question of my problem with kind of an antidote dump, as it were. I mean, I never know what to make of antidote dumps. They're -- you know, I mean, every antidote raises concern. On the other hand, it's, you know, the bottom line question has got to be how often, how much, what context, by whom. You know, there are very basic data questions here that have to be answered if you're going to address these -- the question of discrimination in any kind of systematic and effective way.

CHAPLAIN FRIEDMAN: Well, maybe you've got
more clout than we have. We've been trying to get
documents out of one state system, for example,
documentation on just one particular aspect of a
religious program, kosher diets in this particular
case, and you wouldn't believe how they're
stonewalling and trying to claim attorney/client
privilege and everything else. I can tell you things
like, that everyday and we can compile statistics of
virtually everyday and what they are.

You know, we get in the mail and phone
calls from Jewish inmates, okay. I can tell you that.
There may be, you know, some other faiths, I don't
know what -- if there -- I don't think that the Wiccan
community or probably the Muslin is as organized to be
able to do something like that but I can tell you
this, it runs a gambit and it is all faiths and it is
-- I mean, we can give you some specifics on some of
the things that you ask but other things like I said,
I hope you've got more clout than we do.

VICE CHAIR THERNSTROM: And I have one
question for the Imam. You said, "Look, the Islam
provides a core of beliefs and a route to kind of
internalized discipline on the part of prisoners. But
of course, any Christian and any Jew would also say
the same thing about their religions. What is
distinctive in your view about the Islamic message that makes the prospect of that -- of that kind of internalized discipline which will serve prisoners well over the long run? What is distinctive about the Islamic message that makes it a superior message in your view in this sense?

IMAM AL-AMIN: I wouldn't use the term "superior".

VICE CHAIR THERNSTROM: Uh-huh, or more effective or whatever.

IMAM AL-AMIN: I would say attractive. One of the great attractive features that Islam carries especially for African American population is that it reconnects them with their heritage. There have been significant studies done showing that a great percentage of slaves who came to America came from West Africa. Some say nearly 30 percent of that population were Muslims. There's a PBS documentary that's coming out this month during African American History Month that portrays the life of a prince among slaves who regained his freedom, refused to leave the United States while he was trying to get his children also to have their freedom.

So there are these kind of interests that African Americans have about their own identity and
Islam brings a sense of identity to individuals who may have come from say a Baptist tradition or a Christian tradition and didn't feel a part of that faith. Even though they learned the values and the principles from that particular faith, they didn't really have a sense of belonging. They also experienced discrimination within that faith.

So Islam is a religion that doesn't look as much at color and those kind of features, so it's more attractive because of the ideas of equality and justice and fairness and those features are very attractive for people who have experienced significant amounts of discrimination. So that makes it, I believe, attractive to many African Americans who are looking for something that they can be a part of where there's an even playing field.

CHAIRMAN REYNOLDS: Mr. Nolan?

MR. NOLAN: Yes. To Ms. Thernstrom's questions; first, yes, we're all frustrated with antidotes, but as John DiTulio said, "The plural of anecdote is data".

VICE CHAIR THERNSTROM: Not really. I disagree with that.

MR. NOLAN: He says that humorously, but there's an accumulation over time, but number two, I
serve on the Prison Rape Elimination Commission and we face exactly those same concerns. The reason Congress passed PREA was because people said, "Well, we hear all these anecdotes of prisoners getting raped but there's no solid data, there's nothing to go on", and I would suggest this commission can work with the Prison Rape Elimination Commission and find the things that we have done to establish the actual data.

The Bureau of Justice Statistics has done a survey now that finds of reported rapes, 4.5 percent. That's at a minimum 99,000 rapes out of two million prisoners. That means a heck of a lot of rapes going on in our prisons right now and it was BJS that developed that data.

I think you could find -- you could get Congress to authorize a similar study of the religious discrimination complaints and what we've done -- in fact, Steve McFarland is the head of a panel set up by Congress to then bring in the top scoring prison systems that do the best at dealing with it and the bottom ones; the top ones to say what are you doing that's working and the bottom ones to say, how come you're not able to keep up with them. And Michael Horowitz is the genius that thought up that thing, inviting them to provide testimony and learn from that
so that we can do it.

I think this Commission has a role parallel to the Prison Rape Elimination Commission to deal with this problem. We're here as the canaries in the tunnels saying, "They're stifling religious practice in prisons". We can't give you numbers. We aren't set up to do the research. We can say it is a heck of a lot of accumulated antidotes, enough that I think it's worth this Commission addressing by trying to get real statistics around it and find out what's working and what isn't working.

The second thing as far as single-faith dorms, I would dissent from the other panelists here. I don't like casserole. My faith is not a melange of a whole bunch of different brands. It is specific and we believe that the disciplines of a faith are important. It's not just conversion and not just discussion but people have to be trained in their faith and in a way that is specific to that faith. And as long as all faiths have the opportunity to provide a faith-specific program, we feel is passes constitutional muster.

I visited the Life Connections Program in the Federal Prison System. It was very interesting but it reminded me of a scene in Lawrence of Arabia
where they were all gathered around arguing about who
would control what parts of the city. It was a
wonderful discussion, intellectually you know,
interesting to me but they were discussing faith and
arguing constantly as opposed to learning about their
own faith. And I think that can only be done in a
single faith setting and again, as long as every faith
is able to provide their own program, I think it
passes constitutional muster.

CHAPLAIN MCCOLLUM: I'd like to address
the faith pod issue also because I've had some
involvement with it. I particularly wanted to make
the comment that I had a very unique situation take
place recently where one of the gigantic faith-based
groups that is developing these contacted me to help
me develop their program but didn't know that I was
Wiccan, thought I was Christian and they revealed all
their materials to me, gave me their play books and
everything else, which I'll be happy to provide to
your Commission.

The thing that was the most moving about
that, they actually flew me to their headquarters and
everything else like that, and the thing that was
revealing about it is that they asked me, which I
ended up turning down to help them narrow the program
so that they could accomplish doing what they wanted
to do and make it look like they were going to
accommodate everybody without actually accomplishing
that and they wanted me to help them narrow that down
so that they'd get through the constitutional muster
issue.

And I'll tell you that and this is no
disrespect to you Mr. Nolan and it isn't your
organizations, they -- they're working diligently to
try to find a way around the Constitution and that's
an issue. I don't think it's an issue if you've got
groups of people who say, we want to have a God Pod
and all the Protestant Christian people want to come
to it and such and such and you don't have these
coercive things saying, "We're going to give you guys
all videos or special dorms and things." But there is
a tremendous move on to do that sort of thing and
there's tremendous funding.

They told me significant money from
gigantic people are being put in to try to drive that
forward, so that's something that this Commission and
the Congress needs to really watch as they, you know,
move into having these things happen. If you'd like
more information on that, I'd be happy to provide
that.
VICE CHAIR THERNSTROM: I would, yeah, that's very interesting, yeah.

CHAPLAIN MCCOLLUM: And I wanted to comment on one other thing you asked about earlier. You want data. The person to contact is Steve Herrick (phonetic) from the American Academy of Religion. He's the Director of External Services and represents 10,000 scholars who are studying these issues in religion and they have the foremost experts in the world and they've got all kinds of data, maybe not on every issue but everything that's been talked about, they have people who've written and collected data on it.

VICE CHAIR THERNSTROM: Good. I don't need to write it down, because it's on the transcript.

CHAPLAIN MCCOLLUM: That will help you. Okay, but that will help you out with that.

CHAIRMAN REYNOLDS: Todd?

COMMISSIONER GAZIANO: Hopefully, just kind of quick narrow question. Mr. Luchenitser, I believe?

MR. LUCHENITSER: Luchenitser.

COMMISSIONER GAZIANO: Luchenitser.

MR. LUCHENITSER: That's close.

COMMISSIONER GAZIANO: I'm particularly
bad with names, sorry. I just want a quick comment. When Pat Nolan was describing the Christmas Day situation where all programs had to be cancelled because they were short-staffed, and then the sheriff made the exception for the Catholic Mass and let's assume the movie was cancelled. Do you have any concern with that?

MR. LUCHENITSER: Well, necessarily all -- the same rules should be applied to all religions and there shouldn't be any gerrymandering of the rules in a way that favors one particular religious group or hurts others.

COMMISSIONER GAZIANO: I'm not trying to pick a fight here except to -- I think you all on the panel would agree on many things but some of this is -- it seems to me inherently difficult and while one person's, you know, almost compelled accommodation, does present some problems. So I think the wardens trying to make these decisions sometimes do have some real difficult decisions to make.

MR. LUCHENITSER: Yeah, I think as long as the accommodation is reasonably related to what someone needs to practice their religion and doesn't impose significant penalties on other inmates, it's perfectly constitutional and fine. I mean, there's --
I think there's plenty that Mr. Nolan and I would agree on in terms of the need to accommodate inmates' free exercise rights.

But where we disagree is we think that a 24-hour a day, 7-day a week program that intensely immerses inmates or converts them to a particular religion, that goes way beyond what anybody needs to practice their religion. So there's no justification for government aid to that kind of enterprise.

CHAIRMAN REYNOLDS: Okay, yes.

IMAM AL-AMIN: Yes, I would like to just add three points that I think are very important. In addition to the prisoners being discriminated against for their free practice of religion, with the stigma that's being placed in Muslims, that may also uphold discrimination when it comes to them going before board hearings and being considered for release if there's the idea that Islam is somehow inherently a threat to the public safety of our society. And for that to be artificially imposed onto these people who are coming to Islam for reasons of their own self-improvement and betterment, I think that we should be very careful about that and not allow that to happen.

Also, Muslim chaplains in some cases experience where they're treated as though they're
inmates, you know, because some of them may be young, maybe the same age as some of the prisoners, and the staff, correctional staff or the security staff in some cases that have been brought to my attention, have escorted them off of the prison yard, you know, as though they were -- had committed crimes and they were really carrying out their job responsibilities. Some of these staff have had to resign from their positions without really having the resources to defend their positions adequately. Others are currently on paid administrative leave for actually fulfilling their duties and having tolerated not only religious discrimination but also racial discrimination, you know, at the hands of their coworkers. And those issues are very important issues that you should be aware of.

**IV. ADJOURN BRIEFING**

CHAIRMAN REYNOLDS: Okay, at this point, we're going to wrap it up. I'd like to thank each of you for participating. This has been quite an interesting discussion. If you have any thoughts or any materials that you think would be helpful in the preparation of our report, please forward it to us. Thank you.

VICE CHAIR THERNSTROM: Thank you very
much.

(Whereupon, at 1:36 p.m., the above-entitled matter concluded.)