

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 DEAS
 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

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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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	Page
TOPIC: RELIGIOUS DISCRIMINATION IN PRISONS	
I. Introductory Remarks by Chairman.....	4
II. Speakers' Presentations	
PANEL 1 - Free Exercise of Inmates' Religious Rights vs. Prison Security.....	5
PANEL 2 - Free Exercise of Inmates' Religious Rights vs. Church State Separation.....	71
III. Questions by Commissioners and Staff Director.....	40
IV. Adjourn Briefing.....	161

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B-R-I-E-F-I-N-G-S

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.)

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

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

10 **SPEAKERS' PRESENTATIONS**

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

13 (Panelists are seated.)

14 CHAIRMAN REYNOLDS: Welcome. The
15 participants in this first panel are Chaplain Joseph
16 Pryor, Chaplaincy Administrator for the Federal Bureau
17 of Prisons; Steven T. McFarland, Director of the Task
18 Force for Faith-Based and Community Initiatives at the
19 Office of the Deputy Attorney General of the U.S.
20 Department of Justice; Carol Atkins, Warden of the
21 Maryland Correctional Institution at Jessup; and --
22 Please help me with the pronunciation of your last
23 name.

24 MR. SAATHOFF: Saathoff.

25 CHAIRMAN REYNOLDS: Saathoff. Well, I'm

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1 sorry.

2 MR. CILLUFFO: Cilluffo.

3 CHAIRMAN REYNOLDS: Cilluffo. Okay.
4 Frank Cilluffo, Associate Vice President for Homeland
5 Security and Director at the Homeland Security Policy
6 Institute at George Washington University; and Gregory
7 Saathoff, Executive Director of Critical Incident
8 Analysis Group at the University of Virginia.

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

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

25 Over the course of his career, Chaplain

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1 Pryor has received the J. Michael Quinlan Director's
2 Award for his work in crisis intervention and a
3 Director Special Recognitions Group Award. He is an
4 ordained Baptist minister and has served in churches
5 in West Virginia, North Carolina and Texas.

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

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

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

25 Since 1988, she has served with the

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1 Maryland Correctional Services as a sergeant at the
2 Maryland Correctional Adjustment Center. She started
3 working as an institutional property officer, was
4 promoted to the rank of lieutenant and later in 1999
5 became a member of the Department's first security
6 audit team. In 2000, Ms. Atkins was promoted to
7 captain. She was the first female to hold the
8 position of Director of the Intelligence Coordinating
9 Unit for the Maryland Department of Public Safety and
10 Correctional Facilities.

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

21 And, finally, we have Dr. Saathoff who is
22 an Associate Professor of Research in Psychiatry and
23 Neurobehavioral Sciences and Associate Professor of
24 Emergency Medicine at the University of Virginia's
25 School of Medicine. He also serves as the Executive

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1 Director of the University of Virginia's Critical
2 Incident Analysis Group. In 1996, he was appointed to
3 a commission charged with developing a methodology to
4 enable the FBI to better access non governmental
5 expertise during times of crisis.

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

12 **II. Speakers' Presentations**

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

20 As a chaplain in the Bureau of Prisons, I
21 have served in low and high security institutions, a
22 female medical center, in regional and central office
23 positions. At every stop along the way, I received
24 total support in my efforts to minister to the men and
25 the women in our care. I have myself and have

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1 witnessed dozens of other chaplains offer pastoral
2 comfort to grieving prisoners regardless of whether
3 they were a person of strong faith or no faith at all.

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

17 So it is truly a privilege for me to be
18 with you today to share some thoughts and to hopefully
19 give you a fresh perspective on the delicate balance
20 between the accommodation of religious expression and
21 prison security. I would like to outline the
22 challenge of accommodating the practice of religion in
23 a correctional environment. To achieve this purpose,
24 I want to talk a little bit about the history of
25 religion in prison for just a minute or two.

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1 Religion in the American justice system
2 has its roots in the colonial period of the late 1600s
3 and early 1700s. During this time, colonists adhered
4 to the correctional techniques inherited from England
5 and based on a Puritan philosophy. Crime was viewed
6 as a sin against God and the criminal was seen as a
7 person cursed by the Devil. Until the 1770s,
8 imprisonment was for those waiting to learn their
9 punishment or for the poor who could not afford their
10 fines or debts.

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

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

24 A component of this new and radical
25 correctional method required prisoners to attend

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1 Sunday services and encourage them to read Scriptures.

2 The goal was to reform the individual through helping
3 them see the error of their ways, thereby, preparing
4 them for a successful re-entry into society.
5 Interestingly, the National Focus on Re-Entry Programs
6 is still flourishing today and has been infused with
7 new energy over the past decade. The right to
8 practice one's religion during incarceration is
9 pivotal to this re-entry effort.

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

20 While over the decades correctional
21 systems have evolved in many ways, religion has always
22 played a role in the treatment and rehabilitation of
23 prisoners. Recent laws such as The Religious Land Use
24 and Institutionalized Persons Act, RLUIPA and the
25 Religious Freedom Restoration Act, RFRA, have brought

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1 to the forefront the natural attention between a
2 person's free exercise of religion and the need of a
3 correctional institution to operate in a secure and
4 orderly fashion.

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

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

24 In the same year, the Supreme Court heard
25 the case of O'Lone v. Shabazz in which a group of

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1 Islamic inmates were suing for the right to leave
2 their worksite in the middle of the day every Friday
3 for Jumah prayer. The balancing test was applied and
4 the court ruled that the inmates' rights were not
5 being violated since they had other ample
6 opportunities to practice their religion.

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

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

21 In 1993, the Religious Freedom Restoration
22 Act was enacted by Congress due in part to the belief
23 by some that the balancing test gave the government
24 too much opportunity to restrict the free exercise of
25 a person's religion. With the set of two criteria,

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1 the restriction must show a compelling government
2 interest and the restriction must be the least
3 restrictive means of furthering that interest.

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

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

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1 before it ever reaches the court systems.

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

12 We have a mission statement that I'll
13 conclude with that says, "The mission of the
14 Chaplaincy Services Department is to accommodate the
15 free exercise of religion by providing pastoral care
16 to all Federal inmates and facilitating opportunities
17 to pursue individual religious beliefs and practices
18 in accordance with the law, Federal regulations and
19 Bureau of Prisons policies. The Chaplain shall
20 provide religious worship, education, counseling,
21 spiritual direction, support and crisis intervention
22 to accommodate the diverse religious needs of inmates
23 and when appropriate pastoral care may be extended to
24 staff." And it is from this mission statement the
25 chaplains in the Bureau of Prisons define their

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1 existence as we are committed to the accommodation of
2 legitimate religious practices with inmates in our
3 custody.

4 Thank you.

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

7 MR. MCFARLAND: Thank you, Chairman
8 Reynolds, Members of the Commission. It's a privilege
9 to be here. My following views are only my own.
10 They're not necessarily shared by the Justice
11 Department. My views are based upon several decades
12 of work in Religious Liberty law, both at the trial
13 and appellate stages, and all levels of state and
14 Federal courts. And I co-lead with the ACLU the
15 lobbying efforts of a broad coalition that saw
16 Congress pass the Religious Freedom Restoration Act in
17 '93 which will be discussed later as Pastor Joe or
18 Chaplain Joe has just mentioned.

19 It's also been my privilege to serve as a
20 officer of the world's largest faith-based
21 organization serving prisoners, Prison Fellowship
22 International, as well as to spend most of my time in
23 the Justice Department on prisoner issues. So there's
24 nothing I'd rather talk about that's nearer and dearer
25 to my heart.

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1 The first question that I thought might be
2 helpful to address is how much religion do inmates
3 have a legal right to. Must prisons limit religious
4 gatherings and activities to those that are central to
5 or required by an inmate's faith? Does the law forbid
6 the government from providing inmates with anything
7 more than chapel and the most compulsory sacraments?

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

23 So the Supreme Court has recognized that
24 there's plenty of room or "play in the joints" as one
25 Justice put it between these two complementary clauses

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1 in the 1st Amendment. An example, the 1st complementary
2 clause might not require that the Federal Bureau of
3 Prisons as it has offer inmates the opportunity to
4 volunteer for a faith-based program as Pastor Pryor,
5 Chaplain Pryor, mentioned that he was instrumental in
6 designing such a program. Arguably, it was not
7 required, but it's certainly not prohibited by the 1st
8 Amendment as long as it is furthering a secular
9 purpose and effect and namely that purpose is to
10 reduce recidivism.

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

19 As government officials, chaplains may not
20 favor any religion including atheism or agnosticism
21 over another. Neither may corrections personnel
22 promote faith over unbelief regardless of the number
23 of inmates that embrace either. The Federal
24 Constitution as well as a Federal statute, namely, the
25 RFRA and the RLUIPA for that matter requires state and

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1 Federal officials to accommodate any sincere exercise
2 of religion subject to the interests of institutional
3 security, and inmate safety, health, correction or
4 discipline.

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

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

25 (1) The state must have a secular

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

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

22 So how can prisons offer inmates a genuine
23 private choice of religious and secular programs? A
24 faith and character-based re-entry preparation program
25 can meet this requirement of a genuine and

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1 independent, private choice if inmates are given an
2 option of choosing a secular version with all the same
3 benefits.

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

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

25 It's important that the Bureau and any

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

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

20 We spend \$60 billion per year on our
21 correctional system. Yet it fails to correct more
22 than two-thirds of its targets. As the world's
23 largest incarcerator, America cannot afford, simply
24 cannot afford, to sterilize its prisons of the seeds
25 of faith and of free though limited religious

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1 exercise. And the good news is that the law neither
2 requires nor permits the government to do that.

3 Thank you for the privilege to address
4 you.

5 CHAIRMAN REYNOLDS: Thank you. Ms.
6 Atkins.

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

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

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

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1 prison a more nonviolent place to be.

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

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

18 Part of what I have to do is to provide
19 knowledge and information to my staff. When I came in
20 as an officer, I didn't have a clue when it came to
21 the different religions that we were by law have to
22 acknowledge for the individuals that we house. Part
23 of my duties as an administrator is to inform my staff
24 so that they're open and they're acceptable and
25 acknowledge what is going on when these volunteers and

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1 visitors come in, to make it an environment where
2 people want to come in to assist these people that are
3 in need.

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

13 I see it -- I have a legal obligation and
14 I believe a moral one to uphold the law. With that,
15 as an administrator, I do not determine which
16 religious programs, which religions, we acknowledge.
17 I have to follow the policy that is given to us. With
18 that, in rolling along we acknowledge 15 religions and
19 with those religions, they have at 40 sects and
20 denominations with them. As an administrator, it
21 becomes a policy and a problem how do you allow all of
22 these particular religions and denominations to have
23 adequate meeting time and practice time with a limited
24 budget, with limited resources as far as staffing
25 goes, because again we have to do property searches,

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1 do these backgrounds for these individuals coming in
2 and once they're in our facilities, we have to ensure
3 their safety and that requires staffing.

4 So for a manager, it becomes a resource
5 issue a lot of times. But with that as a manager, I
6 cannot make the distinction. If there are only five
7 individuals participating in one religion and I have
8 50 in another, that that 50 have more time than that
9 five. With that, again, it's working with staff,
10 working with the volunteers, having good
11 communications, everything when it comes to
12 implementing religious programs in a correctional
13 facility.

14 We -- People are afraid of the unknown and
15 when it comes to different religions, when they are
16 unknown to you, and with the staff who are coming out
17 of the same community as the inmates that we house it
18 becomes very difficult. They are more susceptible to
19 want to cut the ties, when not to allow inmates out
20 because of things that they don't understand. So as a
21 manager, I have to be visible. I have to be
22 supportive to make my staff understand why this is so
23 important because it's so important because these
24 individuals when you can a mindset or change a
25 behavior.

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1 That's not advocating any one religion
2 over another, but what I found is most have some basic
3 principles that are alike in what the religions
4 practice and with that it's nonviolence. It's
5 changing thought processes. It's not harming people.
6 It's being productive individuals.

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

23 The same thing when it comes to dress, we
24 have placed procedures in place because of religious
25 customs. There may be dress issues where individuals,

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1 staff members, who are not familiar may not want to --
2 will turn people away because they say they cannot
3 remove a head wrap or something of that nature and be
4 searched. It all comes down to communication again so
5 the staff understand and are aware of what I require
6 of them as a warden that we just don't turn people
7 away because initially they don't meet our standards
8 of what we allow in our institution.

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

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

14 DR. SAATHOFF: Thank you, Chairman
15 Reynolds and Members of the Commission. For the past
16 17 years, I have consulted to state and Federal
17 prisons and also taught medical students in that
18 setting. In my brief remarks today, I will speak to
19 the issue of radicalization from a behavioral science
20 perspective and the relevance of the Religious Land
21 Use and Institutionalized Persons Act of 2000.

22 We have the benefit of almost a decade
23 since the RLUIPA was first established. Although some
24 feared that it would produce a barrage of frivolous
25 lawsuits, this has not been the case. Rather, I would

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1 argue that this has had a salutary effect, providing a
2 means for grievances to be brought forward and
3 addressed. The existence of such a mechanism can
4 actually limit the potential for religious grievances,
5 thereby, preventing a descent into group humiliations
6 that polarize and lead to radicalization.

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

21 Those of us who are old enough to remember
22 the politically motivated violence in prisons of the
23 1960s and 1970s should be aware that prison violence
24 could again become a central point of discussion and
25 could galvanize public opinion. But unlike the

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1 politically motivated secular upheaval of the last
2 generation, we may face a greater risk of religiously
3 motivated violence in prisons. To the extent that it
4 allows for genuine grievances to be addressed, the
5 existence of RLUIPA may, in fact, serve as a means to
6 limit the potential for violence and the cultural
7 polarization that it can produce.

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

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

23 The most effective terrorists are team
24 players who play different positions on a radicalized
25 field. Our overcrowded prisons provide an opportunity

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1 for a deep bench. Even more importantly, para-
2 radicalization occurs in prison. In this exploited
3 environment, inmates, visitors and even prison
4 employees can be unwilling players who can be cajoled,
5 bribed or coerced into transmitting messages and
6 materials without being aware of their real purpose.

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

25 Well, unfortunately, we're living in more

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1 complex times than that. An officer who can easily
2 identify and remove a razor blade from a Bible will
3 most likely not be able to identify the razors of
4 radicalization; jihadist material that advocates
5 violent measures against innocent civilians, gangs who
6 are willing to masquerade their violence as religion
7 and radicalized individuals who are willing to take
8 that last step towards terrorism.

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

18 Thank you.

19 CHAIRMAN REYNOLDS: Thank you. Mr.
20 Cilluffo.

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

25 The subject you have chosen to study this

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1 year is an important one with implications spanning
2 the legal, national security, religious and civil
3 liberty spectrums. The importance of this hearing's
4 topic, inmates exercise of religion and religious
5 discrimination, should not be understated. Within
6 this larger context, however, the Commission may want
7 to consider the security implications of prisoner
8 radicalization.

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

24 Prisons have for centuries been places
25 where extremist ideology and call to violence could

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1 find a willing ear. Recall that Adolph Hitler wrote
2 Mein Kampf while in prison. This spherical
3 philosopher of al Qaeda, Said Qutb, wrote the radical
4 Manifesto: Milestones Along The Road while in an
5 Egyptian prison. And al-Zarrqawi initially merely a
6 petty criminal recruited his followers while in
7 prison. I might note there's a good story to tell
8 also in Egypt right now where Abdul Kidar (phonetic)
9 the former amir of the Egyptian Islamic jihad has
10 written a book renouncing terrorism as well and that
11 violent jihad is not the approach, nor does the
12 definition of jihad necessarily incur violence.

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

20 Of course, religious radicalization is not
21 unique to Islam and remains the exception rather than
22 the rule irrespective of the faith at issue. While
23 radicalization both in prisons and at large has and
24 continues to develop in many forms with diverse
25 ideologies, I will focus my remarks on the potential

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1 inmates to be radicalized by charismatic leaders using
2 a cut-and-paste version of the Koran to promote what
3 one imam who briefed our group referred to as
4 "Jailhouse Islam" which incorporates violent prison
5 culture into religious practice or "Prislam" where
6 they join gangs for protection purposes.

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

14 Radicalization within prisons or outside
15 them is a greater threat overseas. But with the
16 world's largest prison population, over two million
17 and highest incarceration rate, 783 out of every
18 100,000, America faces what could be an enormous
19 challenge, radicalized prisoners being recruited by or
20 enlisting themselves into a violent movement.

21 Over the past several years, there has
22 been growing consensus by officials and law
23 enforcement officers at all levels of government as to
24 the threat posed by radicalization in our prisons and
25 some initial steps to counter the problem. Recent

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1 cases here and abroad have helped create that
2 consensus.

3 Take, for example, Jamal Ahmidan, one of
4 the leaders of 3/11 Madrid train bombing plot. After
5 passing through Spanish and Moroccan prisons where he
6 had been exposed to extremist propaganda videos,
7 Ahmidan developed an obsession with violent jihad. It
8 wasn't long after his release in 2003 that Ahmidan
9 became to organize the group that would murder those
10 200 people in March 2004.

11 Closer to home is the new terrorist prison
12 plot. In July 2005, the FBI, thanks to efforts by
13 state and local law enforcement, became aware of a
14 Suni Islamic extremist group in California operating
15 initially in state prisons without any apparent
16 connections to groups outside of the United States.
17 Members of this group, the JIS, were involved in
18 almost a dozen armed robberies in Los Angeles with the
19 goal of financing terrorist operations. The founder
20 Kevin Lamar James, an inmate at New Folsom recruited
21 other prisoners to the JIS, one of whom went out and
22 recruited a few others as well. Several of the group
23 members had been successfully prosecuted for
24 conspiracy to commit terrorism. Just as young people
25 may become radicalized by cut-and-paste versions of

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1 the Koran by the internet, new inmates, many of whom
2 have had no exposure to Islam prior to prison may gain
3 the same distorted understanding of the faith from
4 charismatic gang leaders and other influential
5 inmates.

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

18 The threat posed by prison radicalization
19 does not end when inmates are patrolled or released.
20 Former inmates are vulnerable to radicalization and
21 recruitment because many leave prison with very little
22 financial or social support. By providing for
23 prisoners in their time of greatest need, radical
24 organizations can build upon the loyalty developed
25 during the individual's time in prison. Information

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1 collection as Greg referred to earlier is integral to
2 combating radicalization. While significant strides
3 have been made at the Federal level, as we all know,
4 the vast majority of prisoners and inmates, 93
5 percent, are at state prisons or county jails.

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

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

24 No one profession alone is equipped to
25 respond to this. A multidisciplinary approach that

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1 includes perspectives of religion, criminal justice,
2 intelligence, law and behavioral science is necessary.

3 Knowledge must be translated into action and just to
4 close it up since I've never had an unspoken thought.

5 So I apologize for going over my time, but there is
6 some good work being done and I think perhaps of most
7 interest to this commission in particular is some of
8 the work being done out of the Office of Civil Rights
9 and Civil Liberties at the Department of Homeland
10 Security. Rather than isolating, they're engaging the
11 Muslim American community who has to be part of these
12 solution sets. But they are understaffed,
13 underfunded. They have three FTEs to cover the entire
14 country. That's preposterous.

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

20 CHAIRMAN REYNOLDS: Okay. Thank you all.

21 **III. Questions by Commissioners and Staff Director**

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

25 COMMISSIONER MELENDEZ: Yes. I would like

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1 to ask Chaplain Pryor the role of chaplain. It seems
2 to me that most chaplains --

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

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

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

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

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1 through the recruitment of contractors or volunteers.

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

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

23 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

24 VICE CHAIR THERNSTROM: I just have a
25 factual question and anybody can answer. What is your

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1 estimate of the percentage of inmates who profess to
2 have some connection to some sort of organized
3 religion and therefore participate in some way? What
4 are some numbers here?

5 CHAPLAIN PRYOR: Well, the participation
6 interestingly and this won't totally answer your
7 question, but of those that profess any religious
8 preference about, and it varies from faith to faith,
9 35 to 40 percent actually participate. In other
10 words, if we have 1,000 inmates that claim to be a
11 certain religion, then 35 to 40 percent of them will
12 participate.

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

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

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

22 CHAPLAIN PRYOR: Seventy to 80 percent.

23 VICE CHAIR THERNSTROM: Seventy to 80
24 percent and of that percentage you have participation
25 rates of what?

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1 CHAPLAIN PRYOR: Thirty-five percent to 40
2 percent.

3 VICE CHAIR THERNSTROM: Thirty-five to 40
4 percent.

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

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

20 CHAPLAIN PRYOR: I think it's a misnomer
21 to think that we only reach inmates through religious
22 programs. Chaplains, for instance, in the Bureau of
23 Prisons are required to make weekly rounds in special
24 housing units. That's another way that we reach out
25 and touch the lives of inmates. We are required to

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1 make rounds in the housing units, not weekly, but have
2 a presence there. We do extensive counseling, on
3 average, 37 sessions per week per chaplaincy team, the
4 delivery of emergency notification messages, the
5 conducting of memorial services for inmates that die
6 in prison.

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

14 CHAIRMAN REYNOLDS: Ms. Atkins.

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

24 Now religious programs are not the only
25 programs that we have. But for me, from my personal

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1 experience, again when inmates do start practicing
2 some type of religious belief or participate in, their
3 behavior and their thinking start to change a little
4 bit. But the biggest thing is generally through
5 conversion. Most do not come in the door professing
6 anything and the ones that do it's usually professing
7 what they were, the faith they were raised in. They
8 might not have practiced anything as an adult. But
9 usually when you go through that orientation process
10 and just who your mother is, who your father is, what
11 faith, it's the faith that they were raised up in as
12 an individual.

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

17 MS. ATKINS: That would lie from, I think,
18 institution to institution, let alone, state to state.
19 My personal understanding upon leaving if they were
20 practicing, I would say, about 50 percent and this is
21 one of the conversations that I was having with
22 someone when we were on break, is there isn't follow-
23 up. Our re-entry programs do not involve religion and
24 it's one of the visions that I personally have is that
25 for individuals who have been practicing a religion

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1 upon release just like we have someone want to meet
2 them at the door talking about employment and housing
3 and things of that nature, that someone from the
4 religious community of their faith would also meet
5 them.

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

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

25 But at this point, the dearth of research

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1 is really glaring and one of the things that would be
2 very valuable would be to get a better understanding
3 about the metrics of religion and religious practice
4 within our prisons.

5 CHAIRMAN REYNOLDS: Commissioner Yaki.

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN REYNOLDS: I'm sorry.

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

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

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1 type of re-entry program.

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

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

14 CHAIRMAN REYNOLDS: Commissioner Yaki.

15 COMMISSIONER YAKI: Yes. I had two
16 questions. One was directed at Mr. McFarland, but to
17 everyone in general. In terms of the Zelman test, how
18 in real experience has been the fourth prong, the
19 secular alternative available to inmates that would be
20 benefits comparable with that with the God Pod as you
21 call them programs? Because I just wonder given the
22 limited resources that institutions have, if you have
23 a program that comes in ready-made with support from
24 the outside community that's faith-based and that can
25 come in, how do you create the secular alternative and

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1 how do you make sure that it is comparable to the
2 point where there's sort of no undue draw of the God
3 Pod program versus the secular alternative program.

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

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

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

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

25 CHAPLAIN PRYOR: It's all BOP funding.

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1 COMMISSIONER YAKI: Okay.

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

14 COMMISSIONER YAKI: Okay. The same
15 question goes to this side over here because I'm
16 fascinated by the notion of how you essentially, if
17 you can or cannot pierce the religious veil for
18 whatever purpose there may be ongoing for whether it's
19 the, for me, it's the Aryan Brotherhood and other
20 kinds of programs, not programs, but gangs in the
21 prison. How do you deal with, and maybe this will be
22 better for the second panel, for lack of a better
23 word, false prophets who preach a different brand of,
24 it could be Christianity, it could be Muslim, it could
25 be Buddhism with knives or something like that has,

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1 how should I put it, a more secular purpose in terms
2 of what its real aims are versus the religion that it
3 purports to be without violating the Free Exercise
4 clause? How do administrators deal with it? How do
5 people in security deal with it? It's a fascinating
6 question.

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

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

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

25 MR. CILLUFFO: There are some lessons we

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

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

22 I was delighted to hear what Ms. Atkins
23 was saying in terms of bringing attention to that but
24 that's because she's on the ball. I'm not sure
25 everyone appreciates the significance of that and even

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1 within, say, the Muslim faith in particular. Is a
2 jihad imam or is a Suni that has the issues of
3 discrimination being claimed in that perspective as
4 well?

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

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

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

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

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

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

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

21 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

22 COMMISSIONER KIRSANOW: Yes. Thank you.
23 Just to kind of follow up on Commissioner Yaki's
24 question, this will be posed to anyone who chooses to
25 answer, at what point possibly short of the direct

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1 advocacy of violence does a participant in a religious
2 program or a religious leader that may come in to
3 minister to the prison inmates lose 1st Amendment
4 protection? I mean, is there a tipping point?

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

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

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1 what's going on. We have increased our training for
2 volunteers and our scrutiny of the volunteers and
3 contractors who are coming in.

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

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

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1 order of the institution and those are certainly red
2 flags of things that we would look for.

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

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

20 So behind that bar, though RFRA doesn't
21 apply at the state level in state prisons where RLUIPA
22 does, but to meet that level in the BOP, it has to be
23 a reasonable likelihood of acting on and inciting to
24 violence or disciplinary insubordination. So racist,
25 as Commissioner Yaki was suggesting, theology or

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1 philosophy that is reasonably calculated to be acted
2 upon would meet a compelling government interest. So
3 I'd offer that it's not a lower bar of any legitimate
4 interest, but rather when it gets to the point of
5 inciting violence or insubordination regardless of
6 whether it's theological or philosophical or
7 political.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano.

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

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

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1 supervision, the kind of supervision that Chaplain
2 Pryor was talking about, and the consequences of that?

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

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

20 MR. CILLUFFO: I think that is a fair
21 point and quite honestly if you look at the challenge
22 of terrorism strategically we can't kill and capture
23 our way to victory alone nor are we going to arrest
24 away the problem. We need to really look at all the
25 different instruments and state craft and I think we

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1 would really benefit greatly from some of the Federal
2 BOP work as well as the Department of Justice at large
3 in terms of some of the initiatives and programs that
4 perhaps have been implemented here.

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

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

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

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1 has made an impressive start.

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

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

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

25 MR. McFARLAND: I was just going to say,

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

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

25 CHAPLAIN PRYOR: All the communication

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1 that you have mentioned that should be increased and
2 improved, there's usually one word that puts a
3 hindrance to that and that's money. Dr. Saathoff
4 mentioned state systems in particular and even the
5 Federal system. To some point, systems are strapped.

6 So the desire is there to reach out and to
7 communicate and to share ideas and to get together,
8 but it still takes that green stuff to do that. So I
9 know that state systems vary and I certainly don't
10 even begin to pretend to speak for any state system.
11 But I know that we network with as many as we can and
12 we get just as many good ideas from them as they get
13 from us. It's just a matter of having the resources
14 to do the networking that we really like to do.

15 MR. McFARLAND: And speaking of money, in
16 '08, Congress gave Department of Justice, they cut
17 almost by 11 percent the budget and that translates
18 into about a \$400 million deficit for the Bureau of
19 Prisons. So the first thing that's going to go would
20 be any kind of the religious programming, extended
21 chaplaincy and outreach that we're talking about. I
22 just wanted to --

23 CHAIRMAN REYNOLDS: Commissioner Melendez.

24 COMMISSIONER MELENDEZ: Yes. I had a
25 question for either the Chaplain or Ms. Atkins. You

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1 mentioned changing -- sets. Do you think that there's
2 too much restriction as to religious materials that
3 are prohibited from coming into the correctional
4 setting? Because I know that there was -- it sounded
5 to me like what was stocked in libraries was really
6 minimal and do you think that's too much restriction
7 on what people could actually read to kind of learn
8 something?

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

16 In the institutions I've worked in and
17 been involved with I haven't seen a limitation that
18 has been harmful. Inmates can also order things
19 themselves through what we call "Incoming
20 Publications." I personally haven't seen that to be a
21 level to where it's a detriment to the spiritual well-
22 being. Certainly, sacred texts are welcome. We
23 receive donations. We have a policy whereby the
24 warden can accept those donations and we can make
25 those available to the population.

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1 COMMISSIONER MELENDEZ: The other question
2 was based on the issue of inmates being transferred,
3 if that's real frequent. Does that mean to
4 accommodate their religious, what we're trying to
5 accommodate, that they have to start all over if they
6 should go to another institution and you don't really
7 transfer anything that tells the other institution
8 about their religious accommodations or needs?

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

19 But they would not -- If you were a Muslim
20 and you were at one facility and you transferred, it's
21 not a whole process where you have to reidentify.
22 That's all in there and each institution has a process
23 for you to register to say, "This is who I am and I
24 want to participate in the programs and services that
25 you have for that particular group."

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1 COMMISSIONER MELENDEZ: So we're not
2 really uniform. For example, in Native Americans, I
3 have read this case on sweat lodges in San Quentin.
4 Basically, I was wondering if some prisons don't have
5 sweat lodges and some do.

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

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

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1 for the financial reasons I just said, they're not
2 going to have much of a budget.

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

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

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

24 VICE CHAIR THERNSTROM: I was about to
25 raise that question.

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1 MR. McFARLAND: Word gets around as to
2 what isn't in the library. I imagine they don't waste
3 their time if they know that comic books and --

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

6 MR. McFARLAND: Weekly.

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

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

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

21 MS. ATKINS: It changes and a lot of them
22 I think are self-taught and it goes back to the amount
23 of funding that we're putting in for educational
24 programs to increase literacy levels. But my
25 experience is again the longer an individual is in,

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1 the more he'll read, the more he'll be self-taught and
2 the more he'll continue more in-depth practices with
3 whatever faith group he has become a part of.

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

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

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

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

17 MS. ATKINS: In my institution, yes.

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

20 MS. ATKINS: Yes.

21 CHAIRMAN REYNOLDS: Okay. I'd like to
22 thank everyone for these great presentations and at
23 this time, let's take a ten minute break and let's
24 meet up at -- let's make it 11:30 a.m. Off the
25 record.

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1 (Whereupon, at 11:22 a.m., the above-
2 entitled matter recessed and reconvened at 11:35 a.m.)

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

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

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

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

22 Mr. Nolan is the author of "When Prisoners
23 Return", which describes the important role the church
24 can play in helping prisoners get back on their feet
25 after they are released. His opinion pieces have

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1 appeared in numerous periodicals, including the Los
2 Angeles Times, the National Law Journal and the
3 Washington Times. He has testified on several
4 occasions before congressional committees on prison
5 work programs, juvenile justice, prison safety,
6 offender re-integration and religious freedom.

7 Mr. Nolan serves on the nine-member U.S.
8 Prison Rape Elimination Commission appointed by the
9 Speaker of the House of Representatives. Justice
10 Fellowship worked very hard to pass a legislation
11 which established the Commission. Once again, all of
12 our participants have very long CV's and please do
13 not be offended if I truncate it.

14 Next up we will have Ms. Lane Dilg, a
15 staff attorney for the American Civil Liberties Union.

16 She is a staff attorney with the ACLU Program on
17 Freedom of Religion and Belief, where she litigates a
18 broad range of religious liberty cases before federal
19 courts across the nation. In recent cases she has
20 advocated the rights for Muslim women wear religious
21 head covering while detained and argued against the
22 application of reduced scrutiny to establishment
23 clause claims in the present context.

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

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1 from Harvard Divinity School. Following law school,
2 she clerked for the Honorable Raymond c. Fisher on the
3 United States Court of Appeals for the Ninth Circuit.

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

8 Next, we will have Imam Abuquadir Al-Amin.

9 Since 1992, he has served as an Imam within the
10 Society of American Muslims. He served a Muslim
11 Chaplain at FCI Dublin California from 1983 to 1984,
12 offering religious services, counseling and re-entry
13 classes. During the same time, he chaired the
14 American Muslim Mission Prison Services Organization
15 for the State of California. In 1984 he was elected
16 as resident Imam of the San Francisco Muslim Community
17 Sector and currently continues to serve in that
18 capacity.

19 Next, sir, help me pronounce your last
20 name.

21 MR. LUCHENITSER: It's Luchenitser.

22 CHAIRMAN REYNOLDS: Thank you. Mr.
23 Luchenitser has served as litigation counsel for the
24 Americans United for Separation of Church and State
25 since 2001 and as a senior litigation counselor since

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1 2004. Mr. Luchenister litigates church state cases
2 all over the country and also periodically authors and
3 edits Friend of the Court briefs that are filed in
4 Federal Court of Appeal on behalf of Americans United.

5 He's also worked on cases challenging governmental
6 funding of religious, social service providers, cases
7 challenging governmental religious displays on public
8 property, cases challenging attempts to inject
9 intelligent design into public school curricula and
10 cases challenging other government sponsored religious
11 activities such a prayer in public schools.

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

22 He sits on influential boards and
23 committees of chaplaincies and corrects related
24 organizations and finally, he's also regularly sought
25 out for his expertise. Actually, finally, he was

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1 honored with the correction industries Chaplain of the
2 Year in 2005.

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

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

21 MR. NOLAN: Thank you very much, Mr.
22 Chairman and members for holding this very important
23 hearing. As the Chairman said, I'm Pat Nolan, the
24 Vice President of Prison Fellowship and I head up
25 Justice Fellowship, their criminal justice reform arm,

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1 served for 15 years as a member of the state assembly
2 in California, four of them as Assembly Republican
3 Leader. I was a leader on crime issues, particularly
4 on behalf of victim's rights. I was one of the
5 original sponsors of the Victims' Bill of Rights and
6 received the Victims' Advocate Award from Parents of
7 Murdered Children.

8 Then I was prosecuted for a campaign
9 contribution that I accepted as part of an FBI sting.

10 I pleaded guilty to one count of racketeering and
11 served 29 months in federal custody. It's with this
12 unique background as legislator and prisoner and now
13 my current work in prison ministry, that I address you
14 today. While in the legislature, I presumed that
15 prison officials, even atheists, would encourage
16 inmates to participate in religious programs. If
17 nothing else, religious activities would seem a good
18 management tool and a device to keep inmates out of
19 trouble.

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

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1 needs.

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

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

20 On one occasion we were gathered in the
21 chapel and we could see the Baptist volunteers that
22 had driven a couple hours from the local church. They
23 had been coming to visit the prison for five years.
24 There was a discussion with the officer and then they
25 left. The officer came up and told us we had to

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1 disband. And I found out later that the reason that
2 they'd been turned away, again, after coming for five
3 years, was that the officer told them that their
4 paperwork wasn't in order. In reality, he'd been
5 playing computer games and hadn't gotten around to
6 running the list of the approved volunteers that day
7 and we were denied services. When Bill Blass'
8 Tournament of Champions came to our camp, a picture
9 card count was called just as they were asking inmates
10 to commit their lives to Christ.

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

21 Such interference at ministry events is,
22 unfortunately, common at prisons across the United
23 States. When I came to work at Prison Fellowship, I
24 asked the Head of our Field Operations if my
25 experiences were unique and he chuckled and said, "No,

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1 our volunteers don't think they've earned their
2 stripes until they've driven hours to get to a prison,
3 waited an hour or more in the rain or snow and then
4 been turned away with no excuse.

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

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

22 Isaac returned from the restroom to be
23 screamed at by the officer. Why did he make that
24 mess? When Isaac tried to explain that he had been in
25 the restroom and that someone else had done this, and

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1 this is in front of all the other inmates, he was
2 chewed out and told that if he didn't shut up and not
3 try to explain what had happened, he would go to the
4 hole.

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

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

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1 inmates randomly out of the sessions without cause.

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

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

22 However, the coordinator will then tell us
23 we have to first have a list of the volunteers and
24 that they won't allow us to submit a program proposal
25 until we have that. But we can't submit a proposal

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1 without the approval from the Deputy, so it is
2 constant confusion. In addition, the volunteer
3 personnel are not anxious at all to allow volunteer
4 in. They, quote, 'don't understand why anybody would
5 want to come and see these women', so they don't act
6 on things quickly, efficiently, or pleasantly".

7 In one case, a prison in Oregon, we waited
8 10 years and have yet to be allowed in to provide our
9 program, even though we're willing hands able to help
10 them. Why would some correctional officers have this
11 attitude? It's not animus to religion. It's
12 bureaucratic lethergy. It's more work for them. Now,
13 many prison officials like you've heard today,
14 encourage religious activities. They know that a
15 changed heart changes the actions of inmates and they
16 do all they can to facilitate it, but also along side
17 them are many officers who make it difficult.

18 There are two troubling policies that
19 frequently occur. One is to limit inmates to choosing
20 one religion and only one activity for that religion
21 during a week. I'm a Catholic. While I was in
22 prison, I not only went to Mass, I went to Lutheran
23 services, Southern Baptist services, AME services, all
24 the Christian services. That's the only place there
25 was light in a very dark place. Under those systems,

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1 I only would have been allowed to go to Mass. And if
2 there were a Prison Fellowship program I wouldn't have
3 been allowed to go to it because Prison Fellowship is
4 not a religion.

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

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

23 I'll end just by saying that there are
24 wonderful people in prisons that have done a terrific
25 job working with inmates, helping to transform their

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1 lives, assisting outside groups, but there's also a
2 separate culture that views inmates as manipulators
3 and that every volunteer is a threat to security and
4 therefore, a threat to their career. And I really
5 hope that the Commission will address standards that
6 will inform the corrections officials all the way down
7 through their training to the lowest level that
8 there's a constitutional right to practice faith and
9 also it does great public good to allow religion to
10 transform lives. Thank you.

11 CHAIRMAN REYNOLDS: Okay.

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

17 CHAIRMAN REYNOLDS: Understood. Ms. Dilg?

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

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

24 COMMISSIONER MELENDEZ: Just a question,
25 did you have any questions as to the last panel,

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1 anything you heard that --

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

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

23 And restrictions on libraries, where they
24 don't have the broad range of commentaries, really
25 restricted out ability to really get into and study

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1 our faiths. And Ms. Thernstrom's comment that a lot
2 of inmates are illiterate is true but it's
3 fascinating, a study in Ohio just came out that showed
4 the inmates that participate in religious programs
5 gain literacy and the thesis of the person that wrote
6 it is, in order to study the Bible, they learn to
7 read, they learn to speak because they participate in
8 Bible studies. By every measure, they exceeded the
9 other inmates. They didn't start out that way but
10 they ended up exceeding the other inmates because of
11 their involvement in Bible studies.

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

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

25 MR. NOLAN: The reason given for the

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1 restriction on the number of Bible studies or worship
2 services is space. However, space or personnel, as
3 the Chaplain said, they now require -- I think it's
4 salutary that an officer be present but there are
5 other ways to observe it.

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

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

22 MR. NOLAN: Right, okay, I'm sorry. In
23 some states, Maryland, for instance, you have to
24 declare your faith and frankly, I've never heard a
25 good explanation of why that is, why they're just

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1 limited to one faith and then one activity for that
2 faith. No one has been able to explain that, but
3 that's a policy that's spreading as far as -- and
4 interferes directly with people's practice of their
5 faith.

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

23 And so what was said in the earlier panel
24 about trying to meet people at the gate and trying to
25 help them with that transition, is absolutely

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1 essential. It's not enough to just study the Bible
2 inside. There has to be that loving, moral person
3 that the system can't provide that only the community
4 can provide to come along side them, help them with
5 the decisions that they make, so research on the
6 effect of that.

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

22 One of the problems with our culture is
23 people are very self-centered and religion tells them
24 there are things more important than you in life. And
25 that's the benefit, getting their minds around the

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1 fact that the world doesn't revolve around them. That
2 there are certain things that have to -- they have to
3 accommodate the rest of society and that's what comes
4 from the faiths, the many faiths represented here is
5 that idea of service other than self.

6 VICE CHAIR THERNSTROM: Thank you very
7 much.

8 CHAIRMAN REYNOLDS: Okay, Ms. Dilg?

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

21 Our statewide affiliates also frequently
22 represent inmates who encounter obstacles in
23 exercising their religious liberties. I'd like to
24 speak to you today about two aspects of the current
25 law governing inmates' religious rights; first, the

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1 substantive, and second the procedural. As Chaplain
2 Pryor and Mr. McFarland said earlier, in the prison
3 context the general First Amendment standard is that
4 regulations are acceptable if they are reasonably
5 related to legitimate penalogical interests. Since
6 that standard was articulated, the Supreme Court
7 handed down Smith which, of course said that
8 government entities can pass general laws of neutral
9 applicability even if they incidentally effect
10 religious rights.

11 How Smith impacts the Turner standard is a
12 little bit up in the air. The DC Circuit came out
13 with` a decision in 2002 saying, We don't really know,
14 but it doesn't matter so much any more because the
15 more protective law on religious inmates' rights is
16 actually the statutory law passed by Congress in
17 reaction to Smith. The first law is the Freedom
18 Restoration Act which Mr. McFarland and the ACLU both
19 advocated for before Congress and that law applies to
20 Federal Government and officials including the Federal
21 Bureau of Prisons and says that the government must
22 have a compelling government interest in order to
23 restrict religious rights and must use the least
24 restrictive alternative in seeking to achieve that
25 compelling government interest.

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1 RLUIPA, the Religious Land Use and
2 Institutionalized Persons Act, was passed in 2000
3 after the Supreme Court said that RFRA was not
4 constitutional as applied to the states. Congress
5 came back and said, well, in the context of prisons,
6 even if RFRA doesn't apply, if you're going to receive
7 federal funds, you have to comply with the same
8 standard. So now any state or local institution that
9 receives federal funds also has the same standard, the
10 government must have a compelling interest to
11 substantially burden religious exercise and must
12 achieve that compelling interest through the least
13 restrictive means.

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

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1 determine sincerity of the belief.

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

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

20 The First Circuit actually agreed with Mr.
21 Spratt and said that the regulation was too broad,
22 that the prison may have had a compelling interest in
23 prohibiting leadership among inmates but that this
24 couldn't possibly be the least restrictive
25 alternative. They, for instance, were still allowing

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1 Mr. Spratt to stand up and read scripture, and if he
2 could do that, why couldn't he preach and there must
3 be some other alternative out there to accommodate Mr.
4 Spratt's preaching.

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

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

23 So in both cases you see that courts work
24 hard to require prisons to present compelling stated
25 interests and to look for the least restrictive

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1 alternatives to achieve those interests. It's a good
2 law and we, have generally been pleased. There are a
3 few counter-examples and of course, any time a
4 government institution goes in and says, "Our
5 compelling interest is prison security", generally the
6 court is going to agree. So it really comes down to
7 least restrictive alternative. But generally courts
8 have forced prisons to come up with the least
9 restrictive alternative to achieve the government
10 interests and also accommodate religious inmates'
11 rights.

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

22 The Fourth Circuit recently held that
23 although RLUIPA applies to any prison that received
24 federal funds that doesn't necessarily mean that the
25 state has waived sovereign immunity. So that an

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1 inmate may not be able to sue officials in their
2 official capacity because 11th Amendment immunity might
3 not be waived.

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

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

20 There are a few provisions of the Prison
21 Litigation Reform Act that we in a coalition of
22 religious and other organizations are particularly
23 concerned about. The first is a physical injury
24 requirement that prohibits prisoners from bringing
25 actions for compensatory damages for mental and

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1 emotional injury without proof of physical injury.

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

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

19 Because of the attorney's fees
20 restriction, the attorney's fees are limited to 150
21 percent of that award, \$1.50. This has happened in
22 two cases recently, a 7th Circuit case and also a 10th
23 Circuit case. They said, "This is what the law says,
24 the attorney gets \$1.50". You can imagine it's hard
25 enough for inmates to find representation but when the

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1 attorney fee is almost certainly going to be \$1.50,
2 that presents a real procedural bar to inmates
3 obtaining representation.

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

16 The inmate would have to go to the guard
17 and make an oral complaint and try to resolve the
18 problem within two days of the materials being taken.
19 Then if that didn't work, within five days after the
20 failure of the oral resolution, you have to file a
21 complaint, again to your immediate supervisor. If
22 that is denied and so far you haven't gotten outside
23 of the person who actually did this in the first
24 place, if that's denied, you then have five days to
25 appeal or five days to obtain an appeal form and five

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1 days to file an appeal, and then you have to go
2 through one more appeal that goes up to the head of
3 the Michigan Department of Corrections.

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

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

24 CHAIRMAN REYNOLDS: Thank you. Imam Al-
25 Amin.

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

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

22 We also want to bring to your attention
23 that sincere regular participation in faith based
24 religious programs while in prison is a prime factor
25 correlated to improve behavior both while in prison

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1 and post-prison, there appears to be little or no
2 appreciation of this fact. Other issues of importance
3 are religious services are often delayed or cancelled
4 for very little or no reason. Custody staff are very
5 dismissive and sometimes ridicule those who
6 participate in faith based religious self-improvement
7 programs. Additionally, less familiar religious
8 traditions, particularly Al-Islam receive inordinate
9 amount of the above treatment.

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

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

24 And thirdly, Muslim inmates are not
25 afforded access to religious required meals, meats

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1 which we call halal, while Jewish inmates are afforded
2 the meats that their religious tradition required,
3 kosher, at the expense of the prison. This is the
4 practice ruling every prison in the State of
5 California. Proposals have been presented to acquire
6 the Muslim allowed meats at a cost below the cost of
7 non-complying meats that are currently being provided
8 to Muslim and all other inmates. Muslim inmates have
9 been penalized for participating in religious
10 services.

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

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

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1 Muslim beliefs and practices.

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

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

21 I would also like to point out that much
22 of the information regarding Islam being a fertile
23 ground for terrorists in America's prisons is really
24 over-exaggerated. Some of the instances that we are
25 aware of where individuals continue a life of crime

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1 while having a very superficial relationship with the
2 Muslim practices or with the Muslim community outside
3 have been blown up by individuals who have a
4 particular agenda that they're promoting. So we're
5 very concerned about our image, the image of the
6 religion of Islam being maligned as a result of
7 political positions that people take.

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

21 We also would like to point out that the
22 first instance of Islam being spread in America's
23 prisons was as a result of Muslims who objected to
24 participating in World War II when the early followers
25 of what was then the nation of Islam led by the

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1 Honorable Elijah Muhammad, himself, and adult male
2 members of his organization who were at draft, put in
3 prison for their refusal to go into the military to
4 fight. The same thing happened with Muhammad Ali when
5 he took his conscientious objector status regarding
6 the Vietnam War and there were other Muslims that also
7 objected to participating in a war that they thought
8 was ill-conceived and not deserving of their support
9 and participation.

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

19 CHAIRMAN REYNOLDS: Thank you. Mr.
20 Luchenitser.

21 MR. LUCHENITSER: Yes, sir, I'm Alex
22 Luchenitser, Senior Litigation Counsel, Americans
23 United for Separation of Church and State. Americans
24 United is a nonpartisan, non-sectarian organization
25 dedicated to the preservation of religious liberty and

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1 the separation of church and state. Our members
2 include people from a wide variety of religions, as
3 well as people without any religious affiliation.

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

11 Protection of the religious freedom of
12 prison inmates also requires that inmates not be
13 coerced to submit in any manner to religious
14 proselytization and the inmates not be discriminated
15 against in any manner based on their faith. It is
16 this type of protection of religious freedom that I
17 would like to focus on in my statement. There are
18 several key principles of constitutional law that
19 apply in this context. First, the government must not
20 coerce any person to take part in religious activity.

21 Thus, the government must not provide individuals any
22 incentive to modify their religious beliefs and
23 practices or to undertake religious indoctrination.

24 Second, the government must not
25 discriminate among persons based on religion. Third,

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1 the government must not delegate governmental power to
2 religious institutions and the government must not
3 become excessively entangled in the affairs of
4 religious institutions. Fourth, the government must
5 not sponsor or finance religious indoctrination or
6 otherwise provide any direct aid to religious
7 organizations that use the aid to support religious
8 activity. Now, of course, in the prison context,
9 there's the exception to this last rule that allows
10 the government to fund chaplains in prisons and
11 religious programs under the supervision of the
12 chaplains.

13 And the reasoning behind this exception is
14 that the government is responsible for restricting
15 prisoners' freedom of movement so in order to allow
16 prisoners to fully exercise their religions as
17 required by the First Amendment, the government needs
18 to provide prison chaplains and related religious
19 programming. But the courts have made clear the
20 funding of prison chaplaincy programs is
21 constitutional only to the extent the following
22 requirements are met. First, the religious program
23 must be reasonably necessary to enable those whose
24 movement is restricted to fully exercise their
25 religions.

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1 Second, the chaplaincy programs must be
2 non-sectarian and must be provided to all religions on
3 a non-discriminatory basis. Third, the chaplain's
4 services must be non-proselytizing and finally, the
5 chaplaincy services must be provided only to the
6 extent desired by the recipients of the services. The
7 growth over the last 10 years of programs that aim to
8 rehabilitate prisoners by intensively immersing them
9 in the teachings of one religion has created great
10 risks that these constitutional principles and
11 inmates' rights will be violated.

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

25 The most well-known example of this kind

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1 of program is the InnerChange Freedom Initiative
2 Program which I will focus on. I happen to know a
3 whole lot about this program since I am the lead
4 counsel for the plaintiffs in litigation over the
5 constitutionality of the program. However, the
6 constitutional and policy issues presented by
7 InnerChange Program, have also arisen with various
8 other faith-based prison units and faith-based prisons
9 as discussed in detail in my written statement.

10 The litigation over InnerChange's program
11 in Iowa showed that the operation of the program
12 violated inmates' rights in many ways. First,
13 participation in the program was linked to numerous
14 material benefits and privileges including more
15 desirable housing, quicker access to treatment classes
16 that were required for parole, greater contact with
17 family members, increased access to computers and
18 computer training, guaranteed jobs in the prison and
19 various other privileges. This violated the
20 constitutional prohibition on coercing inmates or
21 giving inmates incentives to take part in religious
22 programming. Second, the program itself discriminated
23 among inmates based on religion and though it claimed
24 that it would take inmates of any faith, inmates in
25 religions different from what the program teaches

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1 could not in practice enroll in the program while
2 staying true to their own faiths.

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

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

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1 exercises.

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

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

20 First, participation in religious
21 programming should not be tied to where an inmate
22 lives, to how an inmate obtains release or to other
23 material benefits or conditions. Second, authority
24 over the movement, activities and discipline of
25 inmates should be fully retained by governmental

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1 employees and should not be delegated to any personnel
2 of a religious program.

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

13 CHAIRMAN REYNOLDS: Thank you.

14 Chaplain Friedman.

15 CHAPLAIN FRIEDMAN: Yes, again, thank you
16 for inviting me here. I'm not going to read my entire
17 written report but I want to hit some of the
18 highlights here. Disclaimer first, I'm going to be
19 describing some incidents. I'm not going to use
20 specific names, places or dates relating to these
21 examples of religious discrimination because those are
22 better saved for another time that permits fuller
23 examination. And except for where otherwise
24 necessary, I'm going to use the generic term "prison"
25 or "prisons" to refer to all adult and juvenile

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1 prisons and correction systems or facilities. So it
2 shouldn't be any surprise that religious
3 discrimination abounds in prisons. After all, these
4 places they have neo-nazis and Christian identity
5 supremacists and the other and the like who've been
6 convicted of religion-related offenses. Moreover it
7 is the nature of the prison beast that in order to
8 secure protection, inmates often ally with an affinity
9 group and so that there's a lot of association with
10 gang and ethnic affiliations and so therefore, even
11 though anti-Semitism has always been a fact of life in
12 prisons, it's views are far from the old ones who were
13 experiencing religious intolerance these days.

14 Now, what would be a revelation to many
15 however, is that religion-related discriminatory acts
16 against inmates are less often attributable to other
17 inmates than they are to staff and outside ministries
18 as you've been hearing here today. And on the staff
19 side there has been a paradigm shift from people being
20 sent to prison as punishment to being sent to prison
21 for punishment. And staff feel like they've been
22 handed this mandate, public mandate to punish. So
23 they do so in part by instructing religious practices
24 that they perceive to be perks rather than necessity.
25 Further exacerbating the situation are continued

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1 conditions of prison overcrowding, staff shortages, et
2 cetera, that have resulted in only the least demanding
3 practices being permitted for the safety and
4 convenience, and you've heard other references to
5 that.

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

18 But make no mistake about it however,
19 spreading the good news by the likes of evangelical
20 prison ministries, their staff allies and most
21 importantly their inmate disciples, are -- have
22 blatantly crossed the line into overt proselytizing.
23 So in addition to placing constant pressures on
24 inmates and family members to convert to this so-
25 called majority faith, which in fact, is a plurality,

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1 I would point out, their tactics often include highly
2 divisive denigration of other Christian denominations
3 and minority faced, most notably Muslims these days.
4 This spawns physical altercations and other negative
5 incidents. So in the midst of all this mess, you have
6 the chaplains and staff chaplains, the best of them
7 are highly trained professional employees whose
8 skillfully manage the religious activities of all
9 faith groups and maintain a balance between disparate
10 factions who working the same turf.

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

18 In preparing for this briefing I solicited
19 input from experienced professional chaplain
20 colleagues from across the country and immediately
21 received the following two responses. A staff
22 chaplain in a large county jail in the Northeast
23 wrote, "My initial thoughts are that we need to
24 overcome our mentality that develops religious and
25 spiritual provisions in prison from out of a

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1 presumption of Protestant, Christian and American
2 civil religion," and he refers to work by Will
3 Herberg, "Protestant, Catholic and Jew".

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

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

22 Okay, for example, if you walked in with a
23 cell mate who's haranguing you constantly being taught
24 in Bible class that you're going to hell if you don't
25 accept Jesus, you can't just walk away from him like

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1 you can out there on the street, okay? If your
2 prison warden orders that every inmate participate in
3 a corrections department sponsored proselytizing
4 evangelical event, orders everybody to sit on their
5 bumps and watch the TV or whatever, the monitors or
6 physically participate, you can not refuse, okay.

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

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

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1 authority in constantly cancelling Jewish activities.

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

17 So what's happened here is that what this
18 all adds up to is that this is -- all this
19 preferential treatment has come to constitute the
20 establishment of a preferred faith in America's
21 prisons, that simple. There are four things that I've
22 noted in my written testimony that I'm particularly
23 concerned of at this point. I'll just note them
24 quickly. One is regressive chapel requirements, and
25 what's going on is that a lot of professional

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1 chaplains' positions are being eliminated and very
2 often at the urging of certain ministries that are
3 offering free chaplains, who you can imagine what
4 their agenda is and in fact, I describe one of those.

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

14 Proliferation of these God Pod
15 proselytizing machines, I could go on and on about
16 that. I totally agree with Mr. Luchenitser and we
17 certainly have many, many examples of what's going on
18 with them. The private -- and by the way, you know,
19 multiple-faith, no problem but single faith
20 proselytizing machines, no. You asked about the
21 private prison industry, somebody. Absolutely, there
22 are problems there because you know, they cut
23 programs, they cut costs to make more money, and
24 persecution of Muslim chaplains and inmates. So, I've
25 also made some notes about some things that you can

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1 read in my written testimony about RFRA and RLUIPA
2 because the Committee had asked about it, the
3 Commission had asked about it. The most disturbing
4 thing is that the Justice Department has done very
5 little toward authorizing its authorized enforcement
6 of RLUIPA, at least the institutionalized portion of
7 it and as far as I'm aware, no single governmental
8 agency has been sanctioned for violating it.

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

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

24 However, I can and am more than willing to
25 produce documentation that details all of this and the

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1 only thing, you're going to have to come to us because
2 we've got rooms full of files relating to these kinds
3 of things. And I would ask that the Commission urge
4 the Justice Department and other federal law
5 enforcement authorities to fully investigate them and
6 take appropriate action. Thank you.

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

9 CHAPLAIN MCCOLLUM: Well, good morning,
10 everybody. I'd like to thank the Commission for
11 giving us the opportunity to be at the table both as a
12 member of the Wiccan community, who seldom ever gets a
13 voice, but more importantly, as a voice of minority
14 faith, because I'm really the voice of minority faith
15 here. And I'm going to talk about discrimination
16 against Wiccans in the prisons. I'm going to give you
17 some specific examples of things like that but it's
18 very important that you understand that you could
19 insert the name of any other minority faith in place
20 of Wiccan, it could be Buddhist, it could be Jehovah's
21 Witnesses, it could be Mormons, whoever you want to
22 put in and their experience is exactly the same as
23 ours and I traveled to prisons all over the United
24 States for years and years and years, interact with
25 them, and I see all these things first-hand.

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1 So I'd like to begin by giving you a few
2 examples of discrimination to sort of show you the
3 severity of the problem that takes place. A Wiccan
4 inmate has cancer and the prison guards refused to
5 transport him to his chemotherapy unless he removes
6 his religious pentacle medallion that he's wearing
7 which they have objections to. The inmate chooses to
8 forego his chemotherapy and keep his pentacle.

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

22 For more than a decade, I've had the
23 opportunity to interact with administrators and
24 inmates on religious accommodations all over the
25 place. I can tell you that the religious

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1 discrimination against minority faiths is major in the
2 prisons.

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

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

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1 Religious Lens thing works. I'm going to give you an
2 example.

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

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

21 I can tell you that eventually I did end
22 up being able to start performing regular Wiccan
23 religious services but the staff at that institution
24 to this day still talk about the inappropriateness of
25 us worshiping in a circle instead of having me up at

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1 the pulpit and the other people down below and because
2 of that, they negate Wicca as a religion and
3 discriminate against the individual Wiccans who
4 participate.

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

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

24 Another thing that I've observed causing
25 great difficulty for the Wiccans is to try to gain

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1 access to their religious items, their scared
2 religious items. And always these things are denied
3 on the basis of security. So here's that they do.
4 Wiccans typically use an altar adorned with various
5 religious items. The items are composed of a chalice,
6 a few candles, incense, typically a few natural
7 objects, like a feather or a flower and sometimes a
8 little statue of deity or a little painting or
9 something like that of deity and generally a religious
10 book of some sort.

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

24 So why is it that these dominant faiths
25 get all those things and the exact same specific items

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1 are denied to Wiccans? I'll tell you the reason is
2 because when staff and security look at it, they look
3 at it through this Dominant Religious Lens Factor and
4 they go, "Hmm, that looks like the Protestant
5 Christianity" or whatever the particular dominant
6 faith is, and then they see the Wiccans all sitting
7 around in a circle with the same items, they go, "Wow,
8 that doesn't look like the dominant faith, you know,
9 faith practices, so that's suspect and we need to stop
10 it or deny it."

11 Also, another area where some of these
12 problems take place is in the factors that involve
13 accommodation where there are significant resources.
14 For example, the allocation of regularly employed
15 chaplains. This is a really important one. This is a
16 problem throughout the country and California is an
17 example. Even though there are more Wiccans attending
18 religious services at some institutions than there are
19 of the dominant faiths who already have employed
20 chaplains, the state has told Wiccans that they have
21 to prove by their religious faith tenants that they
22 require a chaplain before the state would consider
23 hiring one. The odd thing about this is that proof
24 requirement isn't taken to the Protestants. They
25 don't have to prove that they have to have a chaplain.

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1 They never have had to prove that. But more important
2 is that in Protestant Christianity, the fundamental
3 principle underlying is says they don't need any kind
4 of clergy or faith chaplains. That's the whole idea
5 of the Protestant reformation. They have no need to
6 have a chaplain or a person intercede with them at
7 all. All they need is a Bible, yet they get all these
8 other things.

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

17 So for example, Protestant congregations
18 in most prisons have Bible classes, read Bibles,
19 videos, have choirs. I even went to a prison where
20 Bikers for Christ brought full dressed Harleys and
21 inmates got to ride around on them if they would come
22 to Bible study. At the same time, they won't let
23 Wiccans have a place to practice. They won't let them
24 have their books. They won't let them have their
25 religious materials and they say it's all because of

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1 security, even though they've given the same thing to
2 the people who are the dominant faiths.

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

15 Here are my recommendations to the
16 Commission. If we want to achieve religious equality
17 in prisons, then we have to restrict the hiring of
18 administrators into gatekeeper positions for religion
19 and limit it to people who do not see it as their duty
20 to have a particular religion succeed in a prison over
21 another one. This should be a bonafide occupational
22 qualification, that's a government term. The people
23 have to be screened to determine they're not these
24 kind of people before they get into their positions.
25 And then we need to educate those people about

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1 pluralism, about different types of religion, about
2 how religion is practiced and about the responsibility
3 as administrators for prisons and government
4 institutions to follow the law, our Constitution and
5 the law. And in the end, I think that one of the most
6 important things that we need to do is to get rid of
7 administrators and chaplains who believe that breaking
8 the law and violating inmates' religious rights is
9 justified by faith, because I run into hundreds and
10 hundreds -- I've been into 22 states' correctional
11 systems and the Federal Bureau of Prisons and these
12 are issues that take place everywhere. So thank you
13 very much.

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

17 CHAPLAIN FRIEDMAN: We were that good,
18 huh?

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

25 MS. DILG: I don't believe so.

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1 COMMISSIONER HERIOT: Do you know of any
2 case where somebody has been awarded compensatory
3 damages?

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

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

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

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1 those two options the least restrictive alternatives
2 and kosher meals were not required.

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

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

14 MS. DILG: Of course.

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

19 MS. DILG: You know, the first thing I've
20 observed in reading all of these RLUIPA cases is that
21 they're really not clear lines. It's very prison
22 specific and it really is a fact-based determination.
23 So I unfortunately don't have a lot of guidance there.

24 I think least restrictive alternative is a great
25 standard to have out there and I think that courts

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1 attempt to apply it correctly and generally do.

2 COMMISSIONER HERIOT: Thanks.

3 CHAIRMAN REYNOLDS: Todd?

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

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

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

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1 COMMISSIONER GAZIANO: Well, if you have
2 evidence of that, then --

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

6 COMMISSIONER GAZIANO: The higher --

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

19 What he wanted to know is if the inmates
20 themselves had exhausted their remedies and then in
21 the end he said they hadn't even though they had
22 proved in Court that their things were thrown away,
23 that we found actual state memos issued saying, "Throw
24 away inmates' grievances". Even though all those
25 things took place, he said by the letter of the law,

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1 the inmate still had other means or ways to come
2 forward.

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

6 CHAPLAIN MCCOLLUM: In the end --

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

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

18 I go to states like Ohio, who just
19 finished the Cutter v. Wilkinson case and met with an
20 official there and he said, "We're going to defy the
21 Supreme Court", and I go to Texas and they say, "Let
22 them send the National Guard. We're not going to do
23 this". There's a real problem and no one ever
24 actually takes it upon themselves to do anything, so
25 no one is going actually send the National Guard nor

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1 go to Ohio and make them do it. They're going -- it's
2 going to be 10 years down the line in court case.

3 CHAIRMAN REYNOLDS: Chaplain Friedman?

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

13 So that's pretty much -- that's pretty
14 much the answer to that. I mean, these people -- you
15 know, most people in the system where some of these
16 things were going to happen, you know, they're going
17 to partner up. The superiors are going to partner up
18 with the line officers and whatnot and they're going
19 to instruct them. And I'll tell you what, you know,
20 we've had instances of where clearly where corrections
21 officers, for example, were involved in murders and
22 you know, religion-related, and you're not going to
23 find a jury -- first of all, you're not going to find
24 a prosecutor out in some small prison town where
25 that's the only industry, that's going to prosecute

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1 another -- prosecute them, in the first place. Second
2 of all, there's no way that a jury is going to convict
3 them. Right? So you know, that's --

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

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

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

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

23 I called a county jail and I got a
24 recording of it in fact, and I called the chaplain's
25 office and this is supposed to be the chaplaincy

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1 office for the whole place, and it says, "This is the
2 country jail chaplain's department where Jesus lives".
3 You know, this is on the prison's -- on the jail's
4 recording.

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

11 CHAIRMAN REYNOLDS: Mr. Nolan.

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

24 You know, prison officials are so swamped
25 dealing with over-crowding and the lack of ability to

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1 even hire officers that religion just slips off the
2 table. Dealing with discriminatory complaints becomes
3 just -- it's just not in the hierarchy of what they
4 think is important and yet, to an inmate who is
5 totally dependent on the government for access to
6 their church, nobody can come see him, they have no
7 access to any religious thing that isn't approved by
8 the government, we need to emphasize to prison
9 officials, this is important.

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

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

19 Now, think of the mind set. He's putting
20 Catholic Mass in with ping pong tournaments, Toast
21 Masters, other activities. Fortunately, we had a
22 sheriff then, Sherm Block. As soon as he heard about
23 it he said, "We're going to have Mass for the ladies
24 in the jail, period". But in other prisons, if you
25 don't have a sensitive administrator like that, it's -

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1 - and the grievance process is too late. By the time
2 you file and work your way up, if it isn't tossed away
3 which I've observed, but even when it isn't tossed
4 away, the -- Christmas has come gone and you've been
5 denied that.

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

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

20 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
21 then Commissioner Taylor.

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

24 COMMISSIONER TAYLOR: Imam Al-Amin, a
25 question. You heard the first panel talking about the

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1 radicalization in prisons.

2 IMAM AL-AMIN: Yes.

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

6 IMAM AL-AMIN: Yes.

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

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

25 But I see themselves positioning

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

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

21 And then there are some instances where
22 individuals have gone out and committed crimes and had
23 some superficial relationship with Islam and those
24 situations have been exploited to you know, paint a
25 negative picture of what Islam represents in America's

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1 prisons.

2 CHAIRMAN REYNOLDS: Commissioner Melendez?

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

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

21 IMAM AL-AMIN: I don't think it's as
22 simple as making a recommendation to the Congress. I
23 think it's a much more complex issue that we're
24 dealing with. For example, the attorney who initially
25 contacted me about information for this proceeding,

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1 didn't want me present, they only wanted my comments.
2 And they actually told me that the Wiccan was going to
3 represent the Muslims. And I said, "That's the kind
4 of discrimination that we're talking about". So it
5 doesn't just exist on the level of the prisons
6 discriminating. In the general society, there's a
7 level of ignorance that exists that has to be -- there
8 has to be an educational process that takes place
9 where we learn more about each other on every level,
10 so that we can respect the sensitivities and the needs
11 of other people without assuming that other people
12 have a right to represent your interests. You know,
13 so those are some of the problems that we're
14 experiencing.

15 CHAIRMAN REYNOLDS: Ms. Dilg?

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

20 COMMISSIONER GAZIANO: How do you do that?
21 Sorry for interrupting.

22 MS. DILG: I think the two key provisions
23 would be the physical damages requirement because
24 religious injuries don't involve physical damages, and
25 also the exhaustion requirement, to give Federal

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1 Courts just some ability to stay a case instead of
2 dismissing it. We're not actually asking for the
3 exhaustion requirement to be totally abolished, just a
4 stay.

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

17 Because if they were actually going to get
18 hit personally, with whatever it was, I think it would
19 bring a lot more people on board. Secondly, on the
20 grievance process, I actually think that they should
21 establish an additional grievance process just for
22 religious accommodation issues and that grievance
23 process should include people from minority faiths and
24 other groups that are typically ones who are grieving
25 most of the time, including like Prison Fellowship and

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1 things like that because then it wouldn't have to go
2 to the court. I mean, this could still be in the
3 correctional system but then, you know, those issues
4 could be looked at in a legitimate way because I will
5 tell you, I don't know how it is in other states, but
6 in California, far more money is spent denying
7 religious practices than is spent in you know, the
8 accommodation and things like that, tremendous amounts
9 of money. And I think that a lot of those problems
10 could just go away if they just handled them properly.

11 CHAIRMAN REYNOLDS: Okay.

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

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1 the Department of Corrections in Washington that
2 equipped him to do it.

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

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

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

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

22 VICE CHAIR THERNSTROM: We're all
23 concerned about discrimination in any form and we've
24 heard a lot of -- we've heard descriptions of
25 incidents. We've had a lot of antidotal information

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1 given to us here, but I have what you will regard as a
2 kind of predictable question given my question to the
3 last panel; how many incidents, what level of
4 severity, with respect to which religions, how many
5 grievances, how many are not responded to, inadequate
6 enforcement, how inadequate, levels of inadequacy. I
7 mean, I could make quite a cynical statement and say,
8 "Look, there are always going to be problems, and
9 there is always going to be a prison culture.

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

15 CHAPLAIN FRIEDMAN: Of course not.

16 VICE CHAIR THERNSTROM: Pardon me?

17 CHAPLAIN FRIEDMAN: Of course not.

18 VICE CHAIR THERNSTROM: Of course not. So
19 I'm left with wanting to have some very basic data on
20 the severity of the problems that all of you are
21 talking about and then Chaplain Friedman, I have --
22 well, I have a very specific question for Chaplain
23 Friedman. On the God Pods, now would you -- I just
24 want to see if I've got your testimony straight here.
25 Would you support a Jewish God Pod if the state only

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1 provided in kind, no direct funding for one? I mean,
2 what is your concern here -- well, you should spell
3 out --

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

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

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1 based instead of faith-based.

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

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

25 CHAPLAIN FRIEDMAN: Well, maybe you've got

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

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

20 VICE CHAIR THERNSTROM: And I have one
21 question for the Imam. You said, "Look, the Islam
22 provides a core of beliefs and a route to kind of
23 internalized discipline on the part of prisoners. But
24 of course, any Christian and any Jew would also say
25 the same thing about their religions. What is

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1 distinctive in your view about the Islamic message
2 that makes the prospect of that -- of that kind of
3 internalized discipline which will serve prisoners
4 well over the long run? What is distinctive about the
5 Islamic message that makes it a superior message in
6 your view in this sense?

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

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

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

24 So there are these kind of interests that
25 African Americans have about their own identity and

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1 Islam brings a sense of identity to individuals who
2 may have come from say a Baptist tradition or a
3 Christian tradition and didn't feel a part of that
4 faith. Even though they learned the values and the
5 principles from that particular faith, they didn't
6 really have a sense of belonging. They also
7 experienced discrimination within that faith.

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

17 CHAIRMAN REYNOLDS: Mr. Nolan?

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

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

24 MR. NOLAN: He says that humorously, but
25 there's an accumulation over time, but number two, I

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1 serve on the Prison Rape Elimination Commission and we
2 face exactly those same concerns. The reason Congress
3 passed PREA was because people said, "Well, we hear
4 all these anecdotes of prisoners getting raped but
5 there's no solid data, there's nothing to go on", and
6 I would suggest this commission can work with the
7 Prison Rape Elimination Commission and find the things
8 that we have done to establish the actual data.

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

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

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1 so that we can do it.

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

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

23 I visited the Life Connections Program in
24 the Federal Prison System. It was very interesting
25 but it reminded me of a scene in Lawrence of Arabia

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1 where they were all gathered around arguing about who
2 would control what parts of the city. It was a
3 wonderful discussion, intellectually you know,
4 interesting to me but they were discussing faith and
5 arguing constantly as opposed to learning about their
6 own faith. And I think that can only be done in a
7 single faith setting and again, as long as every faith
8 is able to provide their own program, I think it
9 passes constitutional muster.

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

21 The thing that was the most moving about
22 that, they actually flew me to their headquarters and
23 everything else like that, and the thing that was
24 revealing about it is that they asked me, which I
25 ended up turning down to help them narrow the program

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1 so that they could accomplish doing what they wanted
2 to do and make it look like they were going to
3 accommodate everybody without actually accomplishing
4 that and they wanted me to help them narrow that down
5 so that they'd get through the constitutional muster
6 issue.

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

19 They told me significant money from
20 gigantic people are being put in to try to drive that
21 forward, so that's something that this Commission and
22 the Congress needs to really watch as they, you know,
23 move into having these things happen. If you'd like
24 more information on that, I'd be happy to provide
25 that.

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1 VICE CHAIR THERNSTROM: I would, yeah,
2 that's very interesting, yeah.

3 CHAPLAIN MCCOLLUM: And I wanted to
4 comment on one other thing you asked about earlier.
5 You want data. The person to contact is Steve Herrick
6 (phonetic) from the American Academy of Religion.
7 He's the Director of External Services and represents
8 10,000 scholars who are studying these issues in
9 religion and they have the foremost experts in the
10 world and they've got all kinds of data, maybe not on
11 every issue but everything that's been talked about,
12 they have people who've written and collected data on
13 it.

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

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

18 CHAIRMAN REYNOLDS: Todd?

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

22 MR. LUCHENITSER: Luchenitser.

23 COMMISSIONER GAZIANO: Luchenitser.

24 MR. LUCHENITSER: That's close.

25 COMMISSIONER GAZIANO: I'm particularly

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

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

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

21 MR. LUCHENITSER: Yeah, I think as long as
22 the accommodation is reasonably related to what
23 someone needs to practice their religion and doesn't
24 impose significant penalties on other inmates, it's
25 perfectly constitutional and fine. I mean, there's --

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1 I think there's plenty that Mr. Nolan and I would
2 agree on in terms of the need to accommodate inmates'
3 free exercise rights.

4 But where we disagree is we think that a
5 24-hour a day, 7-day a week program that intensely
6 immerses inmates or converts them to a particular
7 religion, that goes way beyond what anybody needs to
8 practice their religion. So there's no justification
9 for government aid to that kind of enterprise.

10 CHAIRMAN REYNOLDS: Okay, yes.

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

24 Also, Muslim chaplains in some cases
25 experience where they're treated as though they're

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1 inmates, you know, because some of them may be young,
2 maybe the same age as some of the prisoners, and the
3 staff, correctional staff or the security staff in
4 some cases that have been brought to my attention,
5 have escorted them off of the prison yard, you know,
6 as though they were -- had committed crimes and they
7 were really carrying out their job responsibilities.
8 Some of these staff have had to resign from their
9 positions without really having the resources to
10 defend their positions adequately. Others are
11 currently on paid administrative leave for actually
12 fulfilling their duties and having tolerated not only
13 religious discrimination but also racial
14 discrimination, you know, at the hands of their
15 coworkers. And those issues are very important issues
16 that you should be aware of.

17 IV. ADJOURN BRIEFING

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

25 VICE CHAIR THERNSTROM: Thank you very

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1 much.

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

4

5

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