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NCPHS/M-76/09

TRANSCRIPT OF THE MEETING PROCEEDINGS
(16th MEETING)
NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS
OF BIOMEDICAL AND BEHAVIORAL RESEARCH

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PRICES SUBJECT TO CHANGE

Members Present

Brady, Joseph V., Ph.D.
Professor of Behavioral Biology
School of Medicine
Johns Hopkins University
Baltimore, Maryland 21205

Louisell, David W., J.D.
Visiting Professor of Law
School of Law
University of Virginia
Charlottesville, Virginia 22901

Cooke, Robert E., M.D.
Vice Chancellor for Health Sciences
University of Wisconsin
Madison, Wisconsin 53705

*Ryan, Kenneth John, M.D.
Chief of Staff
Boston Hospital for Women
221 Longwood Avenue
Boston, Massachusetts 02115

Height, Dorothy I.
President, National Council
of Negro Women Inc.
815 Second Avenue
New York, New York 10017

Seldin, Donald Wayne, M.D.
Professor and Chairman
Department of Internal Medicine
University of Texas
5323 Harry Hines Boulevard
Dallas, Texas 75235

Jonsen, Albert R., Ph.D.
Associate Professor of
Bioethics
School of Medicine
University of California
1326 - 3rd Avenue
San Francisco, California 94143

Stellar, Eliot, Ph.D.
Provost of the University
& Professor of Physiological
Psychology
University of Pennsylvania
Philadelphia, Pennsylvania 19174

King, Patricia, J.D.
Associate Professor of Law
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

Turtle, Robert H., LL.B.
Attorney-at-Law
1700 K Street, N.W.
Washington, D.C. 20006

Lebacqz, Karen, Ph.D.
Assistant Professor of Christian
Ethics
Pacific School of Religion
1798 Scenic Avenue
Berkeley, California 94709

Staff Present

Charles U. Lowe, M.D., Executive Director
Michael S. Yesley, J.D., Staff Director
Duane Alexander, M.D.
Lee Calhoun, M.A.
Bradford Gray, Ph.D.
Miriam Kelty, Ph.D.
Barbara Mishkin, M.A.
Stephen Toulmin, Ph.D.
R. Anne Ballard, Information Officer
Bonnie M. Lee, Administrative Officer

Consultants Present

Dr. Robert Levine, Yale University
Dr. John Irwin, University of California

*Chairman

Friday March 12, 1976

P R O C E E D I N G S

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DR. RYAN: Good morning. We have a full schedule, and I would like to review with you our projected agenda and call to your attention some things that are of interest in your books. This morning we are going to try to divide in half-hour sessions a draft summary report from the National Minority Conference, a report from the BU School of Law, and a preliminary report from Dr. Tannenbaum on the IRS surveys in prison research. Then I hope the Commission will be able to go on from that to deliberation on the prison research issue.

I would like to call to your attention Tab 6 in your book 16-A, and under Tab 6 there are some interesting letters. One is from the Pharmaceutical Manufacturers Association providing for us what they said they would try to provide, with some limitations, of course, on the extent of research that is going on in prisons, Phase I testing and so on involving the pharmaceutical industry. On page 4 of that report, an interesting line up of the type of prisons that are used appears, and you will see that they are largely state, some county, and there is one city there.

The other item which is of interest under Tab 6 is the correspondence back and forth between Dr. Lowe and Congressman Quie, and I am going to ask for the Commission's desires with respect to this. You have all received the letter from Mrs. Leo Kaysac (?), and Bob Cook's letter, and we may have

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1 some -- no? I thought that they were sent to everyone.

2 SPEAKER: I received them.

3 DR. RYAN: Karen, for some reason Mrs. Kaysac didn't
4 get you on her mailing list. She got everyone else. I just
5 assumed that she had sent one to everyone.

6 Also under Tab 6 in correspondence is a letter from
7 LARASA (?) with respect to the minority caucus at the minority
8 conference in response to the letter which we sent.

9 Under Tab 7 there are some very important and inter-
10 esting items, the most important being -- you have to go through
11 the first four or five pages -- the news clips, but more im-
12 portant than that, Norman Crossan's directive with respect to
13 research in federal prisons, and following that, the task force
14 on medical research and their report. This is under Tab 7 --
15 the task force on medical research on which he supposedly based
16 his decision. I think that that ought to be required reading
17 sometime before we get too far into our deliberations on prison
18 research. Finally, there is some information from ERDA on the
19 background information on testicular radiation in the State of
20 Oregon and Washington prisons.

21 The final item under Tab 7 is President Ford's
22 directive with respect to foreign intelligence activities.
23 That is that they would be required if they engage in any kind
24 of biomedical behavioral research to follow guidelines finally
25 established by this Commission.

1 Have I left anything out? In any case, all that ma-
2 terial is there for you to review.

3 Finally, the one other bit of reading material, if
4 you don't have enough already, is an interesting article called
5 "Ethical Issues in Behavior Modification," by Stephanie Stolz.

6 With that to sort of give you your homework for the
7 first night, I wonder if we could call on the National Urban
8 group, who are meeting with us today, to give us a preliminary
9 report? David Brown and Geraldine Brooks. Would you join us
10 at the table, please?

11 MS. BROOKS: Yes. I would like to request that Mr.
12 Irv Joiner, who is Director of the Commission for Racial Jus-
13 tice and was a workshop leader on prisons, join us at the table
14 to respond to any questions.

15 DR. RYAN: Could you repeat his name, please?

16 MS. BROOKS: Mr. Irv Joiner, I-r-v J-o-i-n-e-r,
17 Director of the Commission of Racial Justice of the United
18 Church of Christ in New York, who also was at the conference
19 as a prison workshop moderator and certainly contributed to
20 the development of the prison report.

21 DR. RYAN: Thank you. Please.

22 MR. BROWN: I will turn this right over to Mr. Joiner
23 for the substance of the report, and then Gerry, if you
24 have any comments afterwards, I think that would be appropriate,
25 and then we would be prepared to respond to questions.

1 MS. BROOKS: I would like to understand clearly,
2 though. Are you requesting that we speak to the draft of the
3 summary report, the total summary report, or just the one on
4 prisons?

5 DR. RYAN: I think that the one thing the Commission
6 is most interested in for its deliberations over this week-end
7 is the summary on the prisons, and we would want to cover that
8 in any case. Whatever other information you can give us -- I
9 realize that the time is short. We will have opportunity for
10 other interchange.

11 MR. JOINER: First of all, I just want to say good
12 morning. We are out here in the wilderness.

13 DR. RYAN: Excuse me. I don't know whether it is
14 just my hearing, but could you speak a little louder? The
15 table is long and the acoustics are not too good in the room.
16 That is not a microphone; that is just for the tape recording.

17 MR. JOINER: Excuse me. I usually start low and
18 usually end up kind of high, so at some point you will reach
19 a proper level. We have -- I think the Commission needs to be
20 commended for taking the initiative to spur the development of
21 the organization of the Minority Conference on Human Experi-
22 mentation, in conjunction with the Urban Coalition. I think it
23 is a subject area that minority people have not addressed
24 themselves to in the type of deliberation that we did in Vir-
25 ginia, that we need to do. As a workshop leader, one of the

1 sessions I was able to see a whole host of ideas and interplay
2 going on as related to this topic. I guess our debate really
3 ranged from those persons that wanted to halt all experimenta-
4 tion on prisoners, of any nature, whether it was therapeutic
5 or non-therapeutic, to those persons who were interested in
6 developing some guidelines to determine what the form was that
7 that experimentation ought to take.

8 I think a consensus view out of that came in the
9 form of the proposal that at a minimum, that there be a mora-
10 torium on experimentation on prisoners until such time as this
11 Commission and other people are able to more fully and completely
12 discern just what is happening. There is a lot of conflict in
13 prisons as to whether experimentation ought to take place or
14 not. Some people allude to the fact to say that prisoners
15 should not be experimented on, that this is to disallow free-
16 dom of choice on their part, one of the few freedoms that they
17 have, which to me does not make any sense. To give the pri-
18 soner the only choice that he can make in his whole life, at
19 least for 2 or 3 weeks, the option of choosing to be a guinea
20 pig or not, is not a choice, especially when you begin to
21 dangle a lot of pretty incentives in front of him.

22 But I think that that population needs to be heard,
23 that that population needs to be prodded as to what they really
24 mean, what they are really talking about. We need to find out
25 if, in fact, the money and the coerciveness of the institution

1 is a factor leading to prisoners volunteering to be experi-
 2 mented on, or whether the claims of other prisoners that this
 3 is a degrading and dehumanizing activity and ought to be halted
 4 is, in fact, the case.

5 Outside and above the legal questions that are raised
 6 in terms of informed consent, I think there is the moral con-
 7 sideration that we need to deal with, the moral question, what
 8 is the policy statement that this country needs to make as it
 9 relates to human experimentation. That goes above whether a
 10 prisoner, as such, wants to be experimented on, above whether
 11 a prisoner wants to give his body to society or to medicine or
 12 to the local drug companies that happen to catch his fancy at
 13 that point. I think this Commission has a responsibility of
 14 developing in part that policy that this country is going to
 15 push in regard to prison populations. The ingredients of
 16 that policy I think would have to be discerned from a number
 17 of interests. There are definite interests that are opposed
 18 to it, and there are some that are for it, and where is the
 19 median ground? The drug industry, of course, is interested in
 20 the cheap or inexpensive patient or subject. Some prisoners
 21 are interested in the money. Some prisoners are interested in
 22 trying to gain the favor of parole boards or whatever the case
 23 may be. Some are just interested in trying to break up the
 24 boredom of the institutional life that presently exists.

25 In looking at and trying to develop that policy,

1 then what factors do the oppressive conditions that minority
 2 people find themselves in play in that, and what role does this
 3 Commission take in regard to formulating some type of approach
 4 to how the government ought to deal with some of the underlying
 5 causes of people being in prisons in the first place? I think
 6 that is part of the role of the Commission and part of the
 7 thing that we attempted to grapple with in Virginia. Maybe we
 8 did not do it as in depth as we should have done or we would
 9 have liked to have done.

10 I think that most people that, for instance, appeared
 11 in my workshop were of the opinion that we need to get together
 12 again to talk more about the subject after we have had an op-
 13 portunity to do some more studying, and also to look at this
 14 whole subject relative to other minority groups, because we
 15 were very heavily populated with Blacks. The Asian community
 16 had some concerns, the native American community had some con-
 17 cerns, the Spanish speaking community had some concerns that
 18 I don't think were adequately addressed at the conference in
 19 Virginia. I would recommend the reconvening or the convening
 20 of another conference of this type so that we can get a more
 21 representative picture of what minorities are talking about
 22 relative to experimentation.

23 DR. RYAN: Your report and recommendations are under
 24 Workshop 8 in the report. This is book 16-B for the Commission
 25 members, and I don't know if you each have it in front of you.

1 It is about -- it is under Tab 18? It is under my Tab 18, but
2 I was just looking at the workshop recommendations. Tab 19.

3 MS. BROOKS: I would like to call the attention of
4 the commissioners to page 6 of this report.

5 DR. RYAN: Under Tab 19?

6 MS. BROOKS: I don't have the same books you do; I
7 have the report.

8 DR. RYAN: All right, fine.

9 MS. BROOKS: The prison report is a short report.

10 SPEAKER: It is Tab 19.

11 MS. BROOKS: Under Tab 19 in your books. I would
12 like to refer you to page 6, and suggest to you, and for the
13 audience who may not have the report, that an examination of
14 the recommendations on the use of prisoners would initially
15 appear to be contradictory. For example, an item recommending
16 a complete ban on all research may be in juxtaposition with
17 the recommendation to establish a permanent commission to
18 evaluate and monitor prison research. I would like to point out
19 that the method that was used for developing the recommendations
20 at the conference was one which did not require a democratic
21 vote, but merely a contributing of everybody in the workshop,
22 so that if a person over here felt very strongly that all pri-
23 son research should be banned, and a person next to him felt
24 that maybe, to be realistic, it is not going to all be banned
25 and it should be continued under such conditions, that was

1 included in the recommendations and considered. One of the
2 main reasons this was done was because the conference was only
3 two days in duration. Conferees only had approximately 6
4 hours of meeting time to develop these recommendations on these
5 very serious issues, and of that time, if you had a workshop
6 group of 20 or 25 articulate, intelligent people who certainly
7 had something to say about it, it was very, very difficult
8 to get that orchestration going. So these reports reflect
9 the best effort that could be made under those circumstances.

10 DR. RYAN: Perhaps, unless Mr. Brown has anything
11 that he wants to add at this time, we should turn it over to
12 the Commission members if they want any elaboration of any of
13 the recommendations or have any questions that they want to
14 ask. Dr. Louisell.

15 DR. LOUISELL: Under the recommendation for a mora-
16 torium, what would be the plan as to existing research projects?
17 Would it be that they could be completed and then the moratorium
18 would commence, or would you contemplate an immediate cessation
19 of existing projects?

20 MR. JOINER: The workshop participants that I met
21 with did not get into what would happen or what should happen
22 with those projects presently under way. I would think that
23 they ought to stop. Other people, for economic reasons and
24 other reasons, would say that for practical reasons they ought
25 to continue until their completion, depending on the stage

1 first of all where did the sample come from and the method of
2 selection.

3 It is not inconceivable to me that an ex-prisoner,
4 given the discrimination in employment as related to prisoners,
5 would find himself in a position that he would have to submit
6 to experimentation on the outside in order to get some money
7 in order to survive. Them doing that on the outside, though,
8 is totally different than them doing it in a coercive atmos-
9 phere, because on the outside, clearly they have the choice not
10 to do it. They could go rob a bank to get some money. I mean,
11 there are other options there. But in the prison setting, you
12 know, to relieve the boredom, for instance, the choices are
13 limited, quite limited. In terms of making some money the
14 choices are quite limited within the prison setting.

15 But I think that in direct answer to your question,
16 I would need to know first of all the population that the sam-
17 ple came from and the method of selection of those persons that
18 ended up in that research program.

19 MS. BROOKS: I would like to answer that a little bit,
20 too, and almost in the same tone, except that I was a volun-
21 teer worker in Trenton State Prison for 6 months, and the only
22 people you ever find in the vicinity of a prison are people
23 who have something to do with it in some way or the other. I
24 spent 6 hours a week in that prison, in the best part of the
25 prison environment. First of all, when people spend 5 or 10

1 years in prison life, there is nothing about those 5 or 10
2 years that make them comfortable in the outside world. So they
3 have created friends in prison. They tend to come back to pri-
4 son. They tend to be affiliated with the prison cause. The
5 only people you find in a prison environment are former pri-
6 soners, employees, and people who belong to volunteer groups
7 and who usually belong to volunteer groups because they have
8 had some relationship with the prison because they have had a
9 relative, friend or something else happen, or are a community
10 participant.

11 So, in that arena that surrounds or that community
12 that surrounds most prison settings, you will not find former
13 ballet dancers. You will find people who have made some com-
14 mitment to the prison. Many prisoners go back to prison be-
15 cause there is no place for them after they get outside, and
16 of course there are people in prison who prefer it that way,
17 just as there are people in the Army who prefer it that way.
18 They prefer not to have to make decisions. You are probably
19 talking about a population who -- the prison statistics about
20 the number of people who have been there or in some other
21 institution a good 60 or 80 percent of their lives is pretty
22 high. There is something so debilitating about that experience
23 that life on the outside is sometimes not comfortable. So,
24 yes, you would get -- and all the other women and men I knew
25 who were volunteers in that prison were there for only one of
three or four reasons. They had had a relative in prison and

1 were sensitive to the conditions and therefore wanted to con-
 2 tribute something; they were aching for a job or had a relative
 3 or friend who worked in the prison and had been drawn in there
 4 by that concern; or they were former prisoners. They make up
 5 a large part of the voluntary force that works in prisons after
 6 their time is served.

7 DR. COOKE: I don't know what Arnold's setting is
 8 like. Is it a prison setting?

9 MR. JOINER: No, not at all.

10 DR. COOKE: No; that is why -- I think what you say
 11 must be true about the prison setting, but this question was
 12 directed at people who had nothing to do with --

13 DR. RYAN: But Bob, he did do research in prisons
 14 prior to that period of time.

15 DR. COOKE: He had done it.

16 DR. RYAN: So his contacts may very well have been
 17 based on the kind of socialization that Ms. Brooks is talking
 18 about.

19 DR. COOKE: But the setting was completely separate
 20 from prisons --

21 DR. RYAN: Yes, right.

22 DR. COOKE: -- and there were ads to college students,
 23 as I understood, and a number of individuals other than just
 24 prisoners.

25 DR. RYAN: Ms. Height, please.

1 MS. HEIGHT: There is one thing that I think hap-
 2 pened -- I happened to have been in Mr. Joiner's group, which
 3 was an effective group, and in that group there was someone
 4 who had worked with the lawyers who dealt with the situation
 5 in Attica, who was a woman legislator from the State of Louis-
 6 iana who I thought was very helpful in pointing out the way in
 7 which a person making decisions in a state legislative body is
 8 constantly confronted with attempts to get legislation through.
 9 She felt that this was almost like a learning ground for her.
 10 There were others, a prisoner and so on.

11 One of the things that I think is somewhat mentioned
 12 in the summary, and I find difficult for the Commission to
 13 deal with specifically but I think it represents sort of an
 14 undertone that was all the way through. It was the recognition
 15 that the disproportionate numbers of people from lower class,
 16 particularly non-white groups, were in the prison population,
 17 and the real feeling that there is sort of a moral obligation
 18 to recognize that the society that denies them opportunity also
 19 expects them to feel a feeling of responsibility to be of bene-
 20 fit to the society. This, along with the coercive climate,
 21 was for me one of the most difficult things to translate into
 22 specifics as to how you deal with it. I think it is part of
 23 the reality that keeps escaping us if we simply take it in
 24 terms of -- if we do not recognize it.

25 It does raise some kinds of questions. For example,

1 there was a real fear that often there are racial breakouts
 2 in research that may not be necessary, but that the racial
 3 breakout continues to support the very climate that creates
 4 the discrimination that brings people to prison in the first
 5 place. In other words, the prison, as it was perceived, was
 6 almost a mirror of the society and its lack of opportunity,
 7 and then those who are part of experiments help to condone the
 8 bases of the original denials, and I think this was a theme
 9 that kept running through.

10 I didn't look again at Dr. Cooke's paper, but I
 11 think in there there was a statement of this, and I think this
 12 is one thing that I would hope we would somehow take into
 13 account as we are looking at the whole matter of prison re-
 14 search. I looked for it. I see certain sort of fleeting ref-
 15 erences to it, but I think it is hard to get that to come
 16 through with exactly the force that the 2 days or 2-1/2 days
 17 of intensive work brought it forth.

18 So that, it was not just the research, but the way
 19 that the use of the research also furthers the elements of so-
 20 ciety -- there is a simple statement here somewhere that says,
 21 "It is agreed that the issues of prisoners and race are merged."
 22 Now, that was a kind of recurring theme, and if you look at
 23 the racial distributions of the prison population, the racial
 24 distribution of the officers in the correctional system and
 25 so on and so on, you see the basis for this.

1 I think this is one thing I would hope we could have
 2 very much in our minds so that -- in other words, as people
 3 were saying, it is almost like saying that you have more Blacks
 4 in prison and therefore more Blacks being in prison may make
 5 the prison more attractive as a source for experimentation be-
 6 cause of the devaluation of this part of the population.
 7 There are tremendous overtones through this report, and I would
 8 hope that as we get the full report and the papers, that we
 9 could read them, because I think therein lies a great deal of
 10 feeling of almost distrust of whatever it is.

11 Also, when -- and I think this was mentioned at one
 12 of our earlier meetings -- when the conference was reported
 13 through the media, the stress was on psychosurgery. In the
 14 meeting itself, it was predominantly about health delivery and
 15 how the denial of some services -- if one is in prison and can
 16 get those services, there again, it is the denial of something
 17 that is given to prisoners that one did not get in the normal
 18 course of life. I think this is kind of a recurring theme
 19 that runs through this report.

20 DR. RYAN: Dr. Lebacqz.

21 DR. LEBACQZ: I think my question dovetails on Dr.
 22 Height's concern. We have data sitting in front of us on this
 23 table that indicates that actually in view of the proportion
 24 of blacks and whites in prison, there is a disproportionate use
 25 of white prisoners as research subjects, so that whereas the

1 population in a particular prison might be 56 percent black,
 2 only 30 percent of the research subjects in biomedical research
 3 will tend to be black. Now, with those kinds of statistics
 4 which have been thrown at us several times during the course
 5 of our studies, I have found myself wondering if -- well,
 6 clearly that raises some questions about why there would be
 7 this disproportion in terms of involvement in biomedical re-
 8 search.

9 My question, however, is more specifically directed
 10 to whether the minority conference, and particularly, perhaps,
 11 your workshop, had more concern about behavioral research,
 12 which would seem to me possibly not to break down this way.
 13 I have no data before me that tells me what happens when people
 14 do behavioral research or try out new behavior modification
 15 techniques, or whatever, in prison, and I wonder if the con-
 16 ference was -- if there was a different feeling about the
 17 rightness or wrongness, if you will, of behavioral over bio-
 18 medical research, specifically focused on the question of the
 19 involvement of blacks as opposed to whites, or minority people
 20 as opposed to whites.

21 MR. JOINER: The workshop that I chaired did not
 22 get into a real sharp distinction between behavioral and bio-
 23 medical experimentation. I think that most of the comments
 24 were pointed toward the behavioral experimentation because in
 25 the particular group that I was working in that is where the

1 bulk of our experience had been, in the behavioral research.
 2 The theme, though, running through was that whether it is
 3 behavioral or biomedical, it ought to be halted or at least a
 4 moratorium placed on it. The only clear, distinctive thing that
 5 came out other than those two was the condemnation of psycho-
 6 surgery on prisoners. People were just asking for a total ban
 7 on any psychosurgery on any prisoner whatsoever.

8 I am not familiar with the statistics that you allude
 9 to. Again, I think it is important when you look at those
 10 statistics to see where those statistics come from and the type
 11 of research that is done on those persons that you are refer-
 12 ing to. Is it the safe kind of research or is that the more
 13 dangerous kind of research? Are we talking about drugs that
 14 have proven to be unharmed or the possibility of them being
 15 unharmed to a large extent has already been deduced, therefore
 16 there is a tendency toward bringing in white prisoners, or does
 17 the more harmful type of research get done on minorities that
 18 are in prison? I don't know. I just raise those questions in
 19 terms of trying to put together the complete picture of the
 20 origin of the figures that you stated.

21 I think with regard to the workshop, though, that
 22 while we did not make a distinction between biomedical and
 23 behavioral, that most of the comments were directed toward
 24 the behavioral, but the theme dealt with both areas of research.

25 MS. BROOKS: I would like to address your statistics.

1 I am sure they are right in the sense that if research in a
 2 prison environment are the goodies, then yes, there would only
 3 be 30 percent of the blacks involved in the goodies. Now, re-
 4 search as defined in this report talks about organized, com-
 5 mitted, contracted research. That is one set of statistics.
 6 But even the drug manufacturers tell you they do all their
 7 drugs, a great percentage of their drugs -- I am sorry -- on
 8 the wider prison population. So that, if an aspirin company is
 9 testing aspirins in the prison setting, and everybody that
 10 comes up to the medical desk for an aspirin gets one of these
 11 tested aspirins, then the prison research is being done on
 12 whatever the racial composition of the prison is at the time,
 13 as opposed to an organized research effort.

14 DR. RYAN: Excuse me. I don't think we ought to
 15 play too loose with the data or what research is in prisons.
 16 The Commission did make a site visit up there and did try to
 17 make some determination as to why there was a racial imbalance,
 18 and some Commission member may have a feeling about that, but
 19 apparently there were different perceptions by the prisoners
 20 themselves about whether or not they wanted to volunteer, as
 21 well as -- yes?

22 DR. KING: A point of clarification. Do we have
 23 statistics for any other prison with respect to participation
 24 other than Southern Michigan prison?

25 DR. GRAY: Yes. If I might, I was going to present

1 those statistics that were mentioned earlier a little bit later,
 2 but just to clarify for the record, the statistics that were
 3 being quoted are from the Southern Michigan State Prison at
 4 Jackson, that was visited. There is also a study with data
 5 from four prisons which is going to be reported later today,
 6 that has been done by the Survey Research Center. The statis-
 7 tics that we are quoting here are something completely inde-
 8 pendent of that study. We used the computer printouts that we
 9 used to draw the sample to compile these statistics.

10 I can go through what we did later on, if we wish to
 11 do that.

12 DR. KING: I just want to ask one question. Do we
 13 have any nationwide statistics? Do we have comprehensive
 14 figures with respect to prison populations and participation?
 15 I think that there is a danger. My only point is that there is
 16 a danger in extrapolating too much from five prisons, and I am
 17 having trouble getting a discussion off on that basis unless
 18 we have some other statistics.

19 DR. RYAN: You are absolutely right. I think one of
 20 the problems, of course, is that this is -- and I am going to
 21 be misquoted again -- that this is almost a tempest in a tea-
 22 pot, because as I have told you, they stopped research in the
 23 federal prisons and our statistics indicate that it is very
 24 limited research going on in the United States in prisons, and
 25 I think we ought to wait with respect to your question until we

1 get the information from the four other prisons as well. Dr.
2 Brady wanted to comment.

3 DR. BRADY: I wanted to address the issue of thera-
4 peutic research, the distinction as we have discussed it here
5 in the past in the Commission, which I presume you are familiar
6 with, the distinction between therapeutic and non-therapeutic
7 research. There were some allusions to this in the minority
8 conference proceedings. I am not sure that that issue was
9 addressed directly, and I would like to get some feeling for
10 what the posture would be in that regard, that is, research
11 which can be shown to be directly for the benefit of the inmates
12 involved in that research. I want to pursue that beyond the
13 biomedical, because I think it is even more relevant to the
14 behavioral research area, but what is the posture of --

15 MR. JOINER: Well, to me, again, the lines are kind
16 of fuzzy. I don't see -- when a prisoner participates in any
17 type of research, for the most part, I am sure you see some
18 type of advantage in it.

19 DR. BRADY: Let me give you a clear line, so it
20 won't be fuzzy. At the Addiction Research Center in Kentucky,
21 we are talking about addicts who are prisoners and who have
22 direct investment in the research process to alleviate their
23 illness.

24 MS. BROOKS: Are you speaking of the place in Lexing-
25 ton?

1 DR. BRADY: I am talking about the place in Lexing-
2 ton.

3 MS. BROOKS: And you say that the prisoners would
4 directly benefit from the research.

5 DR. BRADY: Therapeutic research having to do with
6 addiction on the prisoners who are addicted.

7 MS. BROOKS: Is that the place where one of the
8 things that was developed was Methadone as a way of treating
9 heroin addiction?

10 DR. BRADY: No, it was not developed there, but it
11 was tested there.

12 MS. BROOKS: It was developed in Fidol (?) in New
13 York, for the most part.

14 MS. BROOKS: But it was tested out at Lexington as
15 one of the direct benefit researches.

16 MR. JOINER: Participants in the workshop that I was
17 in did not address that as sharply as you have defined it. It
18 was not addressed in that manner. There was the recognition
19 that there is possibly some research that is beneficial to the
20 inmates, such as the case as you have presented, and also re-
21 search that is supposed to have some type of value for society
22 at large, but there was no hard breaking it down in terms of
23 "this is good and this is bad, and we will allow this and we
24 won't allow this, and we like this or we don't like that." We
25 talked about experimentation on prisoners, period. Again, like

1 I said before, we did not make any sharp distinctions at that
2 point between behavioral experimentation and biomedical experi-
3 mentation in terms of sharpening the distinction, but there was
4 the recognition that there was some distinction.

5 Now, in the other workshop on prisons that had more
6 medically inclined persons in it, they got a little more into
7 that than our work. We had lay persons. We only had just a
8 bunch of lawyers and state legislators, prisoners, you know.
9 We didn't have the people with the M.D.s behind their name
10 who had all that medical terminology down pat and everything.
11 So we labored under that burden, for lack of a better term, to
12 come up with the --

13 DR. BRADY: Do you think it is useful in your repre-
14 sentations to consider that aspect of the problem?

15 MR. JOINER: Oh, yes, I think we need to look at that,
16 and I think that if we had another week or two that we could
17 sit down and really get in depth with this subject, that we
18 could really deal with that.

19 Just one other point I would like to make in regard
20 to these statistics, here. I was just looking over them real
21 fast, and I see where blacks represent 30 percent of the sub-
22 jects, but I find that in terms of the housing units that these
23 subjects come from, roughly 53 percent come from the so-called
24 honor grade and trustee areas of prison, which mean the goody-
25 good guys. The trustees are those persons that are super good

1 to the extent that they watch the other prisoners, and the honor
2 block are those dudes that are so good that they sit down in
3 the more comfortable spots in there, so it is just puzzling to
4 me why these people who have it so good, 53 percent of them,
5 would submit to all of this experimentation, when they would
6 have it better than, for instance, the ones in segregation,
7 which was 5.2 percent of those persons as subjects, when the
8 segregation unit is usually the most dehumanizing stop in the
9 prison unit.

10 DR. BRADY: Them which has, gets.

11 MS. BROOKS: There was one comment in the other work-
12 shop tapes with respect to your question, from a man who said
13 that a prisoner told him the last thing in the world I want to
14 do while I am in this prison is let them make me well, because
15 the minute I become well I am going to have to deal with being
16 a well person and be tried for the crime I committed.

17 I would like to say that in the workshop on drugs as
18 it affects the community and minorities, there is an awful lot
19 to be said about one of the benefits of drug research, which
20 turned out to be Methadone. I think anybody from the minority
21 community or any other community who is exposed to the effects
22 and lives in the neighborhood of a Methadone program will tell
23 you that maybe Lexington, Kentucky should have never been, if
24 that is one of the benefits.

25 DR. BRADY: They should not be held responsible for

1 Methadone. A lot of the work on Antagonis (?) is, however,
2 being done at Lexington, Kentucky.

3 DR. RYAN: Dr. Stellar, please.

4 DR. STELLAR: I realize the conference had a differ-
5 ence of opinion on this, but I am wondering whether our three
6 colleagues here might give us their view of how they think of
7 the possibility of overcoming some of the problems we have
8 heard about through an accreditation system or a review board
9 system.

10 MR. JOINER: If I may speak first on that, we dis-
11 cussed that in our workshop, and the feeling was that any type
12 of evaluation process or review board created should include
13 prisoners. That in the past prisoners have not been in a posi-
14 tion to make a determination of what is good and what is bad
15 for them, except like after the fact. There was a recommenda-
16 tion that if such a body was created, that it include prisoners,
17 and in addition to that, that the composition of such a body
18 would also represent the cross-section of the population, so
19 that it would have more lay people on it that did not have a
20 vested interest in the research, possibly, that was going on.
21 One point that was strongly underlined was the participation of
22 prisoners, and I think one point someone made very strongly is
23 the distinction between a prisoner and an ex-prisoner, and
24 pointed and pinned the prisoners' participation in that evalua-
25 tion process and decision making body.

1 DR. RYAN: Our time is getting on, and I would like
2 the commissioners to sort of sharpen their questions, and those
3 who have not asked questions to raise their hands if they wish.
4 Ms. Height, again.

5 MS. HEIGHT: I want to say to Dr. Brady's point that
6 one of the points I think was made in this group very strongly
7 was that those who were prisoners should not be denied the
8 opportunity to participate in experimentation that might be
9 made available to other people. In other words, they have
10 their civil rights and they should not be denied the opportu-
11 nity to determine whether they wish to participate. This was
12 some of the people who have been talking with the people who
13 were in the situation around Attica were very strong about this,
14 that you not be denied the opportunity to do something that if
15 you were not in prison you might be offered.

16 DR. RYAN: Dr. Seldin, please.

17 DR. SELDIN: Several meetings ago we were given a
18 rather dismal portrayal of some of the aspects of prison re-
19 search as it has been conducted in the past, and I think every-
20 body admits that this hasn't been one of the noblest features
21 of American activities. But I think it is often helpful to
22 look at prison research as if there were no prison research to
23 begin with. Let us assume for the moment that we were dealing
24 with a prison system without any prison research having been
25 there, and ask what might be done to, so to speak, make the life

1 of the prisoner a little more humane. Now, one would say that
 2 the prisoner first of all, as Dorothy Height points out, has
 3 certain rights, like anybody else. True, prison is a depriva-
 4 tion of rights, but nevertheless, a prisoner ought to have
 5 certain rights, and one of the rights might be to participate
 6 in an experiment, without going into the details for the moment.
 7 Then there are prudential considerations, which are not neces-
 8 sarily evil. You point out the prisoner is very often bored,
 9 lacks a sense of purpose. It is not necessarily evil, although
 10 it might be under certain circumstances, to give him opportu-
 11 nities to relieve his boredom. Then, of course, there is the
 12 sense of participation in the mainstream of whatever society
 13 offers on the outside that the prisoner, within certain limits,
 14 may wish to participate in.

15 So that, one could, so to speak, in designing a sys-
 16 tem say what can we do for the prisoner to not deprive him fur-
 17 ther of his rights? What can we do for the prisoner along
 18 prudential grounds to make life a little less dehumanizing, and
 19 one of the things we might think of is certain work kinds of
 20 activities which might have rewards. Another thing we might
 21 think of is research projects.

22 Now, in the case of research, the real problem of
 23 research is the question of free choice, the lack of coercion.
 24 These values that I have mentioned might be counterbalanced by
 25 the fact that there is a coercive overtone. The question I

1 wish to put to you is this: Supposing one were to say, along
 2 the lines also that Ms. Height mentioned, that one had an
 3 accreditation model in which there were scrutinizing units.
 4 These scrutinizing units included, to be sure, prisoners, but
 5 also people who are essentially hostile to the prison or to the
 6 prison system, let us say the NAACP to represent the black
 7 group, or the American Civil Liberties Union, on the accredita-
 8 tion unit, to give it credibility so that the unit doesn't have
 9 the appearance of a group of people who are essentially apolo-
 10 gists.

11 Under such circumstances one would gain confidence,
 12 I believe, that the kind of research going on in prison doesn't
 13 represent the systematic exploitation, even though the surface
 14 aspects may seem to say so. One would have confidence, for
 15 example, that the American Civil Liberties Union -- and I am
 16 just pulling that out of the hat -- it doesn't have to be that
 17 that these bodies would not allow themselves to be perverted
 18 just for one prudential reason after another. Under such cir-
 19 cumstances, it seems to me that this might be argued, at any
 20 rate, as a modest way to make life in prison a bit more humane.
 21 Certainly it would guarantee that the kinds of deprivation of
 22 rights would not be going on just ipso facto because one says
 23 in some general sense a prisoner is a prisoner.

24 MR. JOINER: Well, the workshop participants did not
 25 deal with that on point as you have described it. Speaking

1 personally, however, I can think of a million ways that you
 2 could make the prison system humane and protective of the few
 3 rights that prisoners have, rather than giving them the oppor-
 4 tunity of being a guinea pig. In short order, that is what
 5 they become, guinea pigs. I think it would make more sense to
 6 give a prisoner an adequate wage for the work that he does
 7 while he is in prison. I think it makes more sense to allow
 8 prisoners to have some association in terms of groups and or-
 9 ganizations in prison so that they can have some kind of con-
 10 trol over the limited life that they do have, that the kind of
 11 living conditions be improved in the prisons.

12 But I would also say that in terms of research, es-
 13 pecially biomedical research, that if the pharmaceutical com-
 14 panies were so concerned about prisoners, that maybe what they
 15 ought to do is go into the prisons, persuade the prison admin-
 16 istrators to turn them loose, and then hire each one of them
 17 at \$15,000 or \$17,000 a year and give them a good job, some
 18 security, some pension, some life insurance, access to a lawyer,
 19 and all of those kind of things, and then let them do any kind
 20 of experiments that they want to do. But they are outside the
 21 prison system, they have got a job, they have some choice, they
 22 can accumulate some meaningful income, they can really take care
 23 of their family, and the pharmaceutical company is making an
 24 investment in those persons that they can now say have willingly
 25 decided they want to be guinea pigs for the newest drug that is

1 coming out on the scene. I have not seen at any point where
 2 the pharmaceutical company has made any meaningful investment
 3 in the bodies and personalities of those persons that become
 4 guinea pigs. After they get out of prison, they can't get a
 5 job at one of these companies. Do they have any priorities on
 6 getting jobs after that?

7 I am saying that it seems to me that is one of the
 8 kinds of commitments that the pharmaceutical companies could
 9 make, that the other kinds of testing units, the psychologists
 10 and psychiatrists who run in there and probe through their
 11 minds, can make to these fellows, that they are going to give
 12 them some meaningful jobs when they get out, something that can
 13 help them return to society. I don't think that the option of
 14 being in the honor grade or in the segregation or being shot
 15 up with some malaria germs is an alternative. It has nothing to
 16 do with freedom of choice or rights or anything else.

17 DR. RYAN: Any other Commission comments? Bradford
 18 Gray wants to say something.

19 DR. GRAY: I just wanted to ask a question. We have
 20 heard a number of individuals and groups who have spoken against
 21 prison research on the basis that it is a coercive atmosphere
 22 and people have limited choices, and arguments of that sort.
 23 The question that I have, that we haven't asked any other people
 24 who have spoken in this vein but I think it is a reasonable
 25 question to ask, is to what extent should this Commission in its

1 deliberations on this question consider the expressed views of
 2 prisoners who have participated in research, about whether
 3 research in prison should be done? That is, if prisoners who
 4 have participated in research -- and we are going to have some
 5 data on this later -- I don't want to trap you -- overall have
 6 spoken well of it in the prisons that have been studied, if they
 7 speak in favor of it and say they would like to see it contin-
 8 ued, to what extent should that view be considered by this
 9 Commission? That is the question I have.

10 MR. BROWN: I think that view has legitimacy; but
 11 remember, now, these people that you have asked in the prisons
 12 are still there, and those that you ask in terms of the ex-offend
 13 have a different opinion. So I think you really have got to
 14 give it some thorough deliberation. I don't think you can make
 15 a blanket statement about that. I think that has to be probed.

16 I would like to draw your attention to the preamble
 17 on Workshop 7, and to read that preamble carefully in terms of
 18 how the prison itself is viewed before you even think about the
 19 kind of experimentation that goes on there.

20 MS. BROOKS: If it would be quicker for me to read
 21 it, since I have it right here, I would be glad to read it.

22 DR. RYAN: We have it. Dr. Louisell?

23 DR. LOUISELL: I asked about when the moratorium would
 24 begin under your plan, but I think I neglected to ask how long
 25 you contemplate it would be necessary for the moratorium to
 last before an adequate determination of the relevant things

1 could be made.

2 MR. JOINER: The recommendation was that there be a
 3 moratorium. We did not attempt to work out the details of that.
 4 I think that the duration of such a moratorium would be based
 5 on the ability of a group to make the kind of determinations
 6 necessary to make a determination of whether it ought to con-
 7 tinue or not continue. I don't think that by saying 2 years
 8 you could -- you know, just like this Commission has 2 years,
 9 for instance, to operate, which puts certain kinds of con-
 10 straints on you in terms of really exploring the issue that
 11 has been set before you. The ideal is not to give any kind of
 12 constraints on it, but to say that this needs to be done.

13 DR. LOUISELL: It would have to be indefinite, de-
 14 pending on developments? The period of the moratorium.

15 MR. JOINER: Well, the term "indefinite" seemingly
 16 implies forever and ever. I would like to change that term to
 17 one meaning that it is at the discretion of that body that is
 18 making that determination; not necessarily indefinite.

19 MS. BROOKS: I would like to, in response to your
 20 question, suggest that if you are not able to read anything else
 21 in the report, the preambles to the workshop recommendations
 22 will give you something, take some of the paleness out of our
 23 attempt to commit this to writing. My impression from listen-
 24 ing to the tapes of this conference and my impression from
 25 reading all the material is that no one at that conference had

1 any illusions or delusions about the effectiveness, necessarily,
2 of their effort or that they were qualified to judge under the
3 circumstances some very important issues.

4 When you ask how long were people suggesting the
5 moratorium should be, well, maybe -- how long should it be be-
6 fore we are all free? I mean, that is one of those rhetorical
7 questions that says that no one could answer that without de-
8 termining something. If an experiment that has been conducted
9 has some 5-year effects, as we know some medical practices do,
10 maybe that is the extent of the moratorium on that particular
11 biomedical experiment. If the taking of certain pills, say,
12 for instance, in women's prisons, the effects of which will not
13 be seen for 10 years, maybe that is the period it should be.
14 But that is the kind of question that I don't think anyone
15 could attempt to answer.

16 One of the important things about the preambles in
17 the workshop recommendations is they will answer a lot of your
18 questions about the actual recommendations. The preambles set
19 the environment and the feeling of the group, usually, about
20 how they felt about everything they said after that. This
21 preamble says that very clearly some of us think that prisons
22 have to be abolished, that we shouldn't even be talking about
23 research in prisons, that we should be talking about the abol-
24 ishment of prison, and then go from there.

25 But we recognize that that is not reasonable, so

1 therefore we are talking about this, and each preamble or policy
2 statement will tell you where people's heads were when the
3 recommendations came in.

4 DR. RYAN: I think I will call on Dr. Jonsen. We
5 are going to have to terminate this discussion now. Al, please.

6 DR. JONSEN: In recognizing that the recommendations
7 range from a total abolition of experimentation to the recom-
8 mendation of a moratorium, we are faced with a certain perplex-
9 ity. People who say to abolish it totally, I assume would do
10 so on the basis of some principle; they see it as impossible
11 because of lack of informed consent or coercion, they see it
12 as a way in which the majority society utilizes or uses the
13 minority and subjected population, and they come up with the
14 conclusion that it is bad thing, stop it. But anyone who recom-
15 mends a moratorium is simply asking for a delay, and therefore
16 is apparently not clear that it is all bad. They must see some
17 positive features. Now, the minority report as we have it does
18 not indicate what positive features those who only recommended
19 a delay might have seen. Does the transcript indicate what
20 positive features might have been thought of? There were
21 some people who said it is not all bad, stop it. Why was
22 that?

23 MS. BROOKS: Because 200 people met for 6 hours and
24 attempted to deal with some vital issues, and the transcripts
25 were they transcribed would probably reflect the same sort of
inability initially in such a short time to gather some firm

1 feelings. These people did not have the support of a staff of
2 people to provide research the minute they asked for it. We
3 were not able, under this contract and under the conditions,
4 to be able to say here are the prison statistics on that. We
5 didn't have those kind of resources.

6 DR. JONSEN: Would you say, then, that the reason
7 why some people said a moratorium was merely that they didn't
8 know enough about it or that some people recommended a mora-
9 torium because they said, wait a minute, we think that a con-
10 sideration like giving the prisoners a chance to do something
11 interesting to relieve boredom is sufficient enough for us to
12 say maybe there is a reason why research ought to be continued
13 under proper controls? In other words, I need some kind of a
14 determination that tells me moratorium means we just don't know
15 enough or that moratorium means there is something good about
16 it and let us see if it can be continued under certain circum-
17 stances.

18 MR. JOINER: Again, I speak from the workshop that
19 I chaired and based on conversations that I had at the confer-
20 ence with other people, and the feeling was that if you call
21 for a complete ban of all experimentation on prisoners, as
22 laudable as that was, that the power interests in this country,
23 the money interests in this country, would not allow that to
24 come about. I mean, and then with the realization that that
25 goal was not one that would be achieved in the very near fu-
ture, then the next option became a moratorium so that

1 concerned people and people who have the kind of task that you
2 have before you could sit down and do some in-depth kind of
3 study to see if this long-range goal that we project ought to,
4 in fact, become the policy that this country adopts as relates
5 to experimentation on prisoners, or if there was, in fact, some
6 redeeming social value in being a guinea pig.

7 That body had do do that, but it was not out of con-
8 cern for the most part that they can make some money and they
9 can do this and they can do that and therefore we ought to
10 study this some more, or we don't have all of the facts, be-
11 cause most of the people really thought that from the moral
12 point of view that they were in essence serving as a kind of a
13 protector or protectors of the Black community, some of whom
14 would end up in a prison at some point, and maybe even some of
15 those people that were in attendance at that meeting would
16 end up in prison at some point, and from that moral perspective
17 and from the view that we were asked to sort of form a protective
18 kind of policy, that we would not want our people subjected to
19 those types of dehumanizing experimentation.

20 DR. JONSEN: You make a point that differs from either
21 of the two that I made. That is, the decision was largely a
22 practical one relative to the politics of the situation and
23 realities of the politics.

24 MS. BROOKS: I would like to refer you to something
25 that is in the report which is a letter sent to us by the

1 Deputy Commissioner of Prisons from the State of New York,
 2 Louis Douglas, as it reflects his participation in the confer-
 3 ence and his feeling about it. He is Deputy Commissioner and
 4 knows that he doesn't know enough to make a firm recommendation
 5 in this area and suggests that that was only scratching the
 6 surface.

7 DR. RYAN: Ms. Height? Positively the last word.

8 MS. HEIGHT: I think if you look at the kinds of
 9 items that Workshop 7 suggested needed to examine, you get a
 10 little bit of a sense what people were saying. They said, we
 11 don't know that much about it, what is the purpose, why is
 12 there this research, and all this. There is a kind of sense
 13 that there is a veiled something going on that is affecting a
 14 lot of people, and that very little is actually know about it,
 15 and that there is very little disclosure of what it is all
 16 about. If you look at the kinds of things, they seem like sim-
 17 ple items, but they really are those same elements with which
 18 we are concerned, and those are the elements that came up again
 19 and again. People said we need to know why is this, what is
 20 it, how do they determine who will be selected, and what is
 21 the role of professional groups, what is the role that legis-
 22 latures play. So you have got political and social and economic
 23 as well as some of these other factors that deal with research
 24 itself coming into the picture.

25 DR. RYAN: Thank you all very much. We have other

1 speakers this morning. You are welcome to stay with us.

2 The next speaker is Dr. Leonard Glanz from BU. There
 3 is a report under Tab 15 entitled "Legal Status of Informed
 4 Consent in Human Experimentation; Prisoners." It is a large
 5 document which I believe was distributed to the Commission
 6 members prior to this meeting, so that some of the Commission
 7 members may have had an opportunity to read it. Perhaps you
 8 would like to give us a synopsis or a short summary and then
 9 throw it open for questions.

10 DR. GLANZ: I just want to say this is the biggest
 11 table I have ever seen in my life, really quite incredible.
 12 I am glad that Mr. Joiner made a distinction between the policy
 13 considerations and ethical and moral considerations, and the
 14 legal considerations concerning informed consent, because we
 15 really didn't examine the policy considerations or the moral
 16 considerations. At least some argue that since we are all law-
 17 yers at the Center that we can't debate moral questions with
 18 any authority, but we tried to approach the issues strictly
 19 from the point of view of could a prisoner give his informed
 20 consent if it was decided on the basis of policy that experi-
 21 mentation should be done, should be done in prisons.

22 We went about this a couple of ways. One thing we
 23 tried to look at is some of the work that has been done on
 24 prisoner motivations to participate in experimentation, and
 25 some of that is okay and some of that isn't so good. But

1 generally, the things that have been discussed earlier today
 2 concerning motivation come through over and over again. That
 3 is, money plays a part; and there is some discussion of altru-
 4 ism, prisoners wanting to help society or repay their debt in
 5 some way; the prisoner experiences some monotonous and this is
 6 a way for them to have some excitement placed in their life,
 7 and so forth.

8 The trouble with studies on motivation is that they
 9 talk a lot about what motivates all of us to do just about any-
 10 thing that we do. The reason why people work for a living is
 11 money, for example. It is very hard to draw the distinction
 12 between motivation and coercion or duress, or undue influence.
 13 We did try to do that. Before I go on, I just want to say that
 14 Lazanya (?) did a study on volunteers who were not prisoners
 15 to see why they participated, and he found that a high rate of
 16 free living subjects displayed certain serious mental illnesses
 17 and he didn't know how free they really were to give their in-
 18 formed consent, as a result of that.

19 But the problem of motivation, I think, does blend
 20 in to the problem of coercion. We see whether or not the pri-
 21 soner is motivated by undue influences or he is motivated by
 22 fear or threats that his situation at the prison will be worse
 23 or not get any better as a result of his not participating in
 24 experimentation.

25 When we look at coercion, we see if the situation is
 threatening or threats are made. I think one has to look at

1 prison environment itself. I don't think that it is the ex-
 2 periment itself that is coercive but the environment that the
 3 prisoner comes from that might make his participation the re-
 4 sult of coercion. I think you have to look at such things as
 5 is the prison overcrowded and unhealthy, or just generally
 6 dangerous. Is the food inadequate, by that meaning that it is
 7 not adequate enough for them to have a proper diet, a nutri-
 8 tional diet. Is the prisoner able to maintain minimal standards
 9 of personal hygiene with the resources that are given him in
 10 the prison? We look at that type of thing.

11 If the answer to that is no, but that these amenities
 12 are available to him as a result of his participation in re-
 13 search, then I think that the argument that coercion exists is
 14 strong or that duress is liable to exist is strong. It would
 15 be similar to saying that unless you participate in the experi-
 16 ment, we will force you to live in subhuman conditions. I
 17 think that if it is put that way, that we can see the coercive
 18 element involved.

19 I think that this points out the necessity for
 20 accreditation, which was just mentioned shortly. The first
 21 draft of the federal regulations on experimentation on prisoners
 22 talked about accreditation. The second draft revoked it. They
 23 said that there was some problem, stating that this would con-
 24 stitute interference with autonomous state institutions by the
 25 Federal Government. I don't really buy that. I think that the

1 regulations which exist still interfere with those autonomous
2 institutions to a certain extent. They say that they are not
3 free to do to prisoners or with prisoners what they would like
4 to in terms of experimentation.

5 But I think it is very important to go in and make
6 sure that the prison atmosphere itself is not so poor that a
7 prisoner is actually forced to participate in the research, to
8 be forced to move to the cleaner, healthier, more livable area
9 where the experimentation is conducted. I think that accredi-
10 tation is a very important part of the safeguards that need to
11 be instituted if one were to allow prison research. I think it
12 is important to make sure that the informed consent is given
13 voluntarily and freely.

14 The issue of payment, I think, is a similar one,
15 the issue of financial reward, and again, financial reward mo-
16 tivates a lot of people to do a lot of things. Evel Kneival
17 probably wouldn't jump the Snake Canyon for free. Also, I think
18 one has to look at why the money is required, why the money is
19 needed. Again, I cite a case that hasn't been tried yet deal-
20 ing with a house of corrections, a case brought by the ACLU,
21 in which money had to be obtained in order to purchase food to
22 supplement the prisoner's diet. The food could be obtained in
23 the commissary, and but for obtaining that food, the diet would
24 be inadequate. It would be a non-nutritional type of diet.

25 They also point out in that case that really the only

1 way to obtain enough money to supplement that diet and to get
2 the things that are needed to maintain personal hygiene and
3 health is to participate in experiments. I think as a result
4 of that, that type of offer of money would be coercive. I
5 think that if the only way the prisoner could receive funds is
6 to participate in experimentation and he must receive those
7 funds in order to maintain his own health, for example, then he
8 really has no choice but to participate, and that is what was
9 being argued in that case. Again, it hasn't gone to trial so
10 we don't know what the judge said, but we can use that as an
11 example.

12 This doesn't mean that the money is always a coercive
13 force, even though it might be nice to have. I think we could
14 ask is the money truly given as a reward instead of given as
15 something that the prisoner must obtain. This comes into the
16 accreditation aspect, also. I think one would have to deter-
17 mine whether or not there are other jobs in the prison, whether
18 or not those jobs paid a rate of remuneration similar to the
19 participation in experimentation. In effect we are saying that
20 the prisoner has an alternative, and if the prisoner does have
21 an alternative I don't think that payment per se constitutes
22 duress or coercion.

23 Now, on the behavior modification side of the problem,
24 there are strange problems and difficult problems. one can
25 look at the entire prison situation as being a behavior modi-
fication experiment. We don't know today whether or not prisons

1 work, that is, do they reduce crime, do they deter crime, but
 2 certainly their purpose is to modify behavior of the people
 3 that we put in them. The other problem is trying to decide
 4 whether it is the experimental nature of behavior modification
 5 programs that have been discussed and we will be discussing
 6 that offends us.

7 We could raise the hypothetical that if the prisoner
 8 does something which is not liked by the prison authorities,
 9 gets into a fight, and is placed in solitary confinement, what
 10 safeguards are needed, and would those safeguards change if we
 11 had a social scientist there and we say when a prisoner gets
 12 into a fight and he is put into solitary confinement, we want
 13 to see, we want to measure, we want to test it to see if his
 14 attitudes change or if his actions change, and does that then
 15 become experimental?

16 I think when you look at the behavior modification
 17 cases, like Mackey v. Procunier and Knecht v. Gillman the
 18 cases which use Anectine, the drug that stops breathing, the
 19 cases that use Apomorphine, that causes long periods of vomit-
 20 ing for aversive therapy, I think what one finds is that the
 21 courts aren't really emphasizing the experimental nature of what
 22 is being done. I think they emphasize the fact that they are
 23 outraged by what is being done. The court says that we all
 24 know that vomiting for an hour in front of other people is a
 25 dehumanizing and painful experience, and therefore we are going

1 to protect the prisoner against that sort of thing. They don't
 2 really emphasize the experimental nature of it, but those cases
 3 do. They are important cases for us because they do state
 4 that the prisoner can consent to that kind of experimentation.
 5 They do not say that the prisoner is not capable of giving his
 6 consent, and indeed they say that although this may be cruel
 7 and unusual treatment or punishment when a prisoner doesn't
 8 consent, if he does that it no longer is such cruel and unusual
 9 treatment.

10 Therefore, we at least have a couple of courts saying
 11 that prisoners can consent to this type of treatment. They
 12 don't really get into the experimental nature of it very much,
 13 but they say before we do these things to a human being we are
 14 going to make sure that we have his consent, that we don't want
 15 it being done involuntarily.

16 Clonce v. Richardson (?), which is another behavior
 17 modification case, deals with the Start program, in which they
 18 didn't use physically invasive procedures, but I am sure you
 19 are all familiar with it by now, that they set up different
 20 status levels, and as you progress through status levels you
 21 have more and more privileges. At the lower status levels your
 22 reading was restricted, your freedom to move was restricted,
 23 more than at the higher status levels.

24 There the court didn't discuss the question of whe-
 25 ther or not the prisoner had to consent. Indeed, it said that
 that issue was mooted by the fact that the program was no

1 longer in action when they heard the case, so they wouldn't
 2 discuss it at all. But what they did say is that there are
 3 certain due process requirements that there had to be before
 4 the prisoner could be transferred into a condition that was
 5 less favorable than the one he was in already. Again, the
 6 experimental nature of it isn't what seemed to bother the court.
 7 It is the fact that the prisoner was being transferred to a
 8 less favorable situation than he was in before, and there is
 9 at least one other case that discusses the fact that before one
 10 can discipline prisoners and take away some of their privi-
 11 leges, that he should have certain due process protection.

12 On the other extreme -- and I am not sure this is a
 13 behavior modification case. It deals with psychosurgery. Some
 14 people allege that that is not really behavior modification.
 15 But say that it is an extreme form of behavior modification.
 16 We only have the Kamowitz case, we really don't have cases
 17 dealing with prisoners. In our Center's report on mental pa-
 18 tients, we will discuss this in greater detail. But in Kamo-
 19 witz we are dealing with a mental patient who was institutional-
 20 ized for 17 years. What the court found there is that that
 21 prisoner, because of the nature of the institutionalization,
 22 could not give his informed consent, which goes right to the
 23 question that we are dealing with. The court says that all the
 24 aspects of the prisoner's life are decided for him, he has lost
 25 his ability to make decisions, that institutionalization strips
 you of your freedom to act, and therefore he can't give his

1 consent to this experimental procedure, this irreversible ex-
 2 perimental procedure, I should say.

3 The court did something which is somewhat irrational,
 4 I think, anyway, and that is they said that if the procedure
 5 were no longer experimental, that is, if we knew that it changed
 6 a person's behavior or if we knew it flattened emotions or if
 7 we knew whatever it was that we are supposed to know about it,
 8 so therefore it wasn't experimental, then the fact that the
 9 person was confined for 17 years becomes irrelevant, that he
 10 could consent to it. It is as if institutionalization no longer
 11 counts because it is not experimental. This goes to the point
 12 that I was making before, and that is I am not sure that in the
 13 behavior modification area it is the experimental nature of the
 14 problem that counts, but what is it that we are doing to these
 15 people.

16 I think part of that is a result of a question that
 17 was asked from this side of the table before, about behavior
 18 modification, and that is I think that behavior modification
 19 is probably seen as therapeutic experimentation. That is that
 20 the prisoner, in theory, will benefit from it. He will no
 21 longer be violent, so he won't go to prison later on. He will
 22 no longer be a pedophile. That if these things work, the
 23 prisoner will be better off. I think therefore the courts are
 24 less concerned with the experimental nature of it because there
 25 are some therapeutic aspects to it.

1 So I think that the prisoner can give informed con-
 2 sent as long as there are certain safeguards, and just to name
 3 a few, I think that accreditation is an important one to make
 4 sure that the particular prison environment is not inherently
 5 coercive. If you look at the Army regulations, interestingly
 6 enough, before they allow any experimentation at their facili-
 7 ty they do require a site visit by a medical officer and by a
 8 legal officer. It is not clear what they look for and what
 9 standards they use.

10 DR. RYAN: I wonder if we could break in now and let
 11 the commissioners ask you questions.

12 DR. GLANZ: Sure.

13 DR. RYAN: Dr. Cooke.

14 DR. COOKE: I would like to ask you -- I have com-
 15 ments on three issues. How would you -- first, a little pre-
 16 amble. In general, good ethics begins with good data. I think
 17 that is accepted. Now, there is some data that we have avail-
 18 able which indicates that the percentage distribution of indi-
 19 viduals used in prison research, at least at Jackson State,
 20 which is cited as one of the more coercive environments, 5000
 21 prisoners, et cetera, that the high percentage of the people in
 22 that research turned out to be the individuals with the most
 23 power, the so-called goody-goody guys, the people who were in
 24 favored positions, who had the most money, I think, to begin
 25 with. That those people who were choosing to participate had

1 indeed the greatest free choice of all the people there and
 2 were choosing to participate. That is one item that I would
 3 like you to comment on.

4 The second, in regard to behavioral modification, is
 5 is the outrage about the use of behavioral modification and
 6 so forth in part, at least, or a significant part at least,
 7 because the data substantiating its benefits is relatively
 8 worthless, and if so I would like to ask the question how do
 9 we get the data to show that it is worthless or not worthless
 10 without the conduct of research?

11 The third is an even worse Catch-22. We have indi-
 12 viduals who are institutionalized because, let us say, of their
 13 unwillingness to choose treatment that might take them out of
 14 the institution, electroshock therapy, for example, and yet
 15 that patient as he remains longer and longer in the institution,
 16 according to your presentation, loses his ability to make
 17 choice and therefore can never accept therapy. Now, how do we
 18 handle those kinds of situations? Would you comment, please?

19 DR. GLANZ: I guess you call that a Catch-66, three
 20 questions.

21 DR. COOKE: In terms of those who participated in
 22 Jackson, I have no idea. I mean, I think you would have to
 23 talk to them and you would have to talk to non-participants and
 24 see why they participated. I am not necessarily saying, again,
 25 not talking on policy issues, not trying to give you new data,

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1 DR. GLANZ: To which point?

2 DR. COOKE: To the point of having something accepted
3 and customary and so forth. That is the problem we are strug-
4 gling with. If we couldn't do anything to anyone until we have
5 some information as to whether it is --

6 DR. GLANZ: Well, I think there are a couple of ways
7 out. There are a couple of ways out for me, anyway. One is
8 to say that the Kamowitz court may not reflect the attitude of
9 all courts, that there concept of institutionalization as a
10 broad concept may not be very good. One, I think, can examine
11 a person on a case-by-case basis and ask has he -- whatever
12 way this is done by behavioral scientists -- has this person
13 been stripped of his ability to give his consent because of the
14 impact of the institutionalization on him. In that case you
15 are probably dealing with an incompetent person and then you
16 get into the problems of guardians and all that, which I cer-
17 tainly don't want to talk about right now.

18 But I think that is the result of saying -- the
19 problem of institutionalization -- is that if it does exist
20 for a particular person, then we have to ask can someone else
21 consent, not that that by definition means that it can't be
22 done. But while we are doing research, if you ask how do we
23 find out if these things work, if the only problem were one of
24 institutionalization, then I think at least initially you do
25 it on people who haven't been institutionalized for 17 years.

1 You do it on the person soon after the institutionalization,
2 if you decide he is an appropriate candidate for that sort of
3 research.

4 DR. RYAN: I would like to break for coffee in a few
5 minutes, and I want to call on Pat King first, and then I am
6 keeping all your names down and we will resume the questioning
7 afterwards. I think it is going to go on for a little while.
8 Ms. King, please.

9 DR. KING: If I am permitted a preamble, I wanted to
10 say, following Bob Cooke, that I think the issue of who volun-
11 teers and why they volunteer -- I agree with the speaker -- is
12 extraordinarily complex, not to mention, in certain environ-
13 ments, that to be able to participate -- something we have not
14 discussed -- in a research protocol or experiment may indeed
15 be regarded as a privilege in an institution that has few pri-
16 vileges. So, that only makes the motivation, I think, more
17 complex.

18 I have two questions. One, you propose some system
19 of accreditation. My question is have you given any thought to
20 or have you done any study of how one effectively enforces an
21 accreditation system? I think -- let me explain why I ask
22 that. In principle I have no difficulty with what you propose
23 about dealing with certain -- trying to modify an environment.
24 In practice, my own experience with accreditation systems on
25 institutions that are nowhere near as closed as a prison is

1 that they tend to be ineffective , they tend to set minimum
2 standards, and that even the minimum standards are subject to
3 interpretation because we can only go so far in articulating
4 certain types of minimum standards, those that we cannot quan-
5 tify, for example, which can be extremely difficult to articu-
6 late.

7 My second question is, in the court opinions that you
8 cite, excluding Kaimowitz that deal with behavioral modifica-
9 tion, behavioral therapy, et cetera, you mentioned that the
10 courts did not appear to be concerned with the experimental
11 nature of what was done, but merely what was done. I would
12 like to ask if there is anything in those court opinions that
13 indicate, however, that the judges may be concerned about the
14 beneficial aspects of it, which is a different question than
15 the question of experimentation.

16 DR. GLANZ: I think with accreditation, if we can
17 talk of the question of standards, to begin with, what we should
18 look for, what should the rates of pay be, what should the qual-
19 ity of food be, do we have dieticians determine what the
20 caloric intake should be, the protein intake and that sort of
21 thing, getting around that I think that in terms of enforcing
22 it, that prisons are in a way in a better situation to enforce
23 it than hospitals or nursing homes or things like that, because
24 you have a built in group of reporters, and that is the pri-
25 soners themselves. I think that the purpose of accreditation

1 would be to assure that the standards within the prison are
2 relatively high, that they did meet certain standards which
3 would make the life of the prisoners better, and that if they
4 did not you would say that the experimentation could not go on.
5 I think that certainly on an accreditation committee you would
6 want prisoners in that institution. I think there is no ques-
7 tion about that. But I also think that you would want to no-
8 tify prisoners of what the standards are and that when they
9 see the standards falling below a certain level, which would
10 affect them directly, that they are to report it.

11 DR. KING: Can I ask for a point of clarification,
12 since he has clarified my question? That is, then what you
13 are proposing means that if this Commission were to go the
14 accreditation model route, assuming we could come up with
15 standards, that we would have to, in order to assure some
16 ability to monitor that or enforce that, at the same time as
17 a part of the standards or as a part of a separate system,
18 insure a mechanism or attempt to impose a mechanism for internal
19 decision making or participation among prisoners themselves.
20 Now, I am not trying to specify any form. I am not going to
21 get into prison unions and prison committees and all that sort
22 of stuff. I am just asking -- you are saying that we have to
23 go further than dealing with just the research aspects of it
24 and will have to also insure some type of effective internal
25 reporting back in order to make an accreditation system work.

1 DR. GLANZ: Oh, I absolutely think that is the case,
 2 because as I tried to stress earlier, I think that the coercive
 3 factors that exist in prisons are the prisons. It is the pri-
 4 son itself, not just the experiments that go on in prison, but
 5 it is the prison that produces the coercion. There are other
 6 ways to do it, such as you can have an accreditation committee
 7 make spot checks of prisons, unannounced spot checks, to see
 8 what was going on. In a way, that could be easier also than
 9 the type of accreditation that has gone on, say, for payment
 10 for Medicare programs, accreditation of nursing homes and hos-
 11 pitals. I would imagine there would be many fewer prisons
 12 that apply for accreditation for this. One reason is the money
 13 to bring them up to standard, and once they were up to standard
 14 it would cost them a lot more money to maintain those standards,
 15 and I think that would reduce the number of prisons that had
 16 experimentation going on. Therefore, I don't think it would be
 17 as difficult to have accreditation committees make surprise spot
 18 checks as it is for other accreditations.

19 DR. RYAN: Joe Brady, one brief comment.

20 DR. KING: He didn't answer my second question.

21 DR. GLANZ: Oh, the beneficial aspects. No, it
 22 doesn't, when I think about it, no. The court said that the
 23 prisoner can consent to it and that is it. If you explain what
 24 you do know about it to the prisoner and you explain that he
 25 can withdraw from it at any time, then he can consent to it.

1 DR. RYAN: Joe Brady wanted to make a quick comment.

2 DR. BRADY: I just wanted to comment on Dr. Cooke's
 3 earlier "When did you stop beating your mother?" question, the
 4 point that the data shows that behavior modification is worth-
 5 less as the reason for banning it from the prisons. Quite the
 6 opposite. The data does not show that it is worthless, and the
 7 major basis of concern in my experience is that it works.

8 DR. COOKE: The data were worthless, I said, not the
 9 behavior modification.

10 DR. BRADY: You said the data shows it is worthless.

11 DR. COOKE: Oh, I meant to say that the data itself
 12 is worthless.

13 DR. BRADY: You stand corrected.

14 DR. RYAN: We will reconvene in 15 minutes, please,
 15 and continue with the questioning.

16 (Brief recess.)

17 DR. RYAN: I wonder if we couldn't please resume our
 18 discussion with Dr. Glanz, and I would like to call on Dr.
 19 Jonsen, please. Al, did you have a question?

20 DR. JONSEN: Yes. Mr. Glanz, two questions. First,
 21 you mentioned the Jessup House of Corrections case. Could you
 22 expand a bit on that? Are there other issues in that case
 23 than the one which you mentioned, namely the coercive aspects
 24 of the money paid where so few items are provided by the pri-
 25 son?

1 DR. GLANZ: There are a lot of constitutional argu-
 2 ments that are made. It is hard to say really how forcefully
 3 they were made and how forcefully they will be accepted, but
 4 basically I think the case in a lot of ways was brought because
 5 of the poor prison conditions, period. There were some other
 6 problems concerning other prisoners getting infected, and if
 7 someone went to the infectious diseases area and came back, it
 8 might be that other prisoners who weren't participating in the
 9 experiment itself might be subject to certain risks which they
 10 hadn't consented to.

11 There were problems that prisoners wouldn't be paid
 12 the full allotment of money if they withdrew from the study,
 13 and so it was alleged that people were sick and weren't report-
 14 ing themselves to be sick and therefore weren't getting adequate
 15 care. There were a couple of other issues, but I thought it
 16 particularly well illustrated the problems of the duress and
 17 coercion.

18 DR. JONSEN: You selected that one because it was
 19 illustrative.

20 DR. GLANZ: Right.

21 DR. RYAN: Dr. Lowe has a technical question.

22 DR. LOWE: You are talking about the pleadings,
 23 right?

24 DR. GLANZ: Yes.

25 DR. LOWE: The case has not gone before the court.

1 DR. JONSEN: Yes, I understand that.

2 DR. LOWE: I wanted to be sure that was clear.

3 DR. GLANZ: That is why I say in the paper that if
 4 these are found to be true, if this is indeed the case, then
 5 we can say that --

6 DR. JONSEN: I understand. Secondly, with regard
 7 to Kaimowitz I have been told that one generalizes from cases
 8 at one's peril and at the peril of the logic, and I assume that
 9 one ought to read Kaimowitz relative to the situation of John
 10 Doe and not necessarily to any other situation or to any other
 11 person, and that the 17 years is an important feature there.
 12 One ought not to say that prisons or institutionalization is
 13 inherently coercive as a conclusion from that case, but merely
 14 that Mr. Doe, given his situation, his state of mind and his
 15 experience over 17 years, was not judged capable of making a
 16 decision. This might appear to you a very bizarre interpreta-
 17 tion of the court, but I have been puzzled by the court's pe-
 18 culiar distinction between experimentation and non-experimental,
 19 and it seems to me that perhaps one way of reading that is to
 20 say that John Doe ought not to be put in a situation where he
 21 is confronted with possibles and probables. That having been
 22 for so many years in a situation where everything was yes and
 23 no, it was judged that he ought not to be put in a situation
 24 where he would have to make judgments about risks, and that
 25 that might not be the case if someone could come to him and say

1 this procedure will in fact help you. That his consent there
2 would not be compromised by the variety of possibilities that
3 would be presented when an experimental situation were proposed
4 to him. Does that kind of a distinction make any sense to you?

5 DR. GLANZ: In a way the court alludes to that sort
6 of thing when it says that he had been in prison for 17 years
7 and that if he wanted to get out, something had to change, and
8 this might help him to change, that it was presented to him in
9 such a way that it would appear to be beneficial and that
10 therefore he might be able to be released after he had psycho-
11 surgical procedure. I think if that is what you are saying,
12 that he wasn't really presented with choices because he couldn't
13 make choices, that it was presented to him by saying that this
14 will help you -- is that the point that -- ?

15 DR. JONSEN: No. I am really suggesting that the
16 court judged that this man was not capable of balancing a com-
17 plex variety of risks and benefits that are associated with an
18 experimental procedure, and it was his state of mind after that
19 long period of time.

20 DR. GLANZ: I think that is right, but I think one
21 of the problems with that interpretation is that the court
22 really doesn't examine Doe in that case. They don't really
23 say what did you know or what did you understand. Although
24 you certainly have to read a case keeping in mind the specific
25 factual situation, the court talked about institutionalization

1 in very broad terms of institutionalization stripping a per-
2 son's capacity to do X, Y and Z. It doesn't say that it
3 stripped John Doe's capacity to do X, Y and Z. The opinion,
4 though -- I don't think the Kaimowitz opinion is a particularly
5 well-written opinion. I mean, there are a lot of things on
6 Constitutional issues that don't really make a lot of sense.

7 The other thing that you have to keep in mind besides
8 the fact that this is dealing with an involuntarily committed
9 mental patient who was institutionalized for 17 years and was
10 probably being held unconstitutionally, and indeed he was re-
11 leased before this case was decided, is that it was the lowest
12 court in Michigan. It wasn't the Michigan Supreme Court. It
13 was the lowest court in Michigan. The case doesn't have very
14 much precedential value. The reason why we use it and the
15 reason why it is used so often is because it is the only thing
16 we have and we have to use it. That has to be kept in mind,
17 too.

18 DR. RYAN: Mr. Mangel, please.

19 MR. MANGEL: I would like to follow up on Dr. Jonsen's
20 question. It seems to me there are two ways you can rationalize
21 Kaimowitz. One is the way that Dr. Jonsen has done it, and that
22 is the court seems to be saying prisoners can consent, but
23 they may have somewhat diminished capacity and we are going to
24 look at what is being proposed to be done to them and see how
25 complex it is or how dangerous it is, and we will allow consent

1 in one case and not in another; or the court could be saying
2 that prisoners just can't consent, but in some certain cases,
3 like therapeutic research, we are not going to require consent
4 and we are going to allow some kind of substitute consent.

5 That second kind of analysis is one that I would like your
6 thoughts on. Just from a strictly legal point of view, how
7 viable/^{do} you think the distinction/^{between} therapeutic/^{and} non-therapeutic
8 is, how useful is it in the prison setting, and can you extra-
9 polate from the other areas where you are dealing with people
10 of diminished capacity, like minors or mental incompetents,

11 where they have made dis-
12 tinction between therapeutic and non-therapeutic.

13 DR. GLANZ: Okay. I am not sure that in the prison
14 setting the difference between therapeutic and non-therapeutic
15 research is all that compelling, although I certainly person-
16 ally feel more comfortable with therapeutic research. I like
17 the idea that someone will benefit from what is being done to
18 him. I think that if we think that prisoners are adults and
19 they are not incompetent, as children are incompetent and as
20 mental patients may be incompetent, but are not always incom-
21 petent, and we let them decide what can be done to them for
22 therapeutic reasons, we let them assess the risks and benefits
23 of what will be done to them for therapeutic reasons and then
24 they make a decision, I am not sure that their ability to
25 assess risks and benefits is decreased if it is non-therapeutic

1 In other words, the risks would be the same, the
2 benefits might be non-existent, but at least they will have
3 an understanding that they are non-existent and then they could
4 decide whether or not to take that risk. Unlike children and
5 incompetent people, mental patients who are deemed to be in-
6 competent, I think we could say that prisoners should be
7 allowed ordinarily to consent to their own medical care and
8 invasions into their bodies. The problem with children and
9 incompetents, of proxy consents, what can someone else decide
10 to do to this person which isn't for their benefit. I don't
11 think that is a problem in the prison situation, though. So
12 again, though personally I feel more comfortable with thera-
13 peutic procedures, as a lawyer, in the prison setting I am not
14 sure that it makes that much difference. Again, I wouldn't
15 make a pat statement one way or the other on it.

16 MR. MANGEL: Let me just turn the question around
17 a little bit. Supposing you start from the assumption that
18 prisoners, because of the inherent coerciveness of the atmos-
19 phere in which they operate, cannot give consent in the legal
20 sense. Aren't you then by logic really forced to fall back on
21 that distinction, because otherwise you would not allow them
22 even to participate in therapeutic research, and maybe not even
23 to accept therapeutic treatment, because even treatment requires
24 the giving of consent or some form of substitute consent.

25 DR. GLANZ: I think that is right. I think that if

1 you decide, if you decide that prisoners can't consent because
 2 of the institutionalization or their incarceration, to get
 3 away from the concept of institutionalization, then I think
 4 that the distinction should be drawn so that you don't deprive
 5 prisoners of treatment that might be beneficial to them. I
 6 am not sure whether you would say that we are only going to
 7 allow them to do that because their capacity to consent is
 8 diminished. That is why we will only allow them to consent to
 9 therapeutic research. But what you then go on and say is that
 10 since their capacity is diminished we have to get the consent
 11 of somebody else anyway, and should we go to court as we do
 12 with children or incompetents.

13 DR. RYAN: Dr. Lebacqz?

14 DR. LEBACQZ: Yes, I have a question. I want to be
 15 sure that I understood correctly something that you said
 16 earlier this morning, and then if I did I have a question that
 17 follows on that. It was on the question of the court's atti-
 18 tude toward behavior modification programs, or what might
 19 loosely be called experimental techniques in behavior modifi-
 20 cation, although I am not sure we could always apply the term
 21 "research" to that. I think that I heard you say that by and
 22 large the courts have tended to view behavior modification as
 23 therapeutic for the individual and that their attitudes and
 24 approaches to it then perhaps have been in some way influenced
 25 by that favorable view of it. Was that correct?

1 DR. GLANZ: Yes. That, by the way, is my reading
 2 into it. They haven't said specifically that it is therapeutic.

3 DR. LEBACQZ: Right. That is a position with which
 4 I have some difficulty myself. It is not clear to me that be-
 5 havior modification is ever therapeutic for the individual,
 6 and I wonder if you can shed some light on that, either in
 7 terms of your own personal opinion or in terms of your work in
 8 the law as to what kinds of standards there are for things to
 9 be therapeutic for someone and whether behavior modification
 10 ought to be looked at in that way or not.

11 DR. GLANZ: The reason why I said that is I am dif-
 12 ferentiating it from the pharmaceutical type of research that
 13 is done. Assuming the pharmaceutical research is done succes-
 14 fully, what happens is we now have a drug which we know works
 15 or it doesn't work. One way or the other we know something
 16 about the drug. The prisoner isn't changed one way or the other.
 17 With behavior modification programs, assuming it is experimental
 18 and assuming we are trying to see if it does change behavior
 19 in a positive way -- take the case of treating pedophiles, for
 20 instance -- if that is successful and it is done, it is done
 21 and it is successful and we get the consent of the person, then
 22 that person will no longer be a pedophile. I think the court
 23 would say that that is good, that that is good for the person
 24 and the person is better off for having gone through that pro-
 25 gram. That is why I approached it as being therapeutic.

1 DR. LEBACQUZ: Have the courts at all required that
2 the individual make the request for that kind of intervention?

3 DR. GLANZ: I don't believe that is the case, no. I
4 think the intervention is discussed -- well, in these cases
5 it was more than discussed with the person, but I think in
6 terms of consent it would be discussed and it would be made
7 known that that sort of thing exists.

8 DR. RYAN: John Irwin and Stephen Toulmin, please.

9 DR. IRWIN: Let me suggest a way out of that apparent
10 contradiction between their attitude in case of experiment as
11 opposed to treatment. It seems to me when they are dealing
12 with a subject for the purposes of experimentation, they are
13 treating them as a subject and asking them to be an object of
14 this experimentation, but when a penal system is dealing with
15 a person for the purposes of treatment, that is part of their
16 mandate to treat them, with or without their consent. The
17 courts have ruled in this direction quite a few times. In
18 other words, as they are sent to prison for punishment, they
19 are also sent to prison for treatment. It is not to their
20 discretion. Their consent is not required. Therefore that
21 removes this requirement that they be in a certain mental state
22 where they can -- in fact, they do force, and the courts have
23 upheld their right to force treatment on people of a variety of
24 types, and I can think of only a few cases where they have
25 gone in the other direction, but the rulings on the indeterminat

1 sentence system were clearly forced treatment, and so on. The
2 Supreme Court has consistently held that they have that as part
3 of its mandate to rehabilitate, and manipulating sentences for
4 this purpose is proper, therefore.

5 DR. GLANZ: Well, the issue, though, becomes what
6 are the limits of that? In other words, clearly if a correc-
7 tional institution said we think if you hang prisoners by
8 their thumbs for three days in cold weather that that will help
9 them, that wouldn't be permitted. There are still restrictions
10 on what can be done to people, especially in terms of invading
11 their bodies, which is different than some other forms of
12 punishment, such as solitary and that sort of thing, although
13 the courts are now coming to the opinion that when you are
14 punishing somebody, if you take away good time privileges, for
15 instance, because of something they have done, you don't have
16 to get their consent but you at least have to give them a
17 hearing of some sort.

18 I think more and more, prisoners are getting more
19 rights in that area, concerning what can be done to them, al-
20 though I think you are right in your interpretation that courts
21 in the past have said that you can do pretty much what you want
22 to prisoners. In the paper I sent out there was a line of
23 cases from the Eighth Circuit, six or seven cases that all look
24 like they say the same thing, and they do, but they were all
25 written by one judge. When you look outside that, though, there

1 seems to be some diversity of opinion, but it is a difficult
2 area. I think it is an area that is changing very rapidly
3 right now.

4 DR. RYAN: Dr. Toulmin, please.

5 DR. TOULMIN: Could I just follow this up a little
6 further? It is clear that in many of the cases you cited the
7 question at issue is how the courts draw the line between
8 humane and inhumane treatment. In, for instance, the case of
9 aversive drug therapy, the use of aversive drugs for improving
10 behavior, the complaint is not that it is treatment, but that
11 it is inhumane treatment. But it seems to me that we are hav-
12 ing a bit of trouble here of the kind we have had in other
13 areas, which is/that the word "treatment" is in fact much broader
14 in its application than the phrase "medical treatment," and
15 therefore one feels very uncomfortable when in this case we
16 slide from the word "treatment" to the word "therapy," or the
17 word "therapeutic" and this family of terms. It is clear that
18 there is just as strong an argument for talking about certain
19 kinds of behavior modification as re-education, or, the natural
20 word in the prison context is rehabilitation.

21 Now, I want to ask you, is there any line of cases
22 that allows this to draw a line, draw a boundary, in legal
23 terms, between what constitutes medical treatment and what con-
24 stitutes re-education or rehabilitation? It does seem to me
25 that when we slide from the pharmaceutical kind of research to

1 allegedly therapeutic behavior mod, that there is a terrible
2 trap that we can fall into if we assume that the treatment in-
3 volved in behavior mod procedures is indeed still sufficiently
4 comparable for legal purposes with medical treatment rather
5 than being a kind of re-education procedure.

6 DR. GLANZ: I really don't know off-hand of cases
7 that say some X is medical treatment, although you may not
8 think that it is. I think that in the behavior modification
9 programs, I think the behavior modifiers would say it is a
10 form of re-education. I don't think that they would even say
11 it is a form of medical treatment, but that it is a form of
12 education, of learning to respondⁱⁿ/different ways to old stimu-
13 li. But again, why would that distinction be important from
14 your point of view?

15 DR. TOULMIN: The question of the circumstances in
16 which and the conditions on which one is required to give or
17 entitled to withhold consent in the area of education is quite
18 a different question from the question that arises in the case
19 of medical treatment.

20 DR. GLANZ: I see.

21 DR. TOULMIN: We are required to consent to education,
22 and parents are deprived of the right to withhold consent for
23 their children to be educated. This is a much more complex
24 situation.

25 DR. GLANZ: Okay, I think I understand.

1 DR. TOULMIN: The obligation to enter into educational
2 activities is much stronger in the eyes of the law, as well as
3 in other ways, than the obligation to consent to medical treat-
4 ment.

5 DR. GLANZ: I think I understand the question.

6 DR. TOULMIN: I am not arguing anything. I am in-
7 terested in the distinction.

8 DR. GLANZ: Sure. I think that the question is
9 clear in my mind now, and what I would do is to draw the dis-
10 tinction between the Clonce v. Richardson case and the Knecht
11 v. Gillman and Mackey and Procunier cases, where in Knecht,
12 they didn't do much to those people. They took away certain --
13 I mean in Clonce -- they took away certain privileges but they
14 didn't give them Apomorphine, they didn't give them Anectine,
15 they weren't making them throw up, they weren't causing their
16 breathing to cease. What they were saying is that you can't
17 read certain books, you can't get certain mail, you can't do
18 those types of things. As a result of that the court -- well,
19 the court never got to talk about the consent issue, and it
20 didn't seem to think that it needed to. What it said is that
21 you have to give them certain rights, due process rights, be-
22 fore you put them in this sort of institution and this program,
23 but you don't necessarily have to get their consent, although
24 we don't want to talk about the consent issue.

25 If you look at the Knecht case and the Procunier

1 case, though, where you are giving people injections of drugs
2 which could be dangerous and cause great discomfort, then the
3 courts talk about consent. I think you can draw distinction
4 between giving someone drugs or invading their physical person,
5 and re-educating them, putting them in a classroom. I think if
6 a prison said you had to go take math classes for an hour a
7 day, that the courts wouldn't get into too many due process
8 problems or informed consent problems, but if they say you will
9 have your shot of Anectine once a day, which is invasive, then
10 it is a whole different set of problems.

11 DR. RYAN: Dr. Cooke, please.

12 DR. COOKE: It is a minor matter, but I think it is
13 worth correcting the record and correcting your own miscon-
14 ceptions if what your statement is represents your thinking,
15 and that is your statement that biomedical research was directed
16 at ascertainment of efficacy of treatment. I would like to point
17 out that prisoner research on efficacy of treatment is very,
18 very minor part of such research.

19 DR. GLANZ: Right. I agree.

20 DR. COOKE: I think that is important because those
21 studies are toxicity studies, metabolism drugs and so forth.

22 DR. RYAN: Dr. Seldin, please.

23 DR. SELDIN: This point that has been raised about
24 behavior modification has to be seen, to my mind, in the light
25 of a sort of public outcry out of a notion that behavior is

1 being modified in some such way as to change people so as to
 2 make them passive, so as to sterilize them, let us say, from
 3 radical ideas, so as to make them conform to certain models of
 4 behavior, which might make them quiescent, to be sure, but not
 5 necessarily more human, in some sense of the term.

6 The analogy from a mathematics class as a form of
 7 education is really not very helpful to my mind. What is
 8 really concerned is the other end of the spectrum. When is
 9 behavior modification an illegitimate intrusion on certain
 10 rights and prerogatives, certain humane activity, which are,
 11 let us say, unpleasant and unattractive but nevertheless quite
 12 legitimate? I think this kind of concern, which is very wide-
 13 spread and which has deep roots in problems not too far removed
 14 in Europe and elsewhere, has not been addressed in any legiti-
 15 mate way. I think that the Commission is currently formulating
 16 or has formulated a position paper on the boundary rules -- is
 17 that not right -- between behavioral modification and research
 18 and biomedical research. At least it is supposed to be. What
 19 are you shaking your head for?

20 DR. RYAN: Well, let's not bring that up and --

21 DR. SELDIN: Well, but I think this is a very impor-
 22 tant point, because I do think, on the one hand, that the real
 23 problem does not lie in distinguishing behavior modification
 24 and a class of mathematics. I think that behavior modification
 25 is a form of disciplining an individual in a way which may be
 socially unattractive. It is a very critical problem and it

1 is not merely a medical problem in a narrow sense of the term.
 2 Now, how to evaluate this, how to distinguish this form of
 3 behavior modification and that form of behavior modification,
 4 and this is a medical experiment that is not going to be solved
 5 by the distinction between Apomorphine, let us say, as a means
 6 of internal invasion, and some other coercive device which is
 7 so to speak, a modification of the environment and which would
 8 qualify it as behavior modification.

9 DR. GLANZ: So you are saying there are problems of
 10 not using invasive techniques but other techniques that are
 11 more subtle.

12 DR. SELDIN: That may be much more important.

13 DR. GLANZ: Which may be more important from what
 14 point of view? That they are more effective or that they are --

15 DR. SELDIN: From the point of view that they alter
 16 subtly certain kinds of behavioral characteristics of people,
 17 which don't really represent a medical intrusion. They repre-
 18 sent something like making them more malleable or making them
 19 more pleasant or making them less abrasive or less radical, or
 20 whatever you will.

21 DR. GLANZ: But I think you could start off by saying
 22 that the prison environment itself is a behavior modifying
 23 environment.

24 DR. SELDIN: Fine. We accept that as a boundary
 25 rule, but behavior modification as a specific educational tool,

1 we will say, is a much more specific thing. That can be de-
 2 lineated behavioristically. One doesn't have to get so ela-
 3 borately theoretical about that. Behavior modification, we
 4 understand what that means. We understand this is a specific
 5 manipulation of the environment, generally, for the purpose of
 6 altering certain types of behavior.

7 DR. GLANZ: Okay.

8 DR. SELDIN: I am trying to say that the boundary
 9 rules between the legitimacy of this kind of therapy and its,
 10 let us say, illegitimacy -- if you want to call it education
 11 you don't solve the issue of this sort of problem anyway --
 12 have not been drawn. But it is a very serious problem, in my
 13 mind.

14 DR. RYAN: David Louisell, please.

15 DR. LOUISELL: From your position, I derive the con-
 16 clusion, among others, that we have got to be very careful
 17 about giving too much significance to labeling, for example
 18 therapy and non-therapy. Let us take specifically psychosurgery.
 19 Suppose it is the unanimous opinion of the psychiatric compe-
 20 tence at a given prison, and also the other medical judgment
 21 there, that psychosurgery is very desirable treatment for this
 22 particular violent prisoner. Now, collaterally, of course,
 23 there would be some investigative and experimental value in
 24 the performance of the psychosurgery. What would your attitude
 25 be? Wouldn't the prisoner have a clear right to object to the

1 performance of that psychosurgery?

2 DR. GLANZ: I would certainly agree with that -- to
 3 object to it -- sure.

4 DR. LOUISELL: And to prevail in his objection that
 5 there shouldn't be this psychosurgery.

6 DR. GLANZ: Absolutely.

7 DR. LOUISELL: Now, how far can you go along lines of
 8 less dramatic significance in psychosurgery, for example the
 9 use of various drugs; where is it possible as a general matter
 10 definition to say where the state's power ends to impose on
 11 this prisoner its judgment of desirable treatment, whether
 12 this be in the name of experimentation or therapy? Are you
 13 able to do any generalizing?

14 DR. GLANZ: I don't think I could do generalizing.
 15 It is always the hardest part of a project of this nature,
 16 but the approach that I would take is that generally, unless
 17 you can come up with a compelling reason for doing it you
 18 shouldn't invade a prisoner's body with drugs or electrodes
 19 or something like that until you can come up with a fairly
 20 compelling reason for doing it.

21 Now, one one case that I have talked about, the
 22 Reynolds case, for instance, a hemorrhoidectomy was done
 23 without the consent of the patient and that was found to be
 24 cruel and unusual treatment, or could be. It was sent back
 25 for trial. That is not for behavior modification purposes or

1 anything like that, but they were invading the body of this
2 person. They were doing something to this person that caused
3 discomfort. It would be a battery, ordinarily, if one were
4 free living and one didn't consent. The person has to be
5 allowed to consent to that sort of thing.

6 Now, the question that was raised here, where you
7 are not dealing with invasive drugs and you don't touch the
8 body I think is a much subtler question in terms of trying to
9 figure out guidelines, what are you actually trying to do to
10 this person. I would feel comfortable, I think, in absence of
11 a compelling reason, not to invade the body of the prisoner
12 with drugs or surgery or something like that without his con-
13 sent.

14 DR. LOUISELL: And you would say that however strong
15 the alleged reasons of the state might be to perform that
16 body invasion.

17 DR. GLANZ: However strong?

18 DR. LOUISELL: I mean, however cogent the reasoning
19 of the medical authorities of that particular prison might be
20 in the direction of giving that kind of medical treatment,
21 still if it is this kind of invasion of the body that you are
22 talking about, the prisoner would prevail.

23 DR. GLANZ: I hate to talk about absolutes, that is
24 for sure. I would never say that that could never occur, but
25 I think that if you look at free living persons and a physician

1 says to them, all physicians say to them, "Listen, I really
2 think you should have this procedure, it is good for you, you
3 will live a lot longer, you will be a lot healthier and hap-
4 pier," if the person says no, we don't expect that person to
5 undergo that procedure, and I am not sure why in the prison
6 situation we would expect the outcome of that to be different.

7 DR. RYAN: Okay, we want to bring this discussion to
8 an end, now, if we can. Dr. Lebacqz, did you have a final
9 point?

10 DR. LEBACQZ: I just wanted to once again very
11 quickly make sure that I am clear on what the law does and
12 doesn't help us with in this whole arena. I understand you
13 to say that if we are talking about invasions of the body,
14 that there is some legal material that tells us that there are
15 certain things that we cannot do without someone's consent.
16 When we talk about behavior modification, however, we are
17 often talking not about invading the body but about changing
18 the environment, as you just noted. I understand that there
19 is some legal material that sets some limits on what we can do
20 toward changing the environment of someone who is in a penal
21 institution, who is incarcerated, but I am still seeking if
22 there are any legal guidelines for guidelines for when those
23 kinds of environmental invasions are not acceptable and when
24 they would be considered acceptable to do with a person's
25 consent and when they would be considered acceptable to do

1 without someone's consent. Is there any help for us?

2 DR. GLANZ: It is a very difficult question, only
3 because there isn't law on it. Most of the cases that deal
4 with this problem deal with the case of cruel and unusual pun-
5 ishment under the Eighth Amendment to the Constitution, and
6 it is a very vague kind of test. The courts kind of ask does
7 this shock the conscience of the court, this kind of thing,
8 and it often takes a lot to shock the conscience of a court.
9 What the courts really do is they look at the situation in a
10 very human sort of way. That is the interesting thing about
11 the Knecht v. Gillman case, which deals with the vomiting ex-
12 periments, where a person vomits for an hour after injection -
13 15 minutes to an hour after injection with Apomorphine. The
14 court says, as we all know from our own unfortunate experiences
15 and you can see that the court is feeling for this person,
16 saying, "I wouldn't want to throw up for an hour in front of
17 other people," and I think that is the way the courts are
18 really looking at this, like, "I wouldn't want to suffocate,"
19 and that is where they are coming from. Because of that, it
20 is very vague.

21 They are not saying that this does X, Y, and Z and
22 therefore we don't like it. They are really applying personal
23 values to it, and it makes it very difficult to draw a line as
24 a result of that.

25 DR. LEBACQZ: So we are not going to get much help

1 in terms of finding principles on which we can make distinc-
2 tions by looking at the legal material.

3 DR. GLANZ: Well, from my point of view, though, I
4 am dealing with this from the point of view of informed consent,
5 and right now, forgetting about the Kamowitz case for the mo-
6 ment, which is really a very extreme case, and perhaps not a
7 very well-decided case, but excluding that case for the moment,
8 the point that I would make is that if you have adequate safe-
9 guards you can do an awful lot, I think, to a prison population
10 as long as they consent and that there are certain safeguards
11 built into it. I think that one of the Commission's duties is
12 to figure out what those safeguards should be and how that con-
13 sent is obtained, and that is a point I would take, that I don't
14 even think we would want to do very much to prisoners, now
15 getting into policy, which I promised not to talk about, without
16 obtaining their consent. That was the issue that I was dealing
17 with.

18 DR. RYAN: Thank you very much.

19 DR. GLANZ: Thank you.

20 DR. RYAN: What I would like to do now is try to go
21 to the report from the Survey Research Center of Michigan. I
22 believe Dr. Tannenbaum is with us and is going to give us a
23 report. It is under Tab 16. I underestimated the time it would
24 take to go over these things. I want to allocate an hour and
25 would hope we could finish before lunch if we go for the time.

1 I am not sure the Commission members have seen this previously,
 2 This has just come to us, and I think it might be helpful if
 3 you would give us an overview and point out for us where you
 4 have specific facts. We were wrestling this morning about
 5 race ratios. Tell us what institutions you have surveyed and
 6 point out to us where you have facts that have been validated,
 7 please.

8 DR. TANNENBAUM: Let me state at the outset in
 9 response to what you just suggested, Dr. Ryan, that one thing
 10 I cannot do is mention the specific institutions. I will pro-
 11 vide data about a set of institutions. There are five alto-
 12 gether in this particular study. But I cannot mention names
 13 of institutions or names of persons.

14 We spoke to persons who are associated with the
 15 research process in five state prisons, associated in different
 16 ways, persons who play different roles in the research process.
 17 We spoke to chairmen of review committees connected with re-
 18 search at each of these places. We conducted interviews with
 19 41 principal investigators who are conducting research at
 20 these places. I might interject here a technical note which
 21 some of you may be interested in, namely that the unit of anal-
 22 ysis which we are employing in this study is the research pro-
 23 ject. That is, we are interested in surveying projects. We
 24 want to know how many there are, we want to know what the cha-
 25 racter of the projects are, we want to know the reactions of

1 subjects in these projects, and most of the numbers that I
 2 provide apply to the project as a unit, so that if a principal
 3 investigator, a given individual is associated with two pro-
 4 jects and we talked to him about those two, we present that as
 5 two interviews. I want you to keep that in mind.

6 We conducted 181 interviews with subjects in four of
 7 the five prisons. We were not able, due to the limitations of
 8 time, to get the approval necessary to enter the fifth prison,
 9 so insofar as subjects are concerned, we are talking about four
 10 of the five prisons. In addition to that, for reasons that I
 11 will explain later we added to the initial study design 45 pri-
 12 soners who are not subjects. We felt it important, necessary,
 13 in fact, to make a comparison between those who are subjects
 14 and those who are not subjects. In two prisons we were able
 15 to include in our survey prisoners who were not subjects.

16 Now, let me try to review briefly what I think you
 17 will find in the report when you have time to go through it in
 18 detail. No two prisons are alike insofar as the review pro-
 19 cess is concerned. In some, institutional review boards with
 20 general assurances play an important role. In others, review
 21 committees that are appointed by the Department of Corrections
 22 or by prison authorities or by university officials may play
 23 an important role. Drug companies in some cases have review
 24 committees which are part of the process. In addition, there
 25 are biomedical and legal consultants, and in a few cases,

1 prison representatives who play roles on some of these commit-
 2 tees. In all cases, the process involves a number of stages
 3 that protocols pass through from one committee to another, but
 4 as I said before, the procedures and the processes are different
 5 from one place to another.

6 Now, insofar as the principal investigators are con-
 7 cerned, we got information from them about the nature of the
 8 research that they are doing, and the work that we were able
 9 to study through the principal investigators is predominantly,
 10 if not exclusively, pharmaceutical research involving, to a
 11 large measure, Phase I testing. Most of the studies involve
 12 some kind of oral administration of a drug or chemical. Blood
 13 and urine samples are analyzed. Few, very few, are specifically
 14 intended to benefit the subjects medically, although some in
 15 the opinion of researchers do have such benefit.

16 Also, researchers point out, there are some risks,
 17 although the probability of serious risk, according to the in-
 18 vestigators, is very low or non-existent. For those of you who
 19 would like to see the basis for that statement, you might look
 20 at page 19, Table 6 in the report. There you see the data
 21 that is based on the responses of the principal investigators
 22 to the question dealing with risk. Along the top of the page
 23 you see the scale which they used to estimate risk and see
 24 different kinds of risks presented along the vertical axis, so
 25 that the probability of temporary or minor psychological stress

1 or discomfort due to the research is estimated to involve no
 2 risk of that type by 8 percent, and very low risk of that type
 3 by 82 percent of the investigators and so on.

4 All of the investigators --

5 DR. COOKE: Before you go on, could we ask you more
 6 about this table? Are these judgments made by the investiga-
 7 tors? Are they retrospective data collected in terms of outcome
 8 and so forth? Could you tell us about that?

9 DR. TANNENBAUM: Yes. These are estimates made by
 10 the investigators.

11 DR. COOKE: No one has taken 10,000 cases that have
 12 been passed through particular institutions and done statisti-
 13 cal analyses of the harm consequences.

14 DR. TANNENBAUM: Not to my knowledge.

15 DR. COOKE: Is there such data available anywhere?

16 DR. TANNENBAUM: Not to my knowledge. There may be.
 17 Dr. Cooke, we did ask investigators as a follow up to this
 18 question whether in their experience there were serious harm-
 19 ful effects, and one investigator said that there were some
 20 temporary effects that were serious, but that was the only case
 21 reported to us by investigators. We spoke to prisoners about
 22 this subject, and if you don't mind, when we get to the prisoner
 23 phase I will get into this again.

24 DR. JONSEN: May I ask also about the table? Are
 25 these investigators being asked each about their own project,
 or is it a panel of investigators looking at the variety of

1 projects?

2 DR. TANNENBAUM: Each is being asked about his own.
3 We did ask the review board members about what you might call
4 a panel of projects, the projects that passed through, and I
5 think it is fair to say that their estimate with regard to
6 risk corresponds pretty much to that of the principal investi-
7 gators.

8 DR. RYAN: Bob, do you want to ask a clarifying ques-
9 tion?

10 DR. LEVINE: Yes, about a point made a couple of
11 minutes ago. You said a great majority of studies on drugs
12 were Phase I studies. The data, I believe, are in Table 2.
13 Are these data -- you say 80 percent are Phase I, but it is
14 not clear whether it is 80 percent of investigators are in-
15 volved in that work, 80 percent of protocols, or 80 percent
16 of the subjects.

17 DR. TANNENBAUM: It is 80 percent of the protocols.

18 DR. LEVINE: Do you have any idea as to what percen-
19 tage of all subjects were involved in Phase I as opposed to
20 later phase drug research?

21 DR. TANNENBAUM: We can get that. We have a basis
22 for answering that question, but we haven't done that particu-
23 lar analysis, since we can associate each subject with each
24 project and we know what phase the project is, and we can
25 therefore answer your question in due time. Okay?

1 I might say that all of the principal investigators indicate
2 that there are procedures to treat subjects in the event of
3 some harmful effect.

4 We obtained the consent forms for each of the pro-
5 jects and we did a content analysis of those consent forms, and
6 in the report you will see a more detailed description of that.
7 I will give you some of the points that I think you might want
8 to have at this moment. All of the consent forms describe the
9 procedures. Some describe the procedures very briefly, some
10 describe them in detail, but all of them do make some mention
11 and provide some description of procedures. Almost all describe
12 the purpose of the experiment. About 85 percent mention risks,
13 and some provide long lists of risk; 95 percent state that the
14 subjects can withdraw.

15 Now, if you want to look, just to make this a little
16 more concrete and help you see the basis for the statements I
17 have just made, you might take a look at page 24, for example,
18 where the various aspects, various topics that are mentioned in
19 the review board, are coded here according to the frequency
20 with which they occur, so that you see "Statement of Procedures,"
21 the very first item there, is mentioned in 32 percent of the
22 cases and a detailed description in 68 -- the other 68 percent
23 of the cases.

24 Now, we did an analysis of the reading level of these
25 consent forms and we found that the reading level is very

1 difficult. We think, and we want to do more analysis on this
 2 to make statements that are a bit more definitive, but at any
 3 rate, we think at this point that it is not simply due to
 4 medical terminology, that it has to do with the sentence struc-
 5 ture and the choice of words, but not necessarily the medical
 6 terms and the technical jargon that these investigators are
 7 using. There is a very small correlation, for example, between
 8 reading level difficulty and the frequency of medical terms,
 9 so these investigators apparently are using a mode of descrip-
 10 tion that is somewhat complex, and therefore the consent form
 11 itself is rather difficult to understand, although I should
 12 mention that the consent form is only one of the procedures
 13 that investigators tell us they employ in communicating or
 14 describing the research to subjects. There is also an oral
 15 presentation by them in all cases, according to our respondents

16 DR. COOKE: Would you say they are written as though
 17 they had been written by an ethicist for this Commission?

18 DR. TOULMIN: Not all ethicists write alike.

19 DR. RYAN: Dr. Tannenbaum?

20 DR. TANNENBAUM: We present a couple examples, Dr.
 21 Cooke, for your benefit and for the benefit of some of the
 22 ethicists on page 31, if you want to take a quick look at that.
 23 You can see what -- and I might add here that we have substi-
 24 tuted the name of the chemical there. That is not the name of
 25 the chemical that was stated in the original consent form. We

1 code that as reading level, and there is a score you can see
 2 associated with that, 13.9, very difficult. By way of con-
 3 trast but not too much of a contrast, the next example has a
 4 score of 54.7, which we code as fairly difficult, and we have
 5 a formula for coding. I don't know whether the ethicists do
 6 any better than the doctors and lawyers and others on this.

7 DR. COOKE: We have heard about one.

8 DR. TANNENBAUM: Okay?

9 SPEAKER: Objection.

10 DR. TANNENBAUM: Now, one correlation that we find
 11 a bit intriguing, and I want to forewarn you that this analysis
 12 is just beginning, now, and we would want to examine these
 13 data in more detail before we felt confident about making
 14 statements that have important implications. But let me just
 15 point this out as a correlation that I think is of some in-
 16 terest and may have practical implications. There is a corre-
 17 lation of negative 63, which is a fairly substantial correla-
 18 tion, between the risk level of the project as is estimated by
 19 the investigator, the amount of risk as estimated by the in-
 20 vestigator, and the reading ease. In other words, the more
 21 risk, the more difficult it is to understand, and we want to
 22 go into this in a little more detail.

23 There are a number of speculations we can offer and
 24 I am sure you have additional ones, but one obvious specula-
 25 tion is that those that involve somewhat more risk state a

1 larger number of symptoms that might be stated in technical
2 terms or in complex terms, and for that reason it becomes more
3 difficult to understand those particular consent forms.

4 Now, let me say something about the information we
5 obtained from the subjects themselves. These are subjects who
6 have participated in research sometime since July 1974. Sub-
7 jects who were in research prior to that date are not in our
8 survey. The subjects are generally supportive of biomedical
9 research in prisons. We find a near consensus in all four
10 prisons with respect to the attitudes of subjects as conveyed
11 to us about research in prisons. These subjects say, almost
12 universally, that the research before they participated in it
13 was explained to them so it was understandable, and you can
14 see the data that refers to that point on page 41.

15 Let me read the question. This is the question we
16 asked in the interview. "When you agreed to participate, did
17 you feel that the information that was given to you was clear
18 and understandable?" Ninety-nine percent say yes. On page 43
19 you see data that refers to the extent to which the data was
20 correct and accurate in their opinion, now that they have been
21 through the experiment, 97 percent saying yes. One subject
22 whom I interviewed personally and who answered no to that ques-
23 tion told me that there was a greater number of times that
24 blood was drawn than he had originally expected.

25 The subjects also indicate that researchers are

1 willing to answer their questions, and you see that data pre-
2 sented on page 44, approximately. I would say it is better
3 than approximately. Ninety-nine percent say that researchers
4 were willing to answer their questions. On page 55 you see
5 the extent to which subjects themselves feel that their parti-
6 cipation was voluntary. If you look at the bottom of that
7 page, Table 31, "When you agreed to participate, did you feel
8 that it was a purely voluntary matter; that is, did you feel
9 free to refuse?" Ninety-five percent answered affirmatively
10 to that. Those who answered negatively, we followed that up,
11 and we found that the reason that they did not feel that it was
12 voluntary is that they saw or felt that they would be withdrawn
13 from the subject pool and therefore for that reason they didn't
14 feel that it was voluntary.

15 DR. RYAN: Dr. Jonsen.

16 DR. JONSEN: Would you clarify that? Did all of
17 the 5 percent answer that way?

18 DR. TANNENBAUM: The answer is yes to that. By the
19 way, one person did not answer that question. We have only
20 180 interviews, as you can see. Now, 3 percent of those who
21 did did answer, and that turns out to be six subjects, and
22 remember I am using the word "subject" in the sense that I de-
23 fined it earlier, in that technical sense, as persons playing
24 roles on projects, and one person might be two subjects if he
25 was on two projects. Okay?

CONTINUED

1 OF 5

1 DR. JONSEN: So this very small -- and I am not try-
2 ing to draw any great conclusion from this -- they volunteered
3 the answer that if they refused to participate in this project,
4 they feared that they would be removed from the volunteer pool.

5 DR. TANNENBAUM: Yes, as I recall it, from other
6 projects in the future, and there may have been a time asso-
7 ciated with that.

8 DR. RYAN: I think this was indicated to us on some
9 of our visits as well.

10 DR. TANNENBAUM: This occurred at one place. Thirty-
11 three percent of our subject respondents expected a risk when
12 they signed on for this project. Some of them, however, ex-
13 perience difficulties that they didn't fully anticipate. We
14 spoke to several such persons, six, I believe, such persons.
15 These unanticipated difficulties included nausea, allergic
16 reaction, and in one case, violent behavior, as a result of
17 the administration of a drug. We examined the consent forms
18 that were connected with each of these cases to see what the
19 consent forms said about these risks which the subjects said
20 they did not anticipate, and we found that in each case there
21 was a mention in some way of these particular contingencies,
22 these particular risks. In two cases the risk was very clearly
23 stated and very explicitly indicated.

24 DR. LOUISELL: Was the incidence of violent behavior
25 toward another person?

1 DR. TANNENBAUM: Yes, I believe it was, yes. In
2 two cases -- may I qualify that? I underline the word I
3 "think" so, and if you are interested in that question I would
4 want to check it to be absolutely sure, but I think that the
5 answer is yes. In two other cases the specific possibilities,
6 the specific risks, were in fact mentioned in a long list,
7 and this may be an irony of it. Presumably the investigator
8 attempted to be comprehensive about the risks, had a long list,
9 and these were among that long list and apparently it got lost,
10 and by the way, I think this is associated with what I men-
11 tioned earlier, that these consent forms are difficult to read
12 and difficult to understand.

13 The other case, one other case -- on that consent
14 form we found a statement that "various allergic reactions"
15 might occur and that these reactions might be serious, and
16 some examples were provided. But the specific examples that
17 were provided were not the specific manifestation, the specific
18 symptom that this subject suffered, and therefore he did not
19 anticipate this specific contingency.

20 DR. KING: The one with respect to the violent beha-
21 vior, what did that consent form state? I just want to make
22 sure I get that clearly in my mind, where there was a violent
23 reaction.

24 DR. TANNENBAUM: I don't have the specific wording
25 here, but I believe that this was anticipated. It seems ironic

1 to me, as a layman, to learn, as I am in this project, that
2 tranquilizers sometimes have the effect of creating violence
3 in people.

4 DR. KING: Could I ask a further question? Did you
5 follow up -- and I don't know if this is a part of your study --
6 that one instance because there was a possibility of some forms
7 of mild violent behavior? Were there any precautions taken or
8 was there anything said on the consent form that would suggest
9 certain types of precautions would be taken to make sure the
10 prisoner wasn't dangerous to himself or to others, or was it
11 just stated and then there was a reaction? I am curious about
12 how that got handled in the research setting, or if that came
13 out in your study.

14 DR. TANNENBAUM: My impression as I recall that case
15 is that the behavior occurred subsequent to the departure of
16 the subject from the research setting, that it happened back
17 in the cell block or someplace outside of that setting.

18 DR. RYAN: Barbara Mishkin.

19 MS. MISHKIN: Dovetailing on that, there is one bit
20 of information, back on page 27, which has to do partly with
21 this, which I found very interesting, and that is that none of
22 the consent forms which you examined mentioned any procedure
23 or possibility of compensation for harmful effects, although
24 apparently the PMA study indicates that a lot of the drug com-
25 panies doing research have the possibility of doing that, but

1 it is not apparently relayed to the prisoner subjects. I
2 thought that was very important and I didn't want you to miss
3 that.

4 DR. TANNENBAUM: The fact that it is not mentioned in
5 the consent form does not mean that it is not done, and all of
6 the investigators told us that they have procedures for taking
7 care of or working with the subjects who have experienced that.

8 MS. MISHKIN: The question is whether the subjects
9 know of that availability.

10 DR. TANNENBAUM: Some of them do, and it is conveyed
11 to them, not through the consent form, but through --

12 MS. MISHKIN: Okay.

13 DR. TANNENBAUM: Subjects offer a number of reasons
14 for their participation, and I think you are more or less fa-
15 miliar with this kind of data. I don't know whether I would
16 want to use the word "motivation," here, but at any rate these
17 are reasons that subjects offer when we ask them what are the
18 main reasons you participated in the research. Page 47 outlines
19 those. This is coded on the basis of their words, and I guess
20 it doesn't surprise you to find that 70 percent of the subjects
21 mentioned money. These percentages, by the way, will add up
22 to more than 100 percent, since subjects can offer more than
23 one reason. Prisoners, like anybody else, usually have more
24 than one reason for doing what they are doing. I think it might
25 be interesting to mention, interesting to you to know, that

1 the investigators themselves are reasonably realistic about
 2 this in the sense that when we ask investigators why they think
 3 that subjects choose to participate, a very large percent,
 4 about 80 percent, indicate that money is the primary motivation
 5 there. While we are talking about money, you might want to
 6 look at page 17, which shows the distribution of pay.

7 I am interested in this for more than the substantive
 8 reasons, and perhaps I can induce you to be interested in it
 9 for the same reason that I am, in addition to your own reasons,
 10 namely, that it has methodological implications, since we have
 11 in this table the reports of subjects themselves and the re-
 12 ports of principal investigators. The two columns show the
 13 distributions as reported to us by these two sets of respondents
 14 and I find that the correspondence, under the circumstances, is
 15 quite remarkable, which suggests to me that the respondents are
 16 giving us reasonably good, reasonably accurate data and that
 17 our sampling procedures are working appropriately. We are
 18 getting at a good representation.

19 There are reasons why we would expect discrepancies,
 20 by the way, between these two, at least little discrepancies.
 21 For example, some investigators are talking about more subjects
 22 than other investigators are talking about, so there is a lit-
 23 tle distortion possible as a result of that. The investiga-
 24 tors in this particular case come from five prisons, and the
 25 subjects come from four. Nonetheless, this seems to be pretty

1 standardized, and there you see the distribution of pay.

2 DR. COOKE: Dr. Tannenbaum, may I ask if you inquired
 3 as to the method by which the reimbursement was scaled? That
 4 is, was it done in terms of inconvenience, time, or risk, or
 5 all three?

6 DR. TANNENBAUM: I am not sure of that. I think it
 7 is in terms of time.

8 DR. COOKE: I think that would be important if it
 9 were possible to find out, because I got the impression that
 10 sometimes where the risk is greater there is more offered, and
 11 other times, if it is a long period and so forth. It would be
 12 helpful, I think, because I think it makes a great deal of
 13 difference on the compensation issue.

14 DR. TANNENBAUM: Well, we might be able to answer
 15 that question when we analyze the data further.

16 DR. STELLAR: It would also be helpful in understand-
 17 ing this table if there were some constant as to the rate of
 18 pay for overtime or for time. YOU can't tell from this whether
 19 the \$150 came from a long exposure to an experimental procedure
 20 and the \$10 for a quick procedure that just took a few minutes,
 21 and therefore you have no idea of the range of pay per effort
 22 expended on the part of the subject. Can you do that?

23 DR. TANNENBAUM: We have information about the dura-
 24 tion of the project, we have information about the pay asso-
 25 ciated with that project, and --

1 DR. STELLAR: It would be helpful to have it on this
2 table if you could.

3 DR. TANNENBAUM: Yes, okay. I hear you.

4 DR. RYAN: Do you want to sort of wrap up a little
5 more, and then we will throw it open for general discussion.

6 DR. TANNENBAUM: All right. You mentioned race at
7 the outset, Ken, and perhaps I should point, since we are very
8 close to that on the report, page 16, you can just flip back
9 to page 16, to it. Again, here we have the distribution of
10 race as presented to us by the research investigators. This is
11 their estimate. Then in the second column we have the percent
12 that we were able to obtain through our direct interviews of
13 subjects. Again, you see that the two distributions are re-
14 markably close and the judgments of the investigators seem
15 realistic and the correspondence that we would expect is there.

16 DR. KING: Dr. Tannenbaum, do we have the prison
17 populations by race of the institutions? I know we must keep
18 the institutions confidential, and I don't know if that would
19 reveal it, but I would like to see this data in comparison
20 to the prison population from which the people were drawn. If
21 to break it down by institution is too revealing, if we could
22 have it as a group it would be helpful. Even that amount would
23 be helpful.

24 DR. TANNENBAUM: We do not have in our file at the
25 moment the data that you are talking about. We do have

1 information from the group of non-subjects in two prisons,
2 which group, I believe, does represent the larger prison popu-
3 lation, and I can give you some information about that. The
4 differences with respect to race, and I am going to include,
5 now, all minorities in one group -- the difference with regard
6 to race is not consistent in these two prisons. It goes one
7 way in one prison and it may go the other way or there is no
8 relationship at all in the second prison.

9 DR. KING: I think that would be helpful. Any further
10 breakdown about the prison population racial composition as
11 it relates to the participation in research, to the degree it
12 does not violate confidentiality, would be beneficial.

13 DR. TANNENBAUM: Yes. I can give you -- did you
14 want to ask a question?

15 DR. STELLAR: Well, I was going to add that I think
16 it becomes very important to see the individual prisons, not
17 by name of course, but if you could give us prison A, B, C and
18 D, because it is easy for these figures to be washed out by
19 one large prison that goes in one direction, for example.

20 DR. TANNENBAUM: We may not be able to do that without
21 violating confidentiality.

22 DR. KING: That was what I was afraid of.

23 DR. RYAN: Michael, do you want to add to that?

24 MR. YESLEY: Yes. Just as an element of process,
25 Arnie, I wonder if this information could be provided by the

1 end of today or by tomorrow morning?

2 DR. TANNENBAUM: Which data? If it requires, Mike,
3 going into the prisons to get records, the answer is no. If
4 it implies that we get something from our computer, I would
5 say it may be possible, in principle. Now, there is many a
6 slip twixt the cup and the lip, as you know, but we will make
7 every effort to get the information if it is on our computer.

8 DR. RYAN: Brad, do you have a short question?

9 DR. GRAY: We can bring it up after Dr. Tannenbaum
10 has finished. We do have data in front of -- I think the data
11 on Jessup, Maryland was sent to you in the past 2 weeks, I
12 understand, and I have those data, which have a racial break-
13 down on subjects and total populations in that prison, and
14 then there was the data on Southern Michigan State Prison in
15 Jackson, which was put together by staff and which was in front
16 of you in a table this morning. So those are --

17 DR. KING: That is not my problem. Let me explain
18 why this is of significance to me. This is the only study that
19 we have that anywhere approaches giving us any basis on which
20 to make decisions. Everything else has been impressions and
21 hearsay and blah, blah, blah, blah. This is the only thing I
22 have seen, and before he even finishes I want to congratulate
23 Dr. Tannenbaum, it is the only thing I have seen so far that
24 begins to give me some facts, and it is in relationship to what
25 he has studied that I need additional facts, and that is why I

1 am particularly interested in your study. I think so far that
2 it is outstanding.

3 DR. STELLAR: Without giving us the specific indivi-
4 dual prisons, then, even if uncoded, would it be possible for
5 you to answer the kind of question that is being raised in a
6 general analytic way, to give your impression of the data as
7 to when --

8 DR. TANNENBAUM: I am sorry. There is a conversation
9 going on here and I am finding it hard to hear what you are
10 saying.

11 DR. RYAN: Please.

12 DR. STELLAR: I am hopeful that perhaps even if you
13 couldn't give us the individual prisons broken down in a coded
14 way, that you might be able to give us an analysis whether the
15 same result applies to the five individual prisons or whether
16 there is a great deal of disparity in the results.

17 DR. RYAN: Do you have any major points you want to
18 make with respect to this, because I am sure people are going
19 to have questions.

20 DR. TANNENBAUM: Yes, I would like to make one other
21 point. It has to do with variance and it has to do with varia-
22 tions within prisons. It concerns the non-subject prisoners
23 whom we interviewed. It is among this group that we see less
24 support for research in prisons. Some of these prisoners are
25 opposed to research in prisons, and there is more difference

1 of opinion within this group, that is this group of non-subjects
2 more difference of opinion about research in prisons than among
3 the subjects themselves, almost all of whom are unanimous and
4 favorable towards the idea of prisons.

5 This group of non-subjects differs somewhat in edu-
6 cation level, job, whether they hold a job, and the hours
7 worked in the prison, from the subjects, and we can get into
8 that in the extent that you are interested. I got the message
9 Dr. Ryan. I better stop now.

10 DR. RYAN: There is more time. Now I want to open
11 it up.

12 DR. TOULMIN: This last point does seem very impor-
13 tant.

14 DR. KING: I would like to hear it.

15 DR. RYAN: I am not asking him to stop. I just want
16 the Commission now to interact and get what you want from Dr.
17 Tannenbaum now. Yes?

18 DR. KING: I would like to make a request that he
19 continue to discuss specifically what the reactions and the
20 differences and variations are among non-subject prisoners.
21 Some of us have not had a chance to read this report, so we
22 can't possibly ask him intelligent questions, unless we really
23 hear a really -- as complete a report as possible.

24 DR. RYAN: Fine. I am happy then. Please go on.

25 DR. KING: Thank you, Ken.

1 DR. TANNENBAUM: Let me by way of background, very
2 briefly, point out that this is an aspect of the study that we
3 added along the way, and I want to explain why we added it.
4 We began to recognize as we interviewed subjects that the data
5 were rather homogenous. Most subjects were telling us the same
6 thing, and we wondered was there something wrong with us or
7 something wrong with our instruments such that no matter whom
8 we spoke to we got the same kind of answer. We therefore wanted
9 to see if there were a contrast, to see whether different
10 prisoners in a different category would respond differently,
11 and that is one of the reasons why we drew a small sample in
12 two prisons of non-subjects.

13 There we did find that these prisoners were quite
14 prepared to tell us that they were not enthusiastic about this
15 research. As I said before, some of them were opposed, some
16 of them at least would like to see the research stopped. That
17 is the kind of suggestion that they would make in response to
18 our question about suggestions. These attitudes on the part of
19 non-subjects are by no means shared universally among the non-
20 subjects. That is, there are differences of opinion. You get
21 a distribution there, and because we are dealing with a rela-
22 tively small number, I am a little hisitant to put exact per-
23 centages on it. As I mentioned, this was a subsequent decision
24 after the initial project got launched.

25 There are differences with regard to what you might

1 call the demography of these two groups, the subjects and the
 2 non-subjects, and because these differences are consistently
 3 in the same direction in both prisons, we get the same direction
 4 of differences and the differences seem reasonably sizable,
 5 even though I don't want to put percentages on it, I think it
 6 is reasonable to state that these differences mean something;
 7 namely, that the subjects have a somewhat higher level of edu-
 8 cation, formal education. The subjects are a bit higher in that
 9 respect. The subjects are more likely, somewhat more likely
 10 to have a job in the prison. For those persons in the prison
 11 who do have jobs, the hours worked are likely to be greater for
 12 the subjects than for the non-subjects.

13 The reasons that the subjects give -- pardon me --
 14 that the non-subjects give for not participating include that
 15 some of them had just not been asked, and that is why they
 16 haven't participated, some fear harmful effects, some mistrust
 17 research and researchers, some are alienated and disaffected
 18 and opposed to the system and this is part of the system; so
 19 we get a variety of reasons such as that.

20 DR. RYAN: Dr. Lebacqz.

21 DR. LEBACQZ: I also want to thank you for what I
 22 consider to be very helpful information. I have not had time
 23 yet to read this report in detail, so it could be that the an-
 24 swer to my question is here and I just haven't seen it yet.
 25 I did not see in the latter part of your report any data on

1 subjects who had withdrawn from an experiment during the course
 2 of the experiment or the research, so I went looking to see
 3 whether indeed subjects knew that they could withdraw, and I
 4 find that on page 28 there is at least the indication that 95
 5 percent of the consent forms specifically mentioned that the
 6 subjects could withdraw if so desired. I wondered whether you
 7 had encountered any subjects who did take advantage of that
 8 and withdraw, and if so on what grounds, and how they might
 9 have differed from those who did not participate at all or who
 10 participated fully.

11 DR. TANNENBAUM: No, I don't believe we have.

12 MS. MISHKIN: There ^{are} some data on page 22, here,
 13 that -- the top paragraph on page 22 -- 40 percent of the in-
 14 vestigators reported that at least one subject withdrew after
 15 having begun the experiment, and in these studies they reported
 16 that an average of 14 percent of the subjects had dropped out.

17 DR. TANNENBAUM: Yes, but I understood the question
 18 was about data from the subjects themselves, but perhaps this
 19 goes part of the way, at any rate, to giving you some idea of
 20 the magnitude of that process of withdrawal. It comes to us
 21 from the principal investigators.

22 DR. RYAN: Does your questionnaire include questions
 23 to the investigators as to why people withdrew?

24 DR. TANNENBAUM: Perhaps Brad Gray can answer that.
 25 He is the author of the original instrument and he may remember

1 that better than I.

2 DR. GRAY: I don't think it does. There may be --
3 the interviewers, I think, were instructed to write down when
4 explanations were given, and there may be explanations included
5 in the instruments that could be put together, but I don't
6 know the extent to which that is true.

7 DR. RYAN: Mr. Calhoun, please.

8 MR. CALHOUN: One of the interesting things that I
9 have noticed is that race is important as a very critical
10 variable in terms of looking at who research is done on in
11 prison. My question is is it in terms of your analysis, in
12 terms of the survey that you did, did you look at the socio-
13 economic background or status of the prisoners? You suggest
14 that the subject inmates were higher educated, worked more
15 hours, and things like that, and I was wondering is there any
16 differentiation between subjects and non-subjects in terms of
17 their socio-economic background? I think this may have some
18 import in terms of the concept that has been suggested that
19 human subjects should be those who are the most free, and that
20 sort of thing, and what this is implying, that these most free
21 subjects are those most capable or most willing to do research.
22 Did you look at any such background data?

23 DR. TANNENBAUM: We have questions dealing with the
24 type of work that the subject did prior to being put into pri-
25 son. We do not have information about non-subjects. I don't

1 think we have information about non-subjects in that respect.
2 We do have education, yes.

3 DR. RYAN: Dr. Levine, please.

4 DR. LEVINE: On two of the tables there is informa-
5 tion about what sorts of elements of informed consent appear
6 on the consent forms.

7 DR. TANNENBAUM: What tables are you referring to?

8 DR. LEVINE: Tables 11 and 14. In each case, in
9 each category it specifies whether or not something is mentioned
10 or not mentioned. For example, in Table 14, physical risks,
11 and the data always add up to 100 percent. In the footnote
12 you do point out that it might have been useful to relate some
13 elements to particular projects. I think this would be ex-
14 tremely important, and when I first read the footnotes I thought
15 it might come in later. But the fact that something does not
16 mention a physical risk does not necessarily mean that it is
17 a bad consent form if, in fact, it is for a project where there
18 are no physical risks, and so on for all of the bits of data.

19 In a similar study that I was involved in where we
20 did look at what was on consent forms, we found if we looked
21 at it in this way and said there is no mention of physical
22 risks, we might then look at the description of the project and
23 find that there were no physical risks. But on the other hand,
24 we did find in a small percentage of cases there were some
25 things described in the consent form that didn't have to be

1 because they didn't exist. So there can be errors both ways.
 2 I assume it is not possible to learn by the end of tomorrow
 3 what the correlations are between what data were missing and
 4 whether or not they really should have been in there.

5 DR. TANNENBAUM: In other words, the correlation
 6 between the risk of the project and the statement of risk in
 7 the consent form. The information that we have about risk in
 8 the project will come to us and is in our data tape with the
 9 source being the principal investigator himself. He estimates
 10 the risk. That is how we would know, on the basis of his re-
 11 port. We could do a correlation between the risk in the pro-
 12 ject and the risk as indicated in the --

13 DR. LEVINE: It is possible, then, to correlate on
 14 a protocol-by-protocol basis?

15 DR. TANNENBAUM: Yes.

16 DR. LEVINE: When it says that 88 percent of protocols
 17 mentioned had no mention of psychological risks, this could be
 18 terrible if 88 percent of the protocols really did present
 19 psychologic risks to the subjects.

20 DR. TANNENBAUM: Yes.

21 DR. LEVINE: On the other hand, if 88 percent of the
 22 had no psychological risk, this is exactly the way it ought to
 23 be. I would like to make one other comment, and that is what
 24 of the meaning might be of the correlation between holding a
 25 job and not being a subject. We did learn during the visit to

1 Jackson that just as in the real world, the people who were
 2 employed couldn't take the best jobs as research subjects be-
 3 cause they would lose their jobs because they would have to
 4 take too much time off from the work.

5 DR. RYAN: Bob, they found the reverse. They found
 6 the research subjects worked.

7 DR. GRAY: One figure related to that that Dr. Tan-
 8 nenbaum didn't quote, in my recollection, is that only 6 per-
 9 cent of the research subjects did not have a prison job, and
 10 94 percent did have prison jobs.

11 DR. TANNENBAUM: That is correct.

12 DR. RYAN: Dr. Jonsen.

13 DR. LOWE: I think there is an answer, though, imme-
 14 diately in here, to Dr. Levine's question. If you compare 14 with
 15 6, you get a very rough and ready estimate of what kinds of
 16 risks existed and whether they should have appeared on the
 17 form. I think it is here.

18 DR. RYAN: It is just not correlated on a project-
 19 by-project basis.

20 DR. LOWE: But you can make a very quick estimate.

21 DR. RYAN: Dr. Jonsen, please.

22 DR. JONSEN: Thank you, Dr. Tannenbaum, for this
 23 study. It is very helpful. You began when you described the
 24 subject, non-subject differentials to state a very general
 25 profile of the kind of person who was a volunteer. Is it possible

1 to develop a more complete profile? I don't know whether you
 2 are scientifically, in terms of your science, like to do this
 3 kind of profile thing, whether it is legitimate or anything
 4 of that sort, but we have been plagued up till now with a
 5 profile of the typical volunteer that has been a generaliza-
 6 tion. I could practically describe him to you now. My im-
 7 pression from your statistics is that that is almost uniformly
 8 incorrect. I just wonder whether it is possible to draw a
 9 profile out of your statistics.

10 DR. TANNENBAUM: Yes, I think that it is, if you mean
 11 by profile that we describe the characteristics, the demograph-
 12 characteristics of subjects, their average level of education
 13 or the distribution with regard to that fact. You see that
 14 kind of information in the appendix. Appendix A shows the
 15 distribution with regard to that. However, if you want a con-
 16 trast in that profile between those who are subjects and those
 17 who are not subjects, then I think that the information we can
 18 give you would be more limited insofar as we have a special
 19 kind and limited sample of non-subject prisoners.

20 DR. RYAN: Dr. Cooke.

21 DR. COOKE: It was stated earlier this morning that
 22 prisoners may not be free to express their real beliefs, and
 23 I want to ask the question as to whether or not you could be
 24 getting, in a sense, the prison line, the party line in the
 25 prison in terms of the answering of all your questions in your

1 interviews, and whether or not there is any opportunity to
 2 ask the same sorts of things of individuals who were in the
 3 prison but are no longer in the prisons. That is question No.
 4 1. Then, if you could answer that I have a second question
 5 which is more a kind of general opinion that I hope you could
 6 offer us. But could you respond to that one?

7 DR. TANNENBAUM: Yes, I certainly can. I hope you
 8 don't mind my saying I think that is an intriguing idea, a
 9 very interesting line to follow. This study doesn't make a
 10 provision for such an analysis, but it can be done. Perhaps
 11 it should be done. Under the terms of our present contract I
 12 don't think we can do it. I know we can't do it.

13 DR. COOKE: It would seem to me, though, that that,
 14 Mr. Chairman, is an issue that I would hope the Commission
 15 would look at, later or now, as to whether or not there might
 16 be some benefits from extending Dr. Tannenbaum's study to a
 17 sample of individuals who are no longer in the prison.

18 DR. LOUISELL: How feasible would that be to do that
 19 kind of supplemental study?

20 DR. TANNENBAUM: I think it would be difficult, just
 21 as many aspects of this project that we have taken on are very
 22 difficult. If we sat down together to talk about the techni-
 23 calities of that, I think we might be able to work them through.
 24 I see it as potentially feasible. I think it could be done,
 25 although it would be a very difficult project to do, a matter

1 of tracing some people and getting to them and getting their
2 responses to these questions.

3 DR. COOKE: The second one -- and if you would prefer
4 not to respond it would be perfectly appropriate. As you
5 know, we have been wrestling with the issue of accreditation
6 as a way of giving greater protection. I have been espousing
7 out-of-prison research as a way of providing greater public
8 view and so forth, and you probably have done more right now
9 than most individuals to look at the situation. Can you give
10 us some general ideas from your own personal perspective now
11 that you have carried this out, as to what you would do in the
12 way of improving the situation, or nothing, for that matter?

13 DR. TANNENBAUM: Well, I am torn because of this ques-
14 tion. I am not sure it is appropriate for me to do this. We
15 have made an effort here to present the facts and the opinions
16 of respondents whom we are interviewing, and to do so with as
17 little embellishment as possible. I am concentrating on that.
18 I want to get the facts before you as best we are able to do
19 that. We are therefore exercising a certain discipline, self-
20 discipline with regard to making the kinds of interpretations
21 or explanations that you are asking us to do. We have to
22 shift gears, and I am not sure that would be constructive in
23 terms of what we are trying to achieve.

24 DR. RYAN: Dr. Jonsen wanted a quick -- on this point
25 only.

1 DR. JONSEN: Just on this point. Instead of answer-
2 ing Dr. Cooke's question directly, could you answer in this
3 way? From your experience in gathering this data, could you
4 say whether or not you think an accreditation system which
5 would be faced with data-gathering problems in prisons would
6 work? Have you found it extraordinarily difficult?

7 DR. TANNENBAUM: Have we found it difficult to gain
8 entree and to acquire this data and so on?

9 DR. JONSEN: Yes.

10 DR. TANNENBAUM: I would say we found it remarkably
11 easy, given the time limitations that we faced, and given the
12 minimum -- I would say the absence, from our point of view, of
13 effort to coerce. We went in there and explained that this
14 was voluntary. It is conceivable that some prison officials
15 felt that it was mandatory on their part, but at any rate, we
16 explained that this was voluntary from our standpoint and we
17 hoped they felt it was voluntary. Under these circumstances,
18 nonetheless we were able to get in, we were able to interview
19 prisoners, we were able to interview principal investigators,
20 we spoke to some prison officials, and we didn't have the kind
21 of authority that I think you might have if you worked under
22 some kind of accreditation rule.

23 DR. RYAN: It is a very interesting experience. Ms.
24 King next, please.

25 DR. KING: For fear -- since you offer us the only

1 facts that I have seen for a long time -- that the facts will
 2 be overworked and be used to explain things that perhaps you
 3 didn't intend them to mean, I want to go back to the demongra-
 4 phic statistics. As I understand it, you distinguish between
 5 subjects and non-subjects, but in the non-subject pool you
 6 attempted to draw no correlation between those people who
 7 worked in the prison population and their educational background
 8 how often they worked, how many hours they worked, et cetera,
 9 with non-subjects who neither worked nor participated in re-
 10 search. What I am trying to get at is the following. It would
 11 not surprise me that within any prison that the highest-paying
 12 job is the progression level to which all prisoners, unless
 13 they had some reasons for being suspicious of certain types of
 14 occupations, would gravitate to. So I wouldn't have been
 15 shocked if the non-working, non-subject population may not
 16 have been the lowest in education, the most suspicious, et
 17 cetera, and that what we are really seeing in the prison sys-
 18 tem is what we see, perhaps, in the general society, and that
 19 is that those who are most equipped to survive or to make it
 20 through are those most likely to end up with the highest paying
 21 jobs. I want to make sure that I understand how you drew your
 22 non-subject population so that we don't extrapolate from your
 23 data theories that it is the least coerced who participate, be-
 24 cause it all depends on how you are talking about coercion.

25 DR. TANNENBAUM: Yes. Well, first let me repeat that

1 the non-subjects come from only two of the four prisons.
 2 Secondly, they are a small number of persons, and therefore a
 3 certain error is associated with the statistics that we cite
 4 for that group. We selected them, however, on the basis of
 5 probability methods, which means that we have, given the limi-
 6 tations I have just stated, a representative sample of prison-
 7 ers, with the exception of, let us say, those on detention or
 8 those who we were not able to get to for reasons of special
 9 security purposes. But to the best of our knowledge we have
 10 close to a representative sample of prisoners.

11 DR. KING: As I understand it your sample was limited
 12 and you decided to add it on at the end. You have not, however,
 13 done a breakdown of the non-subject population in a way that
 14 would be useful to me if I were to look at a prison and look
 15 at the three populations therein; those who participated in
 16 research, those who worked, and those who did not work at all
 17 and did not participate.

18 DR. TANNENBAUM: Yes, that would be lovely to do if
 19 unfortunately we don't have the number of cases that are re-
 20 quired for an analysis of that kind. It would take more data
 21 so that when we broke them down into these subclassifications
 22 we had substantial numbers in each of the classes.

23 DR. RYAN: Now, to go on, Dr. Louisell, please.

24 DR. LOUISELL: This is along the line of the ques-
 25 tions, I think, of Dr. Cooke and Dr. Jonsen, but perhaps a

1 little bit different. As a result of all of your very precise
2 careful analysis here, have you come to any conclusion of a
3 personal or philosophic nature that you would care to express
4 to us as to how relevant the prisoners' attitudes should be
5 in our overall conclusion?

6 DR. TANNENBAUM: I don't know whether I would say
7 how relevant, but I certainly agree it is relevant. I think
8 that this is what the prisoners are communicating, and they
9 understand that this information is being presented to you.
10 This is the message that they are sending to you through us.
11 I would say it is relevant.

12 DR. RYAN: Stephen Toulmin, please.

13 DR. TOULMIN: Pass.

14 DR. RYAN: Dr. Stellar.

15 DR. STELLAR: The question I want to ask may help
16 shed light on this issue that Pat King raised. I realize that
17 the number of non-subjects were very small and collected late
18 in the game, but wouldn't it be possible now, and I come to
19 this looking at the appendix, to get comparable data that are
20 appendix and related to the question that Ms. King had, from
21 the prisoners as a whole, the total population? For example,
22 you indicate that twelfth grade education is the most frequent
23 education of your subjects. It would mean one thing if the
24 most frequent education of the prison as a whole were third
25 grade, for example, and another thing if the most frequent

1 education of prisoners as a whole were twelfth grade. So it
2 goes for all the rest of the items in the appendix. I think
3 in some respects if we can collect data on the prison population
4 as a whole from which these subjects were drawn, we might be
5 in a better position to use the information for profile-type
6 purposes and also to answer the kind of question that Pat King
7 has raised. I hope we can get that at some point, even in the
8 next couple of days.

9 DR. RYAN: Excuse me. I imagine that some of that
10 data is kept by the prisons themselves.

11 DR. STELLAR: It should be. It would be important
12 to have it for these five prisons.

13 DR. RYAN: I have received something from Maryland
14 prisons which I will enter into the record and have distributed
15 to you that gives you some information on the characteristics
16 of participants in research, and you will have that this af-
17 ternoon, I hope. Mr. Calhoun, please.

18 MR. CALHOUN: I was wondering about background in-
19 formation. Perhaps the question has been answered already.
20 In terms of the investigators, were there differences in terms
21 of whether the investigators were from drug companies, from
22 university medical schools and that sort of thing, and if there
23 were, were you able to find any variations in terms of some of
24 the questions you raised about the nature of the consent form
25 used by these various investigators in terms of perceptible

1 differences between these various types of researchers?

2 DR. TANNENBAUM: We didn't do an analysis of that
3 kind. It could be, but -- it could be done, but the number of
4 cases are relatively small. We are dealing with 41 cases.

5 DR. RYAN: Now, we are heading down toward lunch, so
6 please be brief. Brad Gray?

7 DR. GRAY: I just wanted to mention, in addition, you
8 indicated those data would be presented this afternoon from
9 Maryland. I think they are relevant at this point, and just
10 with regard to one thing. There are some comparisons there
11 of differences between the subject population over a 17-year
12 period and a one in a hundred sample of the prison population,
13 which is, I believe, consistent with the general line of con-
14 clusions that are coming out of the study done by the Michigan
15 people. That is, the differences where they exist in education
16 are that the better educated subjects, the better educated men
17 tend to be subjects rather than non-subjects, from the Jessup
18 data. There are some other data there, too, but that is, I
19 think, relevant at this point.

20 The other thing that I would mention is that I think
21 that since there is an awful lot of material that has come to
22 you in the last month, there are a couple of things along the
23 lines of the information that is presented here that perhaps
24 should be drawn to your attention particularly. One is the paper
25 by Jack Susman, which I think offers a larger, perhaps more

1 theoretical context drawn from the overall sociological lit-
2 erature on prisons for understanding why the findings that we
3 have here are what they are. There is little interpretation
4 here, and I think it will perhaps provide a larger context.

5 The other thing that I would like to mention, and
6 John should do this himself, is the paper by John Irwin which
7 also addresses directly the question that Dr. Louisell was
8 mentioning. That is, to what extent should the views of pri-
9 soners be relevant to the Commission's deliberations.

10 DR. RYAN: The Commission members have received all
11 that information ahead of time, including John's paper, and I
12 guess you have all received the material from Maryland in the
13 mail, so you should be aware of it. Those who haven't, we can
14 get it to you. John, the final word now, and then I want to
15 break for lunch.

16 DR. IRWIN: I want to add something in terms of the
17 last statement. It seems to me that there is a strong indica-
18 tion that a consensus was reached by the subjects in these
19 programs. You remarked that you were startled at first at the
20 consistency of their answers, and I thought that when we visited
21 Jackson that we watched a movement from the morning to the
22 afternoon to a consensus. I thought that we were getting many
23 more criticisms of the program in the morning when we were
24 talking to persons. By afternoon, it was apparent to me that
25 some kind of a group consensus about the program had been

1 reached and a lot of the criticisms had been stifled. I don't
2 want to imply by this that there was any type of coercion and
3 so on, but I think that there was kind of some way it was com-
4 municated between the subjects that this was, in fact, a pro-
5 gram that they wanted to support and to present in front of
6 the Commission as something very, very favorable, and they were
7 very sensitive to the fear that because of the Commission's
8 action, it being stopped. So I am suspicious that some of
9 that did not also come through in the answers to these ques-
10 tions.

11 DR. TANNENBAUM: Should I respond to that very quick-
12 ly? There is no trend that I can discern that indicates peo-
13 ple who are interviewed later in the day are more or less
14 favorable than those who are interviewed earlier in the day,
15 and the consensus that I referred to -- I didn't mean to imply
16 that there was an agreement, implicit or explicit, among per-
17 sons in achieving that. But that consensus exists across pri-
18 sons as well as within prisons. One prison is like another in
19 this respect. I hate to say that if you have seen one you have
20 seen them all. I hope I am not quoted in that way, as having
21 said that, but at any rate, they are consistent in this one
22 respect.

23 DR. RYAN: What I would like to do now is break for
24 lunch and reconvene at a time when people will be here, which
25 I suggest should be 2 o'clock. Is that adequate for people?

1 That gives you approximately an hour and a half. Please
2 be here at 2 o'clock. We will begin then to discuss our
3 recommendations on research.

4 (Thereupon, at 12:40 o'clock p.m. a recess was taken
5 until 2 o'clock p.m. the same day.)
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AFTERNOON SESSION

2:17 P.M.

1
2 DR. RYAN: I wonder if we can reconvene for the
3 afternoon session, and before we begin our deliberations on
4 prison research I want to ask if there are any more comments
5 or questions anyone wanted to direct to Dr. Tannenbaum. He
6 is with us, I think will be here for the next day. I think
7 I might add for the record I perceive that Commission members
8 appreciate very much the information that he has generated
9 thus far, and I think it will be very helpful to us in these
10 deliberations on prison research. We hope to see much more
11 of it.

12 DR. COOKE: Mr. Chairman, is this the time to
13 bring up the question of pursuit of more information about
14 the prisoners who are no longer incarcerated?

15 DR. RYAN: It might be an appropriate time. The
16 only thing, Bob, is that you have two days, if we are going
17 to get into the question of prisoner research and make some
18 decisions. If there is information you feel is so necessary
19 that you cannot make these decisions, I think we ought to try
20 and get that information, but I would be disappointed if we
21 could not go on with our deliberations over the next day and
22 one-half and reach some direction for the Commission on how
23 we are going to come down on prison research.

24 DR. COOKE: I would hazard a guess that it will
25 come out confirming in-house collection of information. On

1 the other hand there are a number of critics. There may well
2 be a number of critics of what we might come up with, and
3 to respond to some of those criticisms more information would
4 be useful. Now, it might also be useful, it seems to me,
5 for the Secretary, if he is going to act on our recommendations
6 that there is additional information so that I would think
7 there might be an advantage, even though it won't influence
8 our own decisions in the next couple of days.

9 DR. RYAN: Good, please proceed. What are your
10 recommendations?

11 DR. COOKE: Oh, then I would like to recommend
12 the development of a contract be pursued with the same group
13 to look at a small but hopefully representative sample of
14 prisoners who were used in research and possibly non-prisoners.
15 I think that is probably less critical. I mean non-research
16 subject prisoners who have been released from prison and to
17 compare the results on the instruments used, compare the
18 in-prison group with the out-of-prison group. So, I would
19 like to put that in the form of a motion to make it possible
20 for discussion.

21 DR. RYAN: It is my understanding that you want to
22 have interviews of prisoners after they are released who have
23 either been research subjects or not research subjects and
24 to compare that to the kind of information which is obtained
25 while they are in prison.

1 DR. SELDIN: Could I add another point just to
 2 lay it on the table? Pat King mentioned something this morning
 3 which I think is fairly important to strengthen some of the
 4 data we have. It has to do with an examination of the non-
 5 research subject group in parallel fashion with the research
 6 subject group so far as various characteristics go, their
 7 education, just paralleling the thing. I think it would be
 8 of enormous value if the five prisons which were explored
 9 for their characteristics of the research subject be also
 10 explored overall, for the distribution of the same qualities
 11 in the prison population as a whole, just as she indicated,
 12 and I think that would be a very powerful --

13 DR. RYAN: I don't want to confuse the issue
 14 because --

15 MS. KING: I want to ask a point of information.
 16 I thought that what I was asking this morning might be
 17 covered under the current contract. Am I correct?
 18 It is not? That is what I wanted to know. So, this, too,
 19 would involve just the demographic information for the
 20 prisons and would involve an add on to the contract along with
 21 Bob's?

22 MR. YESLEY: If they went back and tried to get that
 23 information with those they have already talked to that
 24 conceivably is within the contract.

25 MS. KING: That is what I asked this morning.

1 MR. YESLEY: What Dr. Cooke is referring to is --

2 DR. RYAN: Excuse me. That is what I have been
 3 trying to do. I appreciate what Don has just asked for
 4 in relationship to Pat's request, but what Dr. Cooke has
 5 asked for is entirely different. It might or might not be
 6 handled by the same contractor and so on. We don't know.
 7 So, I think if we could keep the issues clear what Bob wanted
 8 to respond to was the question of whether or not when you
 9 talk to subjects in prison, whether you are getting the
 10 same answer as you would if they were outside of prison.

11 MS. KING: A further point of clarification.

12 From that I may assume that the additional request for
 13 information made this morning the information then will be
 14 obtained or do I have to put that in the form of a motion?
 15 So, tell me how to proceed to telling Bob how to proceed?

16 DR. RYAN: Let us just finish with Bob first, and
 17 then we will go next to the question that you have.
 18 Charles Lowe?

19 DR. LOWE: I just wanted to ask whether he would
 20 remove the stipulation from his motion that it be the same
 21 contractor?

22 DR. COOKE: Sure.

23 DR. RYAN: Does everyone understand what Dr. Cooke
 24 wants now? It is to try to interview people after they have
 25 been released from prison.

1 MS. KING: May I ask him to clarify his motion?
 2 Do you mean to include by that, Bob, people who are now
 3 outside of prison but who may be participating in biomedical
 4 research as ex-prisoners or did you want a completely
 5 separate class? I don't understand what you meant. You
 6 want people outside prisons?

7 DR. COOKE: I think that it would be probably
 8 or might be a biased sample. It might be a biased sample if
 9 you went to individuals who are now out of prison, who were
 10 prisoners and who are now in research as subjects similar
 11 to the Arnold group. So, I would rather have them come from
 12 the same prisons who are not in biomedical research and so
 13 forth and see what their responses are.

14 DR. RYAN: Eliot Stellar?

15 DR. STELLAR: Do you mean subjects who were ex-subjects?

16 DR. COOKE: Ex-subjects.

17 DR. RYAN: Stephen Toumin?

18 DR. TOULMIN: I think it is clear what the question
 19 is to which Bob wants an answer. I, therefore, hope he can
 20 frame his motion in such a way that the contractor, whoever
 21 he is, is allowed to make suggestions about which classes
 22 of people it would be most appropriate to interview and
 23 what questions it would be most appropriate to ask them.
 24 I mean, it seems to me to be silly to spend our time here
 25 arguing about which exact group we want to define as being

1 the recipients of these questions, because clearly there are
 2 a lot of questions that will enable us to get the grounds for
 3 making a comparison between the people we studied up to now
 4 and the answers we got to them and other people who would
 5 form useful objects of comparison in order to see what weight
 6 we should put on the answers we have to date. I think this
 7 is what is wanted.

8 DR. RYAN: I think that the length of time that
 9 such a thing might take, its feasibility will have to be
 10 explored, clearly. This is not a ready group of available
 11 subjects waiting somewhere, and so all we need is an
 12 indication from the Commission that they are interested in
 13 that kind of information, realizing that it may not come to
 14 them for several months but that they want the information.
 15 If we have that, then staff will prepare and check out the
 16 feasibility and the other things.

17 Any other comments about just Dr. Cooke's request,
 18 no embellishments, please, or we will get bogged down.

19 DR. COOKE: There is another important by-product
 20 it seems to me. One of the issues in regard to experimentation
 21 on prisoners was the issue of the long-term consequences of
 22 the procedures that were carried out, and one of the things
 23 we would certainly learn about this is how maybe some
 24 mechanisms or the difficulty of follow-up of prisoners who
 25 were in such research, and that might have some significance

1 in terms of future regulations in regard to the conduct of
2 the research, the follow-up mechanisms, et cetera. So, I
3 think there is an additional advantage to going ahead with
4 this.

5 DR. RYAN: Brad, did you have something?

6 DR. GRAY: Just a comment, that an awful lot is
7 known about the problem of following up ex-prisoners. There
8 are a lot of studies that are done that way. We don't have
9 to do a study to learn how hard it is to follow-up ex-prisoners

10 DR. RYAN: Okay. I am not sure that we are going
11 to do a study. What you are going to do is to tell us
12 whether we can do them, whether we can issue a contract and
13 get it done. That is what we want. Okay, do you think it
14 is very difficult?

15 DR. GRAY: If you would like some reactions, I
16 think it is very difficult. I think that we will have to
17 start with an RFP. We will have to go through OMB with a
18 questionnaire and the whole thing. It will be months. You
19 are right about that.

20 DR. RYAN: Do I have a second for Dr. Cooke's motion?

21 (The motion was duly seconded.)

22 DR. RYAN: Okay, the first thing you will get
23 back is the staff work to react to. Other discussion?

24 If not, all those in favor?

25 (There was a chorus of ayes.)

1 DR. RYAN: Is there anyone opposed?

2 Now, the next question is with respect specifically
3 to Dr. Tannenbaum's study, and that is whether we can get
4 better demographic information on the total prison
5 populations and on not only the research subjects but
6 individuals in prison who are not research subjects.

7 MS. KING: Ken, I assume, and I am just asking
8 a point of clarification, that whatever I said this morning
9 was sufficient to take care of it. If that is not so, I will
10 put it in the form of a motion so that you can tell me how
11 to proceed.

12 DR. STELLAR: Could I make one point? I asked
13 Dr. Tannenbaum and Brad about this during the lunch period,
14 and they seemed to think they could pursue this question.
15 Is that correct, Brad?

16 DR. GRAY: We can pursue it. There are two
17 problems. I am not sure whether we are talking about
18 restricting ourselves to what is in the prison records in
19 those prisons or whether we are talking about going back and
20 interviewing a random sample of prisoners in order to get
21 the --

22 MS. KING: Mine was purely the kind of information
23 that was raised this morning that had to do with formal
24 education level. It had to do with what kinds of jobs
25 people held, how long they worked, who did not work, basic

1 information. You started on the subjects and a little bit
 2 on the 45 groups. I asked for a split-out of three groups
 3 with that kind of information, and I also asked for overall
 4 racial composition, broken down by prisons if that was not
 5 going to get to be a confidentiality problem in terms of
 6 racial composition.

7 I thought it was a fairly simple request. I did
 8 not think I had to make an additional motion, but I will if
 9 I have to. I just wanted to know whether it would be taken
 10 care of by that request this morning.

11 DR. GRAY: My impression is that it is not a simple
 12 one to me, and perhaps Dr. Tannenbaum should comment on that.

13 DR. RYAN: Dr. Tannenbaum, could you respond
 14 please?

15 DR. TANNENBAUM: I was sitting back here and did
 16 not catch all of the conversation, but I will try to address
 17 myself to the question that I think you are talking about
 18 and that is whether it is feasible to obtain data that
 19 describes the demographic characteristics of non-subjects
 20 that we can compare those non-subjects with the present
 21 sample of subjects.

22 We have, as you know, data from 45 such non-subjects
 23 It is a limited set of data, and we have demographic, some
 24 demographic information about them. We can, therefore,
 25 provide information and give some comparison, but it is a

1 relatively weak one. To get the information that is, say,
 2 more definitive or more solid, we would either have to
 3 interview a larger number in several additional prisons or
 4 we would have to get records from the prisons themselves.
 5 That would represent additional work which we have not
 6 planned and did not anticipate as part of our arrangement
 7 with you.

8 DR. COOKE: Dr. Tannenbaum, if you wrote a letter
 9 to the prison and said, "Would you please tell us about
 10 your overall population in regard to the following, the
 11 amount of education level, the race distribution, and so
 12 forth?" I would hazard a guess that we could get that
 13 information very easily.

14 DR. TANNENBAUM: Good. I think if the data are
 15 available it seems to me likely that we would get them, in
 16 other words that the prison officials would make them
 17 available to us, especially if we could ask them in the
 18 context of the request from you, that this is important in
 19 terms of your deliberations, and I feel reasonably confident
 20 that they would provide it, if it is available.

21 My understanding of the way records are kept, not
 22 in prisons particularly, but generally in organizations, that
 23 sometimes they are not in an order, in a condition that
 24 lends themselves to requests such as this, but we can try
 25 that, and I have no objection to doing that.

1 DR. RYAN: Okay. Then I would ask, does this
2 meet your needs?

3 MS. KING: I guess I had better make it in the
4 form of a motion. I move that Dr. Tannenbaum -- I had
5 better change that. I had better say that Dr. Tannenbaum,
6 in conjunction with our staff, as far as feasible, within
7 the contract, seek to obtain for us additional demographic
8 information with respect to the five prisons studied. I am
9 not asking that they go outside the five prisons, with
10 respect to the five prisons studied. I have in mind racial
11 composition data which should be fairly easy to obtain in a
12 form broken down consistent with the confidentiality
13 provisions.

14 I, also, have in mind information of the type
15 already developed in the current report about the
16 characteristics of the subjects with respect to things like
17 formal education, jobs, background, et cetera, with respect
18 to the prison population to the extent that it is feasible
19 to obtain such information, and if it is not feasible, I
20 would like to have a report back to the Commission at the
21 next monthly meeting of the Commission telling us what it
22 was possible to do and what was not possible to have done.
23 It is a complicated motion.

24 DR. STELLAR: I second that and add one thing to it,
25 that is that we make sure, insofar as possible that we get

1 information of the sort that Pat asked for on the items
2 included in the appendices. If we are to interpret those
3 I think it would be very helpful.

4 DR. RYAN: Thank you. Is there further discussion
5 of this now? Dr. Jonsen?

6 DR. SELDIN: I just have one suggestion. Why
7 can't we have a contingency motion that in the event it
8 cannot be obtained for some reason under the present
9 contract that the staff look at other ways of doing it?

10 DR. RYAN: I think one of the questions the
11 Commission is going to have to decide today and tomorrow
12 is whether or not you are going to make a decision on the
13 prison issue and how much additional information you want.
14 I think that we cannot keep generating information we are
15 not going to use.

16 DR. SELDIN: I think this sort of information would
17 be valuable even if we don't use it specifically here, because
18 it is parallel and in conjunction with the information we
19 have on subjects.

20 DR. RYAN: That is what I want you to say.

21 DR. SELDIN: I am saying it.

22 DR. JONSEN: I suggest that there might be a problem
23 with defining the class of non-subjects, that is non-subject
24 and subject are not parallels. A class of subjects is
25 identified because they have made a decision to participate.

1 A class of non-subjects is people who have either refused
 2 or who have not yet made the decision, and therefore to
 3 investigate the class of non-subjects might leave you looking
 4 at a population many of whom will later on at some other
 5 time become subjects or who may have never considered the
 6 matter, and so we do have a peculiar -- for Bob's sake, I
 7 will use the word "dismorphic," two dismorphic classes.

8 DR. COOKE: No more than anyone else.

9 DR. JONSEN: No, this is very much something else
 10 because I would be very leery about drawing conclusions
 11 about the class of non-subjects in the same way in which I
 12 would draw conclusions from the class of subjects. That
 13 does not apply, however, to any descriptions which one would
 14 want of general prison population.

15 DR. COOKE: I think that the numbers of subjects
 16 are so small in relationship to the total that it really
 17 washes out as far as, you know, it seems to me we ought to
 18 take all the prisoners, use that demographic data and
 19 then draw our conclusions from a comparison of subjects used
 20 in general prison population without worrying about the
 21 non-subjects.

22 DR. RYAN: We will get the report back or the
 23 feasibility back within a month, if you vote on it. Is there
 24 further discussion on this?

25 And I presume Dr. Seldin's suggestion that if it is,

1 not feasible some alternate means of getting it will be
 2 told.

3 Other discussion?

4 All those in favor of Pat's motion say aye?

5 (There was a chorus of ayes.)

6 DR. RYAN: Anybody opposed?

7 Thank you.

8 Now, I don't know how you want to structure the
 9 rest of the afternoon, but I think we must -- yes?

10 MS. KING: I have a suggestion for the chair or
 11 for the Commission, if they would be so kind. Before we
 12 start in discussion I would like to have somebody explain
 13 to the Commission what it was that you had in mind about
 14 you or Charles or Michael had in mind about what we were
 15 to do because I think it would be helpful to me.

16 I assume that you all had a goal that you wanted
 17 to accomplish, and I think it would be helpful if we could
 18 start that, and you could tell us what you want to come out
 19 of this meeting, and then perhaps we could attempt to
 20 react to that before we started. I would appreciate it.

21 DR. RYAN: I think what we are starting now is
 22 the deliberations aspect of a formal recommendation from
 23 this Commission to the Secretary and to other federal agencies
 24 with respect to prison research. It might be something as
 25 simple as saying, "The Commission recommends that no prison

1 research be conducted" and append all of the information
2 and embellish that with a staff report. It might be that
3 we countenance research, but we must start now in our
4 deliberations to develop the Commission position and report.

5 MS. KING: Was it contemplated that we finish?
6 I am talking about in terms of what your objectives were.
7 I know what you want. You want us to reach a product. My
8 question really goes to the time frame which you have planned
9 for us to hopefully reach whatever product we are going to
10 turn out and a further question so that you can respond to
11 me all at one time.

12 If the original contemplation was this weekend,
13 that we would finish either by Saturday or by Sunday, then
14 what was planned in terms of future staff rewrite, when it
15 would come back to the Commission? Tell us that so that
16 we will know how to structure our own time and thinking.

17 DR. RYAN: I think that really what we hoped to
18 have evolve from this meeting is our general approach to the
19 problem. I don't expect that we are going to have a final
20 report this weekend. I think that the staff has to hear
21 the Commission discussion and then incorporate that and
22 synthesize that into our final report.

23 MS. KING: When was the final report, Michael?
24 When did you contemplate it? We did everything you wanted us
25 to do this weekend. When did you contemplate that you would

1 have a report back to us so that we could take official
2 action? I assume this report is to issue before the
3 Commission's final report is to issue, and I am trying to get
4 a more accurate picture.

5 MR. YESLEY: If we have the bulk of the
6 Commission's deliberations which can be summarized as
7 deliberations or deliberations and conclusions as a portion
8 of the final report and in addition we have votes taken on
9 specific recommendations, then a draft of the report can be
10 circulated prior to the next meeting, and you can take it up
11 one month from now with respect to final language or any
12 changes that you want to make, but we need enough material
13 from which to compose the entire deliberations, plus votes
14 on specific recommendations.

15 DR. RYAN: I would also call to your attention that you have
16 under Tab 1 the staff report on biomedical behavioral
17 research involving prisoners which is a summary. It is a
18 summary composed of some 81 pages. I hope all of you have
19 read it.

20 In the back of it are questions to be resolved
21 by the Commission as the staff saw it, and some recapitulations
22 and general comments. I, also, want to remind you about
23 the committee that the federal penitentiary system used
24 in reaching their decision about prison research.

25 Their report is in here, and that is a synopsis.

1 In point of fact, they all come down, everything we have
 2 heard about revolves around two fundamental issues. One is
 3 that prisons are a bad environment, either for giving
 4 informed consent or getting anything done for people, and
 5 for that reason, things like research where there are
 6 ethical considerations, you can embellish that in any way
 7 you want, but that is one pole of the issue. Are prisons
 8 so coercive that nothing can go on there? The other is that
 9 prisoners have rights. That is the other extreme of this,
 10 and they have constitutional rights, and we should not
 11 abridge them. Therefore, research should be allowed, but in
 12 any case someone would want safeguards. Somewhere between
 13 those two poles we are going to have to come up with
 14 specific recommendations.

15 Karen wanted to be heard.

16 DR. LEBACQZ: Yes, I was in fact going to suggest
 17 that we might structure our discussion by addressing the
 18 specific questions that are listed on page 76 of the staff
 19 report, but I, also, want to ask that we have sometime this
 20 weekend when we can address the remainder of the staff report,
 21 so that if we have questions or comments about some of the
 22 remainder of that we can also get those concerns out on the
 23 board for the staff to be reworking, and I do have several
 24 such comments.

25 So, I would like us to block out some time during

1 the course of the weekend where we do that. We might not
 2 want to do that until after we have done our own deliberations.

3 DR. RYAN: Yes, Pat?

4 MS. KING: I would like to move, and I would make
 5 this in the form of a motion, that the Commission structure
 6 its discussion in two separate categories, that we first
 7 address the issue of prison research or research in prisons
 8 with respect to biomedical research and reach some
 9 conclusions and vote recommendations for biomedical research
 10 and then take up the issue of behavioral research in prisons
 11 and make it -- if I hear a second I will explain why I
 12 suggested that. I am afraid that if we don't do it that way
 13 that the complications that arise in trying to discuss the
 14 two issues at the same time will weaken and slow down the
 15 discussion rather than speeding it up, and if they need to be
 16 put back together after we discuss them separately it seems
 17 to me it is easier to do it that way than to try to discuss
 18 them together.

19 DR. LEBACQZ: I will second that motion.

20 DR. RYAN: Everyone sees it the same way.

21 I mean we have got to discuss them separately because
 22 there may be issues that have to be resolved.

23 MS. KING: Good.

24 DR. RYAN: Now, are there any other comments or
 25 suggestions that people have to make with respect to this?

1 DR. JONSEN: Mr. Chairman?

2 DR. RYAN: Yes.

3 DR. JONSEN: Where is the document from the
4 federal prisons?

5 MS. KING: It is under 7, in book 1.

6 DR. RYAN: Under the newsclips. It is right under
7 the letter from Carlson to Caspermyer. It is dated March 10,
8 Federal Bureau of Prisons.

9 DR. COOKE: Does it say anything that we don't
10 already know?

11 DR. RYAN: In point of fact, I don't mean to be
12 facetious about it or to oversimplify it, but those are the
13 two poles. Prisoners have rights and prisons are coercive.
14 Either you are going to stop prison research or you are
15 going to create conditions under which they are acceptable
16 to you.

17 DR. COOKE: Mr. Chairman, I would like to open it
18 up. I think we have already said this, and that is why I
19 don't quite understand your alternatives. I think the
20 Commission voted. Maybe it was just a straw vote on this
21 proposition that no person or class of persons should
22 categorically be excluded from participation in biomedical
23 research. That was, I thought, what we had agreed on at one
24 time, and that it was under certain sorts of circumstances
25 that it would be permissible to carry out, and we would

1 attempt to define what those circumstances were, but that
2 this by its very nature would say that it is possible for
3 prisoners to participate providing circumstances are such
4 and such.

5 DR. RYAN: That is your understanding, Bob, but
6 I want to hear it from the rest of the Commission.

7 DR. COOKE: I would like to vote that so that it
8 definitely gets us away from a categorical ban.

9 MISS KING: I want to say that the staff statement
10 on page 78, B4, is my understanding of what we arrived at,
11 and that is that although prisoners may not be excluded
12 categorically from research on principle, there may be
13 practical reasons why they would have to be excluded. That
14 is my understanding of it as far as we have gotten. Now,
15 we may very well go as far as Bob is suggesting, but I think
16 that the staff is to be congratulated at this time for being,
17 I think, very accurate in picking up what turned out to be
18 the consensus.

19 DR. RYAN: They always are.

20 Okay, I think that that is the issue that we have
21 to come to grips with, and if we start getting into the
22 kinds of questions that Karen suggested we start with, like
23 the requirements for informed consent, we are leading ourselves
24 down the path which we think under certain circumstances
25 research may be carried out. I would not want to get into a

1 long, elaborate discussion and then find out that most of
2 the Commissioners felt that research should categorically not
3 be carried out in prisons.

4 So, how do we get started.

5 DR. COOKE: There is a motion.

6 DR. JONSEN: What is the motion?

7 DR. COOKE: The motion is that the Commission
8 support the proposition that no person or class of persons,
9 including prisoners should be categorically excluded from
10 participation in biomedical, if we want to separate it off,
11 biomedical research.

12 DR. JONSEN: On principle.

13 DR. LEBACQZ: If you make that on principle, that
14 would make a difference.

15 MS. KING: It sure would. I don't think that is
16 what Bob wants to do.

17 DR. RYAN: Is there a second to that?

18 (The motion was duly seconded.)

19 DR. RYAN: What is the discussion on this?

20 DR. LEBACQZ: Do I understand that the phrase on
21 principle is included in here?

22 DR. COOKE: It is a kind of a principle anyway,
23 but it is okay to put "on principle."

24 DR. LEBACQZ: There is a difference.

25 DR. RYAN: So, what you are saying, in the best of

1 all possible worlds, on principle you might allow this..

2 Okay.

3 No discussion of that?

4 All those in favor of that then?

5 MS. KING: I think we had better have some
6 discussion.

7 DR. LEBACQZ: I have a point for discussion about
8 that. I am troubled by the fact that Bob Turtle is not here,
9 because my recollection of our discussion last time is that
10 Bob was one of those who was moving in the direction of
11 excluding prisoners on principle from participation in research.
12 Now, I, personally, do not object to the motion that is on the
13 floor before us at this time, but I would not want us to
14 come out saying that everyone who is here because we are not
15 raising objections has nothing to say. I am aware that if
16 Bob were here he might.

17 DR. RYAN: It is laudible for you to bring it up,
18 but everyone was asked to be here, Karen.

19 DR. LEBACQZ: I understand that. I just want to
20 remind the Commissioners that some points were raised at our
21 last discussion that I think would have spoken to the other
22 side of that, and they might need to be reminded to think
23 about it.

24 DR. COOKE: I believe on the principal issue
25 Bob Turtle and I were in agreement that, for example, if

1 there was adequate public exposure. if there was research
 2 conducted outside the prisons, et cetera, he, at least,
 3 privately indicated to me that that would be acceptable.
 4 So, I don't think he would oppose the on principle that they
 5 not be categorically excluded, although at one time in his
 6 argument it sounded like that.

7 DR. RYAN: Dr. Jonsen?

8 DR. JONSEN: I think we have got a funny proposal
 9 here. Is anyone here willing to argue strongly against it?
 10 And if so, can they tell us what they would mean by on
 11 principle excluded? What I understand, when I hear someone
 12 say on principle is that there is something about the class
 13 of beings called prisoners that of their very nature
 14 disqualifies them. For example, and I mean this is simply
 15 an example, one person might say of someone who has been
 16 condemned to prison they are unworthy by that very fact of
 17 ever volunteering to do anything good for society and therefore
 18 whoever belongs to the class of condemned criminals is on
 19 principle, on that principle excluded.

20 Now, it seems to me if we are going to make any
 21 sense out of this proposal that is on the floor that we at
 22 least ought to hear somebody argue that case. Is there
 23 anybody willing to argue it?

24 DR. TOULMIN: I don't wish to argue this case. I
 25 just want to underline the point that Al seems to me to be

1 implicitly making. It is quite clear to me that some of the
 2 practical reasons for which they might have to be excluded
 3 which are referred to at the end of Item B4 on page 78, that
 4 some of these practical reasons might include, might raise
 5 methods of principle. So, it is not clear that the
 6 distinction between on principle and in practice is itself
 7 a clear distinction. In fact, I think the reason why the
 8 motion is not attracting any discussion is because there
 9 is / ^{some} interpretation ^{on} / ^{it} which anybody could accept/. It
 10 seems, therefore, to me to be a cloudy motion, and I am not
 11 sure that a vote on it would throw any light on anything.

12 DR. COOKE: I think the advantage in defense of
 13 my motion is that it puts down firmly the fact that a ban
 14 as such would not be acceptable to the Commission, just
 15 because they are prisoners as such, too powerless, et cetera,
 16 and for that reason out.

17 DR. RYAN: Pat, do you want to --

18 MS. KING: I think that what is troubling me
 19 because I think I understand what Al is trying to get to,
 20 and I think I could agree with my own interpretation of what
 21 is meant. It is because the motion is stated in the negative.
 22 We talk about ethical principles, and the way this should be
 23 stated is something that we agreed to last time, that no
 24 human being or category of human beings should be categorically
 25 excluded from research, not to focus on prisoners or anything

1 else. We accept it as an ethical principle that our humanness
 2 or the fact that we are human beings means that we have a
 3 right, and this is at a theoretical level or an entitlement
 4 to participate as any others participate. Now, what limits
 5 we place on that is something else again, and I think my
 6 trouble with the motion is not that I disagree with it. It
 7 is too narrow for me. I would prefer to go back to work from
 8 our basic ethical principle and to start right there which
 9 I have no trouble with doing, and if that is all Bob is
 10 meaning -- what he started to say is not what I mean. I
 11 do mean that from the Belmont discussion that as a matter of
 12 speaking of ethical principles, no category of human being
 13 should be categorically excluded, and that it at a
 14 theoretical level.

15 DR. RYAN: Do you have that quote?

16 MS. KING: No, but you said that it would not
 17 support a ban.

18 DR. RYAN: Please include all of us.

19 MS. KING: Bob is telling me that I am wrong in
 20 saying something. I was trying to say that is not necessarily
 21 what I just stated, consistent with the statement that I would
 22 not support a ban on research in prisons. I cannot, in my
 23 mind, anyway, see being consistent with supporting a ban
 24 but not being in principle opposed or in principle excluding
 25 anybody.

1 (Plug to recorder accidentally pulled.)

2 DR. RYAN: How many hours of recording have you
 3 missed?

4 REPORTER: Maybe three or four seconds.

5 DR. RYAN: Okay. Is it working now?

6 REPORTER: Yes.

7 DR. RYAN: Okay, Dr. Jonsen and then Dr. Brady.

8 DR. JONSEN: I am thinking, also that our
 9 composition is getting compoundedly confused, because the
 10 proposition excluded from research -- what does it mean to
 11 say, "No one has the right to be excluded from research"?
 12 What does it mean to exclude from research?

13 I assume what we are getting at is something like
 14 everyone who is capable of volunteering for research should
 15 be allowed to volunteer or we might mean that anyone is
 16 a potential subject of a researcher's actions whether or not
 17 they volunteer.

18 In other words, it is not at all clear to me what
 19 it means to say that no one should be excluded on principle.

20 DR. RYAN: I want Pat to read from the Belmont
 21 manifesto.

22 MS. KING: I am actually reading from Stephen's
 23 paper, and I think that this will clarify what I was trying
 24 very desperately to say.

25 Page 16, under Tab 4. Participation in biomedical

1 behavioral research as a research subject may, in different
 2 cases be either a benefit or a burden. Insofar as it is a
 3 benefit, particular groups or individuals should not be
 4 systematically excluded from opportunities to participate,
 5 except where the nature of the problem under investigation
 6 specifically requires it. I think he is getting there at
 7 what I am talking about, and that is that the benefits and
 8 burdens and that no one should be excluded systematically
 9 from being able to participate --

10 DR. JONSEN: What that means is no one is to be
 11 excluded a prior right from being a beneficiary.

12 MS. KING: Right, yes.

13 DR. RYAN: Go on. Finish the paragraph, please?

14 MS. KING: Conversely, insofar as participation
 15 is a burden, particular groups or individuals should not be
 16 systematically selected to carry this burden. If anybody
 17 wants to make that a motion, I would be willing to go with it.
 18 That sums up what I was trying to say.

19 DR. RYAN: Sometime this weekend we are going to
 20 have to review the ethical paper and the boundaries paper as
 21 well for a first cut, but we are running into difficulty
 22 with the way Bob has phrased his question.

23 DR. COOKE: Could I try once more? No person or
 24 class of persons should categorically be excluded from being
 25 offered a choice or the opportunity to choose to participate.

1 DR. RYAN: What is wrong with just endorsing what
 2 the ethics committee has already -- it is going to be the
 3 solid basis if it is accepted, and that is what Pat just
 4 wrote and use that as a basis for --

5 MS. KING: I did not write it.

6 DR. RYAN: I am sorry, what Pat just recited to us.
 7 Doesn't that make sense? A lot of thought went into it.
 8 A subcommittee of the Commission and staff did it. Participa-
 9 tion in biomedical behavioral research as a research
 10 subject may in different cases be either a benefit or a
 11 burden. Insofar as it is a benefit, particular groups or
 12 individuals should not be systematically excluded from
 13 opportunities to participate, and except where the nature of
 14 the problem under investigation specifically requires this,
 15 and conversely if it is a burden no one --

16 DR. COOKE: I don't want to put it simply in terms
 17 of whether there is some benefit. That is exactly the point.
 18 I think that every individual ought to have the opportunity
 19 to choose to participate, whether it is to his benefit or not,
 20 providing the circumstances are such and such and such, and
 21 I would like to lay out what those circumstances are.

22 DR. RYAN: Karen?

23 DR. LEBACQZ: I have a comment specifically directed
 24 to that. Bob, I think that the ability to participate, to
 25 make a free choice can itself be considered a benefit. The

1 word benefit here is not intended to mean a benefit deriving
 2 from the research in terms of one's health care or whatever,
 3 but one's freedom of choice is itself considered a benefit.
 4 So what this is saying is that freedom of choice should not
 5 be systematically -- certain groups should not be systematical
 6 excluded from having freedom of choice.

7 DR. RYAN: We have a motion which is --

8 DR. LEBACQZ: Your concern is incorporated here.

9 DR. RYAN: Excuse me. We have a motion on the
 10 floor which is being discussed, but the discussion seems to
 11 suggest that a lot of people have trouble with it, and that
 12 it is not going to be helpful.

13 Don Seldin, do you want to add --

14 DR. SELDIN: I really have less trouble with Bob
 15 Cooke's motion than others have. I think, if I understand
 16 him right, what he is saying is that one should not designate
 17 a class of human beings as systematically excluded from
 18 research on a priori grounds. That argues that such people
 19 as prisoners may or may not be --

20 DR. RYAN: Okay. Excuse me. Is that what you
 21 agree with, that simple statement? Repeat it again?

22 I mean if you go on we are going to lose the thread
 23 of it, and if everyone agrees to that, then we can vote it,
 24 that no one should be systematically excluded on a priori
 25 grounds from research. Is that what you said?

1 DR. SELDIN: No class of individuals --

2 DR. COOKE: Individual or class.

3 DR. SELDIN: No class of individuals. Well, you
 4 see, what you are really saying is that some broad
 5 categorization of people should not systematically be
 6 considered on a priori grounds as reasons for being excluded
 7 from research. Each should be examined empirically, and
 8 it is not a vacuous statement to my mind, because you might
 9 say in the case of prisons, for example, that prisons vary
 10 all the way from a Nazi concentration camp, let us say, to
 11 some enlightened prison, we will say, that might exist
 12 somewhere in the world and that by an empirical scrutiny
 13 one could distinguish this. So, we wouldn't exclude prisoners
 14 or those in prisons. We will make this an empirical
 15 scrutiny, similarly in the case of let us say research on
 16 children or on the fetus as we discussed or on individuals
 17 who are insane. We would argue that under certain
 18 circumstances research on them might be permissible, under
 19 other circumstances not. In short, I think it is a very
 20 important statement in the sense that it is not a vacuous
 21 statement, in the sense that it specifies that there is a
 22 right, so to speak to participate in research which should
 23 be systematically examined and then excluded on empirical
 24 grounds.

25 DR. RYAN: Okay, Michael?

1 MR. YESLEY: I just want to say that I think what
2 you want to make clear is that not excluding on a priori
3 grounds implies under appropriate conditions you can do it.
4 I am not sure that you can make that jump. If you can do it,
5 then Bob's motion does what he wants it to do. The question
6 is whether you can make that jump.

7 DR. RYAN: Well that is, of course, the evolution
8 of our deliberations, I expect, and that is why I want to get
9 this over and get on to more substantive things about
10 prisoners, if we can. If this is the first step, let us
11 take it.

12 DR. TOULMIN: As a professional teacher of
13 philosophy I am highly suspicious of the use of philosophical
14 jargon. I mean I am very distrustful of phrases like in
15 principle, a priori and the rest. It seems to me we have
16 two issues here.

17 On the one hand we have a very general issue which
18 is the issue on which we have already tried to do our best
19 on page 16 in the paragraph that Pat read out. ^{There} / seems to
20 me on the other hand to be another quite distinct issue which
21 is a substantive issue which is being run together with it,
22 and which I would phrase as follows--and I think it is clearly
23 distinct from the general issue-- that the mere fact of being
24 sentenced to a term in prison is not a ground for excluding
25 an individual from the opportunity to participate in research.

1 Now, it is clear that the mere fact of being
2 sentenced to a term in prison is a ground for excluding an
3 individual from taking foreign holidays or for doing a large
4 number of things. I mean the mere fact of being sentenced
5 to a term in prison ipso facto carries with it a lot of
6 exclusions, and the substantive question we are facing here
7 is whether exclusion from the opportunity to participate in
8 research is or is not one of those exclusions to which a
9 man is subjected simply in virtue of being sentenced to a
10 prison term.

11 Now, this is a substantive question in penology,
12 not an a priori ethical assertion. It is one of the questions
13 which is before us. Is this what Bob is wanting us to take
14 a stand on?

15 DR. COOKE: I think I could stand with Don's
16 statement first and your statement second, that is people
17 in general, prisoners in particular.

18 DR. TOULMIN: I mean participating in research
19 is not something like going on a foreign holiday which you
20 should be excluded from simply in virtue of having been
21 sentenced to a term in prison.

22 DR. RYAN: Okay, Pat?

23 MS. KING: I am not a philosopher, but I will try
24 to think of that in one, two, three terms. It seems to me
25 that what Stephen said a few minutes ago is critical not

1 only to this deliberation but to every other and that is
 2 that we take each small step, step by step deliberately so
 3 we don't lose each other. It may seem silly to start with
 4 this basic ethical principle, but we have got to start here
 5 and understand what it is that we are saying before we can
 6 then get to the way Stephen phrased the next problem which
 7 we may not be able to agree on right now, and I don't like
 8 Don's phraseology a priori. First of all, this paragraph
 9 I have been studying is a gem. It dealt with the specific
 10 problem.

11 I am very serious. If you look at this, except
 12 for the nature of the problem under investigation specifically
 13 requires this. Nowhere in the motions that I have heard on
 14 the floor has that problem been addressed because we are
 15 so still up in the clouds we had not thought about it, but
 16 it is has been thought about in this particular paragraph.
 17 I don't understand what the a priori language does that this
 18 paragraph does not, and I also cannot understand quite
 19 frankly why we cannot just say on the prison report we
 20 reaffirm the ethical principles. We will now vote on that,
 21 and we will proceed to the next question. Are we willing to
 22 ban research in prisons on the fact that a person has received
 23 a jail sentence.

24 DR. BRADY: If you leave off the first phrase of that
 25 sentence you have met Bob's concern about it, too.

1 DR. COOKE: Yes, that benefit one --

2 DR. BRADY: If you leave off the "insofar as it
 3 is a benefit." That is not necessary. You would start with
 4 particular groups or individuals should not be systematically
 5 excluded from opportunity to participate. Why is the first
 6 part necessary?

7 MS. KING: Because I, also, like the last sentence.
 8 I think that says something very important, too.

9 DR. RYAN: Excuse me, Pat. He did not exclude the
 10 last phrase which was except where the nature of the problem
 11 of the investigation specifically requires --

12 DR. BRADY: I was thinking about the next
 13 sentence, too, that she wants in there. Conversely, insofar
 14 as participation is a burden, particular groups or individuals
 15 should not be systematically selected. That I think we can
 16 get in there, too, without mentioning the risks and benefits
 17 and burdens. You don't have to mention benefits or burdens
 18 at all. Groups should not be systematically excluded nor
 19 systematically required to carry --

20 DR. COOKE: That might be a useful addition if we
 21 are going to talk about concordance.

22 DR. RYAN: David Louisell, please?

23 DR. LOUISELL: I really think we are wasting time
 24 on a sheer procedural matter and just delaying the inevitable
 25 hard grappling with the substance of this problem. I think

1 in any event, Bob, what you say is a little premature, your
2 proposition at this time. There are certain questions of
3 information that I want to ask about, and if you make it as
4 general as one interpretation of your proposal would have it,
5 everybody shall have his rights. If that is all it means,
6 then it is so self-evident that it does not really need a
7 formal preparation.

8 DR. COOKE: Yes, but what I am trying to do is to
9 set up a situation where we can begin to list the conditions
10 under which it would be appropriate, providing, for example,
11 true vulnerableness does exist, providing there is -- I
12 hate to bring it up, but concordance, that is that there are
13 non-prisoners who are participating, providing there is an
14 opportunity for this, providing -- and it is these provisions
15 that I think we can come to grips with.

16 DR. RYAN: Excuse me. If that is what you are
17 getting at, why don't we find out from the Commission whether
18 we want to get involved in that kind of an exercise. I mean
19 really the question is, are you going to stop prison research
20 or are you going to allow it to occur under conditions in
21 which you feel prisoner rights can be safeguarded.

22 If the latter is worth the Commission's time, then
23 let us get busy trying to decide whether or not we can
24 create an environment where we would make a recommendation
25 to the Secretary that he can ethically support and conduct

1 research, and I, personally, would suggest that the
2 Commission try that. Everything I have heard about research,
3 up until now, suggests that except for some very bad
4 experiences 20 years ago and 15 years ago, and I am sure they
5 still exist, I have not seen very many bad things going on in
6 biomedical research. It has been indicated it is Phase I
7 testing. The risk is small. We have papers with respect
8 to the risk.

9 We all know that prison life is coercive, and we
10 know that there are many things that are going on in prisons
11 that are a heck of a lot worse than their being allowed to
12 volunteer for research, that probably should take precedence
13 in society's concern even, but we have to deal with the
14 research.

15 So given that, and given that everyone around
16 this table feels that prisoners have rights, they are going
17 to have to decide whether this is one they should be able to
18 exercise, I would say that we could most profitably spend our
19 time, if we are of a mind about this trying to come up with
20 an accreditation process and make specific recommendations.
21 Even if it stops prison research because no prison can meet
22 those recommendations, I would sooner go that way than to be
23 completely negative. That is my position.

24 Now, if you agree with that, could we translate
25 that into a way of dialogue among ourselves so that we can

1 put it into form? That is where I need help.

2 DR. STELLAR: I think Bob has got the answer, the
3 important answer to his question, and there is nobody on
4 the Commission present in the room who is willing to say that
5 we should agree to exclude prisoners from participation in
6 research.

7 MS. KING: No, that is not what you have. There
8 is one Commissioner, and I think we want to make this very
9 clear. There is at least one Commissioner in the room who
10 has got to hear all the conditions before she can reach a
11 decision about whether I would ask for a ban, and that is a
12 little bit different than asking me to vote on Bob's motion
13 now.

14 DR. RYAN: But I want to know if you want to hear
15 those conditions?

16 MS. KING: Absolutely. My decision depends upon
17 what kind of conditions we develop.

18 DR. RYAN: All right. Karen, please?

19 DR. LEBACQZ: I appreciate Bob's desire to begin
20 with a very general statement about all human subjects and
21 move from there into talking about prison research, but I
22 think what has happened, Bob, is that you have got us hung
23 up on particular matters of terminology and language that
24 are obfuscating rather than helping us at this point, and I
25 would like to ask you if you would be willing to think about

1 withdrawing your motion at this time with the understanding
2 that we might want to bring it back before us again later
3 so that we could begin the kind of discussion that Ken is
4 suggesting that we do. I think you will have an easier time
5 of it later after we have talked about some of the other
6 things, and if you don't withdraw it, then I am going to
7 propose a substitute motion.

8 DR. RYAN: Will the seconder withdraw the motion,
9 whoever seconded it?

10 (The seconder withdrew the motion.)

11 DR. RYAN: Okay.

12 DR. SELDIN: Now, what about Stephen's proposal
13 specifically in connection with prison research? In other
14 words, does the sentence of an individual to imprisonment
15 necessarily entail --

16 DR. RYAN: We don't have to beat that to death,
17 Don. The fact of the matter is it doesn't. We all know it
18 doesn't, except in the very real world when we test it.
19 It does not in principle, but what we have got to get on with
20 is whether we can test it. Can we, in the real world, set
21 up conditions which we would want to see met? Can we
22 satisfy ourselves that those conditions would allow
23 accreditation to take place and that surveillance would, in
24 fact, go on and that rights would be protected and that the
25 public interest would be served?

1 DR. SELDIN: I don't mind that, but there are people
2 who do think that in principle, with all due respect, one
3 should ban prison research on grounds that imprisonment
4 by its very nature precludes reasonable research. That is
5 what they do in European countries. I don't think that the
6 point that is being made is vacuous.

7 DR. RYAN: I know, but we were not having a good
8 dialogue, and we were not making progress.

9 DR. SELDIN: Okay. I know, but this is a much
10 more narrow and discrete thing than the more general form
11 that Bob phrased here.

12 DR. RYAN: Dr. Jonsen?

13 DR. JONSEN: I will make a motion to get things
14 started which I will withdraw immediately if it seems too
15 clumsy. My motion is that the Commission recommends to the
16 Secretary that no prison research be supported and that the
17 reasons for that are all of the reasons listed on page 78
18 and 79. I put the question that way --

19 DR. RYAN: Under paragraph B.

20 DR. JONSEN: Under paragraph B, with the intent that
21 each of those questions be addressed and if we find any of
22 the reasons or all of the reasons convincing we support the
23 recommendation, either reasons singularly or cumulatively.

24 DR. RYAN: I don't think that we need a motion for
25 that, but I think it might be worthwhile to go down and look

1 at each of these arguments against participation of prisoners
2 in research and to see whether or not they are absolute
3 prohibitions or whether they can be --

4 DR. BRADY: That is what I call the null hypothesis.

5 DR. COOKE: I think it is a bad form because to me
6 it plays into what we heard this morning when the term
7 "guinea pig" was used. I believe that there is something
8 good about research and noble about research and to put it in
9 terms that seem to me negative is -- I know what you are
10 doing, but nevertheless I think the impact is wrong. I
11 think we ought to be talking about allowing things providing
12 rather prohibiting unless.

13 DR. RYAN: If you turn the page you could take
14 Dr. Jonsen's effort and turn it around the other way and
15 say that they should be allowed because of these arguments
16 but because the fact that prisons are not as good as they
17 should be, the accreditation, that is page 79 and 80 and it
18 covers all of the input that we have had which the
19 Commission could, in fact, embellish if it wanted to, including
20 the conditions for accreditation.

21 Yes, Karen?

22 DR. LEBACQZ: I have an alternative procedural
23 suggestion to Al's, and it would be that we begin by focusing
24 the first question on page 76, whether the requirements are
25 in a form of consent and very specifically that we begin by

1 looking at the requirements for informed consent as they
 2 were laid out for us in the paper by Cornell West where there
 3 are, I think, three principles elaborated, each one of which
 4 has been addressed in one form or another by many of the
 5 other essays that were submitted to the Commission, and it is
 6 possible that in looking at these principles to see whether
 7 indeed they are what is necessary for informed consent and
 8 then whether the prison context is a context in which
 9 each of these principles can be met that we might then be in
 10 a position to say what would be necessary in order for
 11 research to be done in prison and whether indeed we think
 12 under the present circumstances those conditions can be met.
 13 That is a somewhat more narrow approach.

14 DR. RYAN: I would be willing to let you start
 15 down that line, Karen, if you want to lead the way.

16 DR. LEBACQZ: There may be other Commissioners
 17 who don't want to proceed in that fashion.

18 DR. RYAN: I think that we have got to stop that
 19 game. I mean, please start. I don't think that informed
 20 consent is the only issue, but I think informed consent is
 21 one, and it is of great essential focus. Why don't you
 22 start there, since you have those things in front of you
 23 and see how far it gets us, please?

24 DR. LEBACQZ: Okay. I will begin with this because
 25 I found this paper quite compelling in some respects, although

1 I think I have some disagreement with it at other points.
 2 As I understand the argument that is made by Cornell West,
 3 it is that we accept as basic premises of our society freedom,
 4 equality and rationality. I think that that is fairly
 5 closely linked with what, indeed, the subgroup on ethical
 6 principles came up with at our last meeting.

7 If freedom, equality and rationality are important
 8 premises for us, then Mr. West proposes that we should look
 9 for those principles which would be chosen by free rational
 10 persons under conditions of equality and fairness, and
 11 specifically he proposes that there would be three such
 12 principles. Let me see if I can get the exact wording on
 13 this. The first one, in essence, requires that someone be
 14 fully informed of what would be involved in research. The
 15 second one requires that a person openly consent, and the
 16 third one requires that an individual make the decision on
 17 rational grounds under conditions of equality and fairness.

18 Those of you who have had a chance to read this
 19 essay will recall that Mr. West himself argues that prisoners
 20 can be fully informed and can openly consent, and he deals
 21 at length with the issue of coercion which has hung up our
 22 conversation at numerous points. I think we might do well
 23 to take a look at his argument at that point, but he argues
 24 that because of the nature of the prison setting at this
 25 point in time that prisoners are not able to decide on rational

1 grounds under conditions of equality and fairness and
 2 therefore I assume would support a position that would allow
 3 that research might be able to be done in prisons under some
 4 circumstances but not under the present circumstances because
 5 of the conditions of inequality and unfairness that exist
 6 there at this time.

7 That seems to me to be a position that is very
 8 similar to what many of us were trying to argue when we last
 9 talked about this. Could we begin by looking at these
 10 questions? We would be in a position to concretize the
 11 discussion.

12 DR. RYAN: The things that don't exist are fairness
 13 and equality, and the question is can they ever be achieved
 14 and must they be achieved and to what extent.

15 DR. LEBACQZ: I think from my perspective there
 16 are two very significant questions that have to be addressed
 17 here. One is the question of whether indeed prisoners can
 18 give consent, and I have argued previously that that is not
 19 to my way of thinking the critical question here. I think
 20 this essay is in some support of my stand on that. He argues
 21 that indeed the conditions in a prison setting cannot be
 22 considered coercive in the loose sense in which we have
 23 heard the argument about coerciveness but rather that the
 24 conditions that have troubled us so much, the scale of payment,
 25 the better living conditions and whatnot, that these issues

1 really are matters that make the research setting a condition
 2 of bribery, not of coercion, that is one is being induced in
 3 order to get benefits or advantages. One is not being
 4 threatened with having one's life situation made worse, and
 5 coercion deals with threats and with a worsening of one's
 6 life conditions. Bribery deals with inducements and the
 7 bettering of one's life conditions.

8 If, indeed, then the setting is not coercive, he
 9 argues, consent can be freely give, What becomes critical
 10 then is what are the grounds on which one consents? Are they
 11 rational and is consent being given in a freedom of equality
 12 and fairness, and I think that he, as well as John Irwin,
 13 from what I understand of his essay and several others,
 14 would argue that the conditions are such that prisoners are
 15 not on grounds of equality and fairness with those with whom
 16 they deal in the prison setting, and therefore the grounds
 17 for giving consent are underlined, but the consent itself
 18 is not coerced in the strict sense of that word.

19 If we could come to some agreement on some kind of
 20 issue like that, I think that would be very helpful for us.

21 DR. RYAN: I think that is the first step, Karen.
 22 Thank you. Does anyone have any response to that? I did
 23 read West's report, and I agree with it. I think that it is, if
 24 you are going to allow research in prisons the first step
 25 along the way.

1 DR. LOUISELL: It may involve an oversimplistic
 2 rationalization of coercion in respect to bribery. Take,
 3 for example, the person charged with a crime. We all
 4 immediately acknowledge as self-evident that he is being
 5 coerced into a confession if he is beaten. However, if he
 6 is bribed by being told that he will get a lighter sentence
 7 if he will immediately confess, that is equally regarded
 8 as coercion, even though superficially it would appear under
 9 this distinction to be mere bribery.

10 DR. RYAN: I think he was trying to make a value
 11 judgment using those two words as a degree of evil, perhaps
 12 and not necessarily saying that bribery either for aircraft
 13 companies or in prisons was acceptable. I think that in point
 14 of fact what we have to decide, if we are going to take the
 15 line that under certain circumstances research in this
 16 setting is permissible, it is possible, what we are going to
 17 have to decide is how to get the equality, how to get the
 18 fairness, how to get the bribery portion into a very onerous
 19 situation for the mother who promises favors for her child
 20 if he does something good. We consider that bribery, but
 21 it is a socially valued bribery if you will or may be.

22 That is why I think it is so important to look at
 23 the accreditation concept. If you, in fact, reduce research,
 24 biomedical research, to only one of many opportunities for
 25 prisoners to occupy their time and to do gainful things while

1 they are in prison, if it is only one of many, and they can
 2 make a free choice among those, and it is felt desirable for
 3 them to be gainfully occupied, then you are in an entirely
 4 different context.

5 When the research because of the money pay or
 6 because of the onerous nature of all the other opportunities
 7 afforded to prisoners is made to be the only one, and so in
 8 that sense that bribery is considered more evil than the
 9 bribery of offering money for a whole range of things so that
 10 people will be able to better their conditions.

11 DR. LOUISELL: I think that is very true, and my
 12 major point is that we don't discount unduly the notion
 13 of bribery as being an element of coercion. Take, for
 14 example, what we saw at Jackson, those extremely attractive
 15 clinics in contrast to the harsh prison environment otherwise,
 16 the fact they then get the hope of reasonable medical service
 17 for their personal needs by having that kind of affiliation.
 18 That would loosely be called, I suppose, bribery, but it
 19 becomes a serious factor on the question of whether they are
 20 really being coerced by the environment into the submission
 21 to the research.

22 DR. RYAN: Dr. Seldin is quite anxious to --

23 DR. SELDIN: Well, I am not that anxious.

24 DR. RYAN: Someone else?

25 DR. SELDIN: But I do want to endorse your motion

1 that we might consider starting from the point of view of
2 accreditation. What is disconcerting about the prison is its
3 setting.

4 Now, research is always done in special settings.
5 Hospitals are a special setting, and often have a coercive
6 element in some subtle sense to it. So, is the doctor's
7 office, as has been pointed out, a kind of coercive setting,
8 and a prison might be more so, a coercive setting. Don't
9 misunderstand. I am not minimizing the setting. I merely
10 want to emphasize that there is nothing unique about the
11 setting imparting a certain element of coercion, of putting
12 a boundary on freedom in some metaphysical sense of the
13 term onto the business.

14 Now, what we have to satisfy ourselves before we
15 go into the matter, I think, of informed consent is can we
16 somehow assure ourselves that the setting of the prison under
17 certain circumstances can be reasonable enough so that other
18 things, such as coercion, informed consent can be meaningfully
19 given quite irrespective of whether the prisoner conceives
20 it so. Now, if we can satisfy ourselves that accreditation
21 to a prison no less than to a hospital or to a doctor's
22 office can be described in some way which gives us confidence
23 that it is hollow, that we really do have protective safeguards
24 that these safeguards are not transgressed, we can then look
25 to those criteria which would allow us to say that this

1 prisoner within a wholesome setting, wholesome from the
2 point of view of research, let us say, can give informed
3 consent and it not coerced. So, I would like to suggest
4 more or less in line with your proposal that we consider
5 whether we can specify criteria for accreditation. They are
6 listed, and maybe we can elaborate however we wish, and
7 then if we satisfy ourselves we can look at the problem that
8 Karen raises of informed consent and coercion, bribery and
9 the like.

10 DR. RYAN: I really think that it would be
11 profitable if the Commission members are agreed, to get
12 the staff working and get ourselves working thinking about
13 the conditions under which this might occur to set those
14 conditions down and then ask the question now, are you going
15 to allow research. For example, committees composed of
16 prisoners, composed of outside groups that are sponsors of
17 prisoners, ACLU, if you will, or any other group and the
18 requirement that the government makes that there be set
19 inspections that there in fact be monthly meetings with
20 minutes being kept and so on and so forth. I think this
21 may create conditions in which research -- we would consider
22 research could go on, and I suspect, also, it might, in fact,
23 improve prisons in a way that people have not been able to
24 get them to improve otherwise, and if that is a secondary
25 gain so be it, but I thought that John Irwin changed his mind

1 so to speak or I should not say that. I think that what I
2 read from his report was more or less a change of emphasis,
3 and he came out with recommendations I thought in that report
4 that were a little different than I perceived him telling us
5 when he first came with us. Is that true, John?

6 DR. IRWIN: Somewhat, somewhat. I got caught in a
7 trap where I had to abandon a certain set of values because
8 of feeling that I had to speak as an advocate for certain
9 groups of prisoners. I was finally able to solve this
10 conflict in the manner which psychologists call cognitive
11 dissonance or they finally bring their old values together
12 with new values and so on, and I now think that I am a firm
13 believer in my present stand.

14 DR. RYAN: I would commend to the Commission members
15 to read his report because it helped me.

16 DR. IRWIN: Just in closing, the strong part of
17 this new posture, the one that you just mentioned, Dr. Ryan,
18 is in fact a chance here of not only making behavioral
19 research in prisons or biomedical research in prisons
20 acceptable but also having a general ability to impact on the
21 prison setting. I think the Commission would be remiss if
22 they set the standards so idealistic that we, in fact,
23 precipitated total abandonment of the stuff and then you
24 walk away from the prison. You say, "Prisons are too
25 horrible because therefore we cannot allow drug research."

1 Then you just walk away. They stay horrible. It seems to me
2 that you should take a second set of conditions which may be
3 perhaps less than perfect but which have a chance of being
4 accepted which then go on and start the motion for improving
5 the prison situation, and there are definitely changes.

6 Prisons are variable and changeable, and you can have an
7 impact on them.

8 DR. BRADY: It is called doing well by doing good.

9 DR. JONSEN: Mr. Chairman, my impression of the
10 papers that we have received and of much of the testimony
11 is that the strongest trend is toward the moratorium
12 suggestion. I have not analyzed everything in great detail,
13 but that is the way it seems to me, that there are relatively
14 few people who have said absolutely no, and nobody to my
15 knowledge said absolutely yes, but there is a range of
16 critics that seems to come down on the moratorium side.
17 If that is the case, I guess there are two ways of conceiving
18 of a moratorium. One is simply to gain information about
19 what is going on, and the other is to attempt in the period
20 of a moratorium something constructive whereby some realistic
21 tests for the activity under scrutiny can be devised. I
22 just wonder if we might think in terms of a moratorium
23 which is a constructive moratorium and set up a device whereby
24 a number of questions that we might ask could be put to a
25 task force of some sort that would work in some area to see

1 whether it is, in fact, possible for prisons to live up to
2 our criteria.

3 DR. BRADY: I would be against that. I think we
4 ought to specify what the conditions are and then determine
5 whether there is anyone who meets the conditions. If there
6 are not, then I think we talk about a moratorium.

7 DR. JONSEN: That is not what I mean, Joe.

8 DR. BRADY: I am not convinced that it is necessary
9 to call a moratorium in all cases under all conditions.

10 DR. RYAN: Pat King and Eliot?

11 MS. KING: I find myself a little bit opposed, not
12 completely to what Joe just said, but somewhat. I don't
13 think any of us are penologists, criminologists or have had
14 any vast experience with prisons or jails or anything else,
15 and the best that we could do would be to deal with a general
16 set of criteria that we consider standards that should be
17 met in order to allow research to go on within a prison.
18 If we attempt to go beyond that, and maybe this is not what
19 you were saying, Joe, if we attempt to go beyond that, I
20 think that we are way over our heads, because we just don't
21 know what we are talking about and that there is something
22 to what Al says in that some of the general standards may not
23 be enough and it may take a group of people who have far more
24 expertise than we do to come up with some more specialized
25 standards on this general base which may have to be trial

1 tested or it may have to be put into implementation, but I,
2 for one, have lots of problems based upon the visit to one
3 prison which has been called the best maximum security
4 prison in the country and the worst, depending upon who you
5 are talking to and one visit to Marquette and come out and
6 think that I am such an expert that I can now start setting
7 out more than general kinds of standards that I think have
8 come to me over a period of time in terms of accrediting the
9 prison, and I am kind of opposed to getting into real
10 specifics.

11 DR. RYAN: Pat, I would submit to you that some
12 of the people who are writing laws on this have never gone
13 and talked to prisoners according to the prisoners themselves.

14 MS. KING: That does not say that I have to
15 duplicate their mistakes.

16 DR. RYAN: I know.

17 DR. BRADY: By voting the moratorium you are
18 presuming just the expertise which you said you did not have.

19 DR. RYAN: Excuse me. We don't have to do one or
20 the other. I think that the thing is that we are coming
21 down on the concept that we might try and see whether
22 conditions could be drawn, that we could then, as Al agreed
23 to, was not different from his opinion to see whether any
24 extant programs, and we could make this a requirement of the
25 Secretary, to see whether any of the programs met those

1 standards. If not, research could not go on until they
2 did, but I think we have to start somewhere with respect to
3 that.

4 DR. STELLAR: I would like to see us take this
5 more positive approach, holding the moratorium idea in
6 abeyance if the standards are not met, but at the same time
7 I would like to see us following John's idea to try to phase
8 in the standards in some realistic way. I think if we set
9 them too high, initially then I think we will be defeating
10 the purpose we may have. Furthermore, I think that if we
11 set them too low we will also be defeating it. Therefore,
12 we have to, it seems to me, plan an elevation of the
13 standards to meet our ideals over some reasonable time
14 schedule.

15 I don't know what that is going to be or who can
16 give us advice on it.

17 DR. IRWIN: May I suggest something here? It
18 seems to me that setting certain kinds of standards is very
19 important, but more important is establishment of a
20 mechanism which in itself is a standard adjusting mechanism
21 which escalates the standards as time goes on because there
22 are a lot of coercive facets to the prison world that we will
23 not become sensitive to for years or which have not even
24 emerged which will emerge in future years which have to be
25 addressed, and the only way to take care of it is the

1 establishment of a process.

2 DR. RYAN: What I would like to do is allow
3 everyone to have a cup of coffee and then come back for a
4 final shot at that this afternoon. Do you want to say
5 something before the coffee?

6 DR. TOULMIN: Could I say something very quickly.
7 It does seem to me there is a great danger that the
8 Commission may set itself the task of rewriting Samuel
9 Butler's Erewhon. I say this having the following in mind.
10 I do think Karen was right to say that Cornell West's paper
11 sets a benchmark which represents one position we might
12 adopt, and I think he challenges us with the remark that
13 the real question is whether conditions of fairness and
14 equality which are requisite could conceivably be met
15 within prisons.

16 Now, before we go on looking at this in detail,
17 there is one other fact which I think our staff researchers
18 have brought to light which we should not overlook, especially
19 if we are going to start making pragmatist remarks of the
20 kind that John and Eliot have been making. The question of
21 whether fairness and equality of a sufficient kind can
22 exist in any prison is a question which necessarily involves
23 judgment. This same judgment has been exercised in a large
24 number of other countries, including all those countries
25 with which we in the United States, we Americans would like to

1 compare ourselves.

2 In all of those other countries the decision has
3 been that the situation is that they do not do research in
4 prison. If we were wanting to justify taking a short way
5 with this issue, we could appeal to what is commonly known
6 as the decent opinion of mankind and we should not forget
7 this. In taking the accreditation road we should not forget
8 this.

9 DR. RYAN: I want to put that in context, and I
10 don't want to be misquoted because I have said it before,
11 but there are certain countries, I am certain, where research
12 is not countenanced in prison where it has been said that
13 torture occurs, and I think that we should keep things in the
14 proper perspective.

15 DR. TOULMIN: But I think if we are going to work
16 out a procedure for making research in prisons acceptable,
17 it should be clear that the kind of reform that we are
18 contemplating is one which takes us, so to say, far beyond
19 the best that people in other countries have been able to
20 manage.

21 DR. LOUISELL: It would be helpful to me, at least,
22 if we could have, after the break a little more explication
23 of why these European countries, and I take it it really
24 refers in general to all of the Western European countries,
25 why have they reached a conclusion despite the engagement

1 of some of them on occasion at least, in torture, why
2 have they reached this conclusion in respect to research?

3 DR. SELDIN: Because the spectre of Nuremburg
4 is behind that.

5 DR. RYAN: Reconvene in 10 minutes.

6 (Brief recess.)

7 DR. RYAN: We have a lot of material to cover
8 over the next day, and I would hope that we can get most of
9 our work done. I would like to start now and just announce
10 for the record that for the rest of the meeting Mr. Yesley
11 is the federal officer, and we can continue with our discussion
12 now of prison research.

13 Bob, do you want to lead off or try again?

14 DR. COOKE: Yes, let me see. I was trying to say
15 what I would hope we could do. From hearing Tannenbaum's
16 report, from looking at the, what I would have to consider
17 the relatively high voluntariness level of consent that we
18 would draw from his data and from some of our own observations,
19 and I will try to amplify in a minute. I think the situation
20 is not as bad as has been made out, and I would think that
21 we ought to take the position that biomedical research should
22 continue and that we ought to work to improve the protection,
23 and there are some specific ways that have been suggested
24 that might permit us to make improvements. Now, much of the
25

1 prohibition against prisoner research, as far as I can see
 2 has been based upon the "coercive" nature of the prisons
 3 that interferes with what I would call voluntary consent
 4 using the lead from one of our essays that says the consent
 5 part of informed consent relates to information, and that
 6 informed consent is a poor term in a sense because what we
 7 are really talking about is voluntary consent, the
 8 voluntariness of the situation being important, as well as
 9 the information.

10 Now the information side of the consent in the
 11 prisons we heard had some -- could be improved some. We
 12 heard that the forms were kind of confusing at times, et
 13 cetera, but it did not seem to me to be a lot worse in the
 14 prison setting than other places.

15 The voluntariness side, it seems to me the evidence
 16 is quite good that individuals who have the most choice in the
 17 prison environments, the most freedom of choice are the ones
 18 that are signing up for research activities and the coercive
 19 nature of prisons applies least to this group, that is they
 20 are the people who are the sort of trustees. They are the
 21 people that have the jobs. They are the people that have the
 22 money so that the bare necessities of life are not being
 23 provided by the prison research. The extreme deprivation
 24 that some prisoners might have, those are not the group that
 25 are in the prison research and so forth. Now, to my mind, the

1 is no question that prison environments are not perfect by
 2 any means, but I don't think the situation seems now to be
 3 quite as bad, and I think it is very unreal for this
 4 Commission and I felt that way all along, we are not a
 5 Commission on prison reform, to attempt to reform the prison
 6 system by way of biomedical research. So, I would like to
 7 see us try to recognize the fact that research is ongoing,
 8 that it is not as serious an exclusion of voluntariness as
 9 may have been portrayed, that the burden is not being
 10 borne disproportionately in the prisons at least by minority
 11 groups and that we attempt to develop some mechanisms for
 12 improvement rather than throwing the whole thing out.

13 DR. RYAN: Karen?

14 DR. LEBACQZ: I do disagree with you, Bob, but at
 15 the moment I am not going to speak to my general disagreement.
 16 I just want to clarify one thing that you said because I
 17 think that you have drawn a conclusion that is unfounded on
 18 the basis of some of the data that was presented to us.
 19 The fact that the people who participate in research also
 20 often hold paid positions in some other kind of work in a
 21 prison does not necessarily mean that they are the least
 22 coerced, if you will, or that they are more advantaged than
 23 other prisoners. It could be that they are the most desperate
 24 for money.

25 Until I knew what their financial obligations were,

1 whether they were supporting families or other outside sources
 2 of income they had I could not draw that conclusion. I don't
 3 want to see us begin to say that because we now have this
 4 data that says that these people have higher educational
 5 levels and that they also work in prisons that therefore
 6 they are not in some way in need or being induced by the
 7 bribery elements or coerced by the coercive elements --

8 DR. COOKE: I said nothing about the bribery
 9 element. I am not talking about the bribery element. The
 10 bare necessities of life, the toothbrush, the soap and so
 11 forth, that group is least likely to be deprived of that
 12 if they are already working, if they are already in the more
 13 favored status group of that institution.

14 DR. LEBACQZ: You really cannot say that without
 15 a lot more data than we now have about what other financial
 16 obligations they have. I have been very impressed by the
 17 large number of inmates who are working in order to support
 18 families on the outside, and I just don't think that we can
 19 draw that conclusion.

20 I am not drawing an alternative conclusion. I am
 21 just saying that I don't think you can draw that conclusion.

22 DR. RYAN: Pat King?

23 MS. KING: I don't know where to go except to
 24 express disagreement with Bob Cooke, and I am not sure that
 25 that gets us anywhere. I would really prefer as a suggestion

1 because it seems to me to be the most fruitful avenue to
 2 explore of the two that I heard so far is to go back to
 3 Karen's suggestion which has some difficulties in it, but I
 4 am willing to overlook the semantic difficulties I discovered
 5 in it because I think it synthesizes the primary issue and
 6 that is and I will not use the term "informed" consent --
 7 are there conditions present in the prison itself which
 8 are or can be made to be fair enough to satisfy our concerns
 9 about equality, people who are outside prison, so that we
 10 would want to permit research to go on in those prisons.

11 We can continue that avenue because I don't really
 12 think that there is anybody in the room, and I may be wrong
 13 who thinks research is an evil, that in the abstract that
 14 even research because it is done in a prison is an evil.
 15 I think that what we are mostly concerned about is when we
 16 put a research setting in a prison, what have we done with
 17 respect to the people who then become the subjects and are
 18 inside the prison. So, I think that most of us are trying
 19 in some way to preserve research, not destroy it and are
 20 genuinely disturbed by the fact that we are not sure we
 21 may be able to do it.

22 If there is anything that is troubling people, I
 23 think that is what it is, not that we are anti-research or
 24 not that we want to do away with research.

25 The second avenue I heard suggested today which would

1 give us additional information and certainly would be
 2 informative to me, and I offer it as an alternative suggestion
 3 is guys like David Louisell and Steve Toulmin both suggested
 4 and both were concerned about the fact that many European
 5 countries with whom we consider ourselves and measure ourselves
 6 by for all other sorts of activity have chosen to ban research
 7 in prisons.

8 Now, it may be that that is because of the spectre
 9 of Nuremburg, but there may be something about that very
 10 spectre of Nuremburg that we perhaps should be more aware of
 11 because we were not in Europe, and I would suggest that either
 12 we get information about why European countries have chosen
 13 to go a certain way -- it may be that their requirements for
 14 testing of new drugs are not the same as our own. It may be
 15 that they could not possibly continue their ban under our
 16 kinds of regulations. That is fine. We need to pursue it
 17 one way or the other, but at least I am suggesting that one
 18 of those two avenues might be more fruitful in advancing
 19 the discussion, and I leave it to the Commission to come up
 20 with another or pick one of those two.

21 DR. RYAN: Some of that information has been
 22 supplied in the report that was sent to us.

23 MS. KING: We can either discuss that or go back
 24 to what Karen was suggesting.

25 DR. RYAN: Dr. Seldin?

1 DR. SELDIN: I would like to make a try at this
 2 once more. It is somewhat repetitive, but this is the last
 3 time I will inflict it on anybody. It seems to me that a
 4 prison describes three elements which ought to be taken into
 5 consideration in any formulation of prison research. One is
 6 that it consists after all of prisoners. It consists of a
 7 certain geographic confinement, and it consists of certain
 8 types of institutional arrangements. Now, from the point of
 9 view of research there is nothing particularly about the
 10 prisons that gives concern. It just from the point of view
 11 of research. No one is claiming that they are insane. No
 12 one is claiming that they are in principle irrational. No
 13 one is claiming that they are infants or otherwise incapable
 14 of making a judgment. The real problem about the prison
 15 concerns an institutional arrangement within a setting of
 16 geographic confinement which screens it off from scrutiny
 17 from the rest of society. Therefore the arrangements of
 18 informed consent and the like may not be creditable, even
 19 though one has the form which seems to be an acceptable form.
 20 If one wanted to, therefore, permit research to proceed in
 21 prisons, one would have to deal with the problem of insuring
 22 not merely a protection for prisoners but that this type of
 23 protection was not simply a surface phenomenon designed to
 24 place a veneer on the program but something real, something
 25 that one could live with with dignity. I want to suggest

1 that there are two ways of at least exploring this. One is
 2 by a system of accreditation. Now, this could be graduated.
 3 I realize that the term accreditation by itself is vague, but
 4 still one could specify certain minimum conditions without
 5 which no prison research could proceed.

6 Now, I don't think by itself this would be
 7 satisfactory alone. The second ingredient that I would
 8 suppose should be considered is a system of surveillance.
 9 Now, I consider this very important because the major problem
 10 about prisons is the fact that it is a kind of very tightly
 11 closed society, screened off from the public scrutiny where
 12 you cannot trust anything in a certain sense. So, the
 13 surveillance mechanism would have to be conducted in a way
 14 which would be creditable. This kind of surveillance, to my
 15 mind, could only be insured if the groups who participate
 16 in the surveillance are those whom we might have confidence
 17 with and who would be competent to make a judgment.

18 This would consist not only of the prisoners
 19 themselves but groups who represent the prisoners and the
 20 interests of prisoners.

21 Now, if one could specify appropriate accreditation
 22 procedures and surveillances, then it seems to me that one
 23 would at least be in a position to judge whether other
 24 qualities, such as Karen mentioned and others have mentioned
 25 could be satisfied, could be reasonably satisfied. We

1 recognize that there are other institutional arrangements
 2 in which research is allowed to proceed which are by no means
 3 coercion free. I am referring to a doctor's office, for
 4 example, or a hospital or special hospitals. I recognize
 5 that these are different institutions to be sure from a prison
 6 where the state is the instrument of coercion, but I would,
 7 therefore say that that is why one wants to specify more
 8 rigidly procedures of accreditation and surveillance. I
 9 just want to make one final point that has to do with a
 10 hysterical addendum.

11 When I used the term "Nuremberg" before, this was
 12 simply a summary label to embrace the Nazi and Russian
 13 concentration camps which were such a horrible spectre
 14 before the world and which one might feel was one end of the
 15 spectrum of the prison confinement model. The other end of
 16 the spectrum might be a very enlightened prison which, let us
 17 say, only exists in model form, but we shouldn't imagine
 18 that all prisons are necessarily like that or that prisons
 19 in the United States need be like that or one could not
 20 break into this confined atmosphere by the procedures that
 21 I mentioned.

22 What I would like to propose is this, as a formal
 23 way to get started, but as I say, it may not be acceptable.
 24 One is to see if we could not agree, if one wished to proceed
 25 in this manner, with appropriate accreditation and surveillance

1 procedures and see what we come up with, and then we can take
2 a look. Is equality or fairness reasonably satisfied by that,
3 and if it is not, through it out, but if it is, one would
4 have a way to begin.

5 DR. RYAN: Okay, Stephen, do you want to --

6 DR. TOULMIN: I just want to make one last attempt,
7 after which I will shut up. I just want to make one last
8 attempt to state the general case for the negative a little
9 more strongly, and I want to follow immediately on John's
10 analysis. It seems to me that what is distinctive about a
11 prison is not merely that it is screened off from public
12 view, a closed community. In addition, one essential feature
13 of a prison is that there is a social distinction within
14 the prison between the jailed and the jailers and that it is
15 essential to the situation that there have to be mechanisms
16 by which the jailers keep control of the jail.

17 Now, as we saw very clearly at Jackson, and again
18 I don't think this took great insight, one of the ways in
19 which control is maintained is by establishing a system of
20 great economic inequalities as between the different prisoners
21 within the prison, which inequalities work against the
22 achievement of any kind of social solidarity within the body
23 of the inmates. What we find, not surprisingly, is that those
24 who are most successful in all other respects because they
25 are most intelligent and most experienced succeed also in

1 locating the places where the greatest financial rewards
2 are to be procured and make their way there and succeed in
3 the economic competition to obtain these rewards-which
4 economic competition is itself, ⁱⁿ part, one of the instruments
5 of control.

6 Now, it is my belief or rather the argument I
7 wish to put forward is the argument that where you have
8 research in prison, access to the pool of research subjects
9 itself will always be a part of the mechanism of control
10 by which the jailers maintain control over the jails, and
11 that it is an illusion to suppose that any set of accreditation
12 procedures or conditions laid down by outside bodies could
13 ever obviate that, or could ever be applied in a way which
14 protected the prisoners against the manipulation of the
15 research situation by the prison administration as one part
16 of their instruments for the control of the jail.

17 I don't wish to assert this or argue it. I present
18 it as an argument which it seems to me has to be answered
19 if you are going to recommend accreditation procedures
20 with a good conscience.

21 DR. SELDIN: I thought accreditation was
22 associated here with surveillance and part of the surveillance
23 program was designed specifically to meet this. When I
24 said geographic confinement, I also meant institutional
25 arrangements. Due cognizance is taken of the fact that the

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1 prison is after all a coercive structure, and it seems to me
 2 that recognizing just the point that you mentioned requires
 3 that there be a representation from the prisoners amongst
 4 the prison population so as to at least attempt to meet the
 5 issue you mentioned. Now, whether it can be met.

6 DR. TOULMIN: I am sorry, Don, but I only thought
 7 it was worth spelling out.

8 DR. RYAN: Excuse me. There are many people who
 9 want to speak. I want to call on them in order, please.
 10 Dr. Jonsen?

11 DR. JONSEN: I want to express agreement in large
 12 part with Stephen's statement. I think that the data
 13 presented to us today can be interpreted in that way, that
 14 the people who participate in research are the people who
 15 know their way around, who get control or are in fact given
 16 control by the authorities and allowed to maintain it within
 17 the institution. I don't think that structural feature of
 18 prison life is ever going to be done away with or will any
 19 surveillance make much difference in it except to correct
 20 the most gross abuses, for example, allowing a prisoner
 21 to be a secretary in an office who can simply choose his
 22 friends for research and no others, things of that sort, but
 23 I just want to suggest that in looking for criteria if we
 24 are moving in this direction of surveillance standards and
 25 accreditation, I suggested some months ago -- I used the

1 phrase approximation of the free-living state as a standard
 2 for what I believe West is describing when he says, "Judgments
 3 made in a condition of freedom and equality." Approximation
 4 is to be underlined precisely because you recognize that
 5 there are certain structural features of prison life that
 6 you will never erase, but there are others that you can erase
 7 or modify or ameliorate, and I would suggest that they are
 8 the following, and these are areas where one might look for
 9 standards in the modes of communication between those who
 10 are inside and outside, in the modes of recourse and redress
 11 which are open to those who are inside, the modes of
 12 participation in decision making which exist, the modes of
 13 protection for those who are particularly at disadvantage
 14 and the modes of alternative resources for maintaining one's
 15 life.

16 It seemed to me those are some of the modes of
 17 existence in a prison situation which can be examined, which
 18 can be described in certain ways in terms of better or worse.
 19 For example, prisoners have access to telephones or don't
 20 and how often and under what circumstances, and if you
 21 develop a picture of a prison in terms of those modes of
 22 prison existence you might at least be able to spell out
 23 an approximation, the way in which that prison approximates
 24 the free-living state, and in those terms then say the
 25 decisions made in such a situation are at least enough like

1 the decisions that people make when they live freely that
2 we could accept the possibility of research being done.

3 DR. RYAN: John Irwin?

4 DR. IRWIN: It seems to me an awful lot of
5 discussion is coming together and going along on a ground
6 which I find very, very acceptable according to my own
7 views. I would like to try to pull some of the strands
8 together. I am in total agreement, Al, with your identifying
9 those facets of freedom which may be brought together
10 between the outside situation and the inside situation. I
11 think that they do address the conditions that Cornell West
12 laid down in his paper. I wanted to see if we could not use
13 it as a standard. It seems to me that the way we have to
14 approach that, the values of freedom, and fairness and
15 equality, certain levels of this have to be reached in order
16 for it to be permissible. We have to admit that inherent,
17 essential, explicit in the prison situation is that there
18 is in some areas a reduction in equality, a reduction in
19 freedom. We must identify which ones of those are essential.

20 We know that beyond the ones that are essential
21 society really intends to reduce, the prisoner should not
22 have the same freedom to travel to the Riviera or whatever
23 and that is intrinsic. That is inherent in imprisoning
24 people for punishment, but within those sets of things
25 explicitly intended to reduce freedom we should defend that

1 there are many other areas or all other areas, I would submit
2 that equality to the degree to which it is consistent with
3 a system of incarceration should be maintained, and we could
4 do that. I think we can specify a lot of those, and we
5 can start approaching those.

6 Now, we know that the prison system itself as all
7 organizations, loves to fall in or tends to fall into practices
8 at their convenience and therefore they obtrude into those
9 other areas. They start restricting other areas of freedom
10 which are really not necessary to maintaining incarceration,
11 but all bureaucracies tend to do that, all organizations
12 which particularly if they tend to be authoritarian, and
13 particularly if they tend to operate with a high degree of
14 autonomy which is the case with the prison. It is probably
15 the most autonomous, the most hidden organization in our
16 society, and it has gone quite far operating that way, and
17 it is also true that there is an informal system of control
18 in which certain privileges prisoners are encouraged to
19 aid in the maintaining of control. One of the papers
20 addresses that, Jack Sussman's paper.

21 However, I don't think that those are insurmountable
22 problems. I think that in really addressing those directly
23 which I think you have done to a great extent, Al, I think
24 that you are identifying the two kinds of general attacks
25 which have to be made is the proper direction. I would suggest

1 one correction, surveillance I would like to see you shift
2 to the concept and the label of review and grievance
3 mechanism which suggests something kind of different.

4 Surveillance, also, on the one hand, the prison people will
5 feel that there is this overseeing their operation, whereas
6 review and a grievance mechanism has a different connotation
7 and also a different mode of operation which I think has a
8 chance of being more successful. I think that those will get
9 at trying to expand the level of fairness and equality and
10 freedom in all those areas in which it is not essential
11 for maintaining a system of punishment.

12 DR. RYAN: Ms. Height?

13 MS. HEIGHT: I think related to this, it seems to
14 me that we for our own credibility of what we are going to
15 say if we come to a thing like accreditation would have to be
16 very clear on the whole point that there really is a large
17 body of both documentation, as well as opinion about the
18 need for complete change in the prison system, so that what
19 we are recommending does not seem to be a way simply of
20 bolstering up a system that works for some but not for all,
21 and it seems to me that I would hope that we could get
22 through this some of the information that we could use to
23 support that.

24 We have had some groups even saying, "Abolish the
25 prisons." I am not going that far. It seems to me we would

1 need to certainly put whatever we are going to say within
2 the context that we are not really just seeing something
3 happening within that system but we are recognizing inherent
4 injustice, I would say, but this group may not wish to say
5 that within the prison system.

6 The second point it seems to me, when we were
7 talking earlier about excluding the prison population, the
8 point that I would hope we would say we would not talk about
9 excluding because that again seems like it is somebody
10 deciding for someone else, but I think that the crucial
11 point there is the excluding of the opportunity to
12 participate which keeps the individual right to speak for
13 him or herself at the heart of it.

14 It seems to me that that is a simple phrase, but
15 I think it always has to go with it or else we will find
16 people saying, "We are not excluding, we are including you,"
17 which is exactly what some people don't want to have happen.
18 They want to have the right to determine whether they will
19 be included.

20 It seems to me that that is another kind of basic
21 condition that we need to work on and work for.

22 DR. RYAN: Bob?

23 DR. COOKE: Now, I guess I am taking a different
24 perspective from everyone else, but it seems to me the title
25 of this Commission is the Protection of Human Subjects who

1 are used in biomedical and behavior research.

2 Now, I agree that the prisons are an unfair place,
3 and I think they are terrible and ought to be replaced by
4 other mechanisms and I am sure there are a lot better ways
5 of doing what prisons are trying to do than the prison
6 situation. So, the fact that fairness may not exist in
7 prisons is to me not necessarily germane to the argument
8 regarding the protection of human subjects. What I am
9 concerned about is whether or not the subjects who are in
10 biomedical research are indeed given -- they have had an
11 opportunity to make a voluntary informed choice. Now, the
12 weight of the evidence seems to me to be that these people
13 are those who are the subjects, actually have had a fairly
14 good opportunity, not as good as it might be, we might
15 improve on it, but they have not had too bad an opportunity
16 to make a choice.

17 They are not the most coerced individuals in the
18 prison. They are individuals who -- now, you can say that
19 maybe they have got bigger families and so forth, but there
20 is absolutely no evidence that that group is that much
21 different from the other individuals in terms of financial
22 needs, et cetera, and my observations of the subjects who
23 are in the biomedical research unit, indeed they did have
24 more advantages personally. They had more advantages than
25 the other group. So, it seems to me that we ought to be

1 concerned with those who are in the research setting and
2 how we can give them somewhat greater protection. The fact
3 that there may be some people in that prison who are not
4 allowed to be subjects, that may be somewhat upsetting to
5 people, but that is not our main job, to see that everybody
6 in our society can be a subject for research.

7 I just don't want those people who are the subjects
8 to be discriminated against, and none of the arguments I
9 have heard have anything to do with that.

10 DR. RYAN: Dr. Louisell?

11 DR. LOUISELL: I feel somehow compelled to test
12 some of these very cogent philosophical statements and I
13 refer particularly to Dr. Seldin's specific cases. Now, a
14 few weeks ago I think we were all shocked by the news item
15 in the paper and then over TB, and I see there is data
16 pertinent to it under Tab 7 here from the ERDA about the
17 experiments in Washington and Oregon prisons, I believe on
18 irradiation of genitals.

19 DR. BRADY: Walla Walla.

20 DR. LOUISELL: Walla Walla? Now, I am just
21 wondering how significantly is this experience to be taken.
22 It was a dramatic thing as I witnessed it over TV. Is it
23 to be taken as a freak experiment that we need not be, on a
24 general basis, overly concerned with or is it to be taken
25 as indicative of the perpetual perennial danger that surrounds

1 the prison environment.

2 DR. SELDIN: Do you want me to respond?

3 DR. LOUISELL: I would be delighted to hear your
4 explanation.

5 DR. SELDIN: In the first place, I would agree
6 with you completely. First of all, I would take the worst
7 view and say that it is indicative of the perpetual problem
8 in prison environments. Yes, I do think so. I think it is
9 just the ingredients that have been mentioned up to now,
10 secrecy, screening off from public scrutiny, internal
11 coercion and the like that permits this, and so if we were
12 to have appropriate safeguards to this, this should take
13 cognizance of the danger of this type of practice, particularly
14 in prisons.

15 I may point out that there is a certain danger of
16 that in hospitals and a certain danger of that in doctors'
17 offices as well, and there are many instances one could give
18 of this sort of thing also.

19 I don't want to press the point. I am not trying
20 to argue the extreme point that there is no difference
21 between prisons and these other institutional arrangements.
22 I merely want to say that it is a public institution, and if
23 it is to qualify for certain kinds of activity, there ought
24 to be devices which allow us to get into the prison in some
25 open manner. If this were not the case I would not do research

1 there.

2 Now, whether we can devise a series of ground rules
3 embodying such things as accreditation I think you said,
4 reviewing grievances, whether we can have appropriate bodies
5 sit on review and grievance committees, review and grievance,
6 whether we can have appropriate bodies sit on review and
7 grievance committees of a kind that would give us confidence
8 remains to be seen. Moreover, I don't think this should be
9 viewed as an all or none principle.

10 One can say that one would have probationary
11 periods. One would have rescruinizing periods. If it turns
12 out that problems emerge despite these safeguards, I would
13 say abandon it. In short, I am perfectly willing to admit
14 that the kinds of appalling issues you cite do represent
15 one of the grave dangers inherent in any kind of miniature
16 closed society and the judgment we have to make is can we
17 erect appropriate safeguards.

18 DR. RYAN: Karen, please?

19 DR. LEBACQZ: Now, there are so many things on the
20 table before us that it is tempting to enter into a lengthy
21 monologue and speak to them all. I want to make a couple of
22 quick points. One is an addition to the list that Al Jonsen
23 gave us of those kinds of conditions which would approximate
24 the free-living state and which might provide the grounds for
25 us to deliberate about what would be necessary in any kind of

1 accreditation procedure. I am not sure that this was
2 excluded from Al's list, but it was not stated as explicitly
3 as I think it would need to be.

4 It seemed to me that one of the things that we
5 hold very dear in our society, possibly more in the breach
6 than in the actual practice, but nonetheless we hold it dear
7 is freedom from arbitrary power over one's life to which we
8 sometimes give the phrase due process. That seems to me a
9 little different than simply talking about mechanisms for
10 redress, and what I have in mind is, for example, the
11 difference between having a prisoner have a mechanism for
12 redress after being thrown in the hole as opposed to having
13 to go through some kind of due process hearing before being
14 thrown in the hole, so that I would want to add to that list
15 some of the kinds of things that I think fall under that
16 general category of due process which I believe are covered
17 in some of the legislation that we heard about this morning
18 in the report by the Boston University Center for Law and
19 Health Sciences.

20 I want to raise another kind of procedural question
21 here. I am not sure that Bob Cooke is yet satisfied that
22 he has received an answer to his question. It is possible
23 that the remainder of the Commission is of a mind to think
24 that we need to move toward these kinds of accreditation
25 procedures and that if Bob does not share that that we may

1 have to ask him to hold the minority position and to --

2 DR. COOKE: I am all for that, plus some more.

3 DR. LEBACQZ: Okay. Then you have a specific
4 question about why we have a concern about whether other
5 people get into research and things like that. I would like
6 to try to answer that concern of yours, Bob. I am not sure
7 that I can convince you, but I will at least spell out to you
8 my own thinking on that.

9 My thinking on that is essentially this. It is
10 true that we heard data this morning that in some prisons
11 those who participate in research also hold other paid
12 positions within the prison. It is, also, true that one of
13 the institutions that several Commission members visited,
14 Vacaville Medical Facility in California is a 2000-bed
15 institution that has one industry with 50 physicians
16 available.

17 There are then some 1950 inmates of that
18 institution who do not have alternative work opportunities
19 available to them. Part of our concern, it seems to me is
20 whether then since they do not have alternatives available,
21 whether they really are in a position to enter into
22 research under what we would consider fair or equitable
23 or positions of equality in terms of their bargaining power.
24 They really have no other way to make money. Now, it is
25 not that we are trying to say that everybody should get into

1 research, but surely then those at Vacaville who do
2 participate in research might be said to do so under somewhat
3 constrained conditions. Part of our concern is what we need
4 to do in order to minimize those kinds of constraints, and
5 that is what I understand the accreditation movement to be
6 moving toward.

7 I would be one -- I am willing to participate in
8 the deliberations of the Commission as we go about setting
9 the standards for accreditation, and that is why I have
10 proposed one and added it, but I would be one who would be
11 willing to argue the position that Stephen Toulmin outlined
12 a moment ago that says, in point of fact that the power held
13 by the prison officials is so arbitrary and that surveillance
14 or review and grievance mechanisms will be so faulty that
15 indeed I might decide that it would never be possible to
16 move into the kind of accreditation and review mechanisms
17 that we might like to establish. I am nonetheless willing
18 to go about the initial process of trying to set them up,
19 but I do want to make the statement that I may end up
20 arguing that position which he so cogently outlined a few
21 moments ago.

22 DR. TOULMIN: May I add a footnote? I think we
23 have now got to the point at which the most instructive
24 thing to do would be to discuss what these conditions would
25 have to be. My purpose in stating the case as I did was

1 simply to make sure that the Commissioners had it in mind
2 what the target was that they would have to reach. If it
3 were possible to reach this target, if it were possible to
4 satisfy ourselves that, as one of the contractors suggested,
5 within the area of each federal appeal court there was a
6 regional committee which had statutory responsibility for
7 conducting this desirable kind of survey and we were
8 satisfied that they could be effective in their operation
9 and that their operation would not be subverted by the
10 prison authorities then I think we would indeed have achieved
11 something. But I do feel the argument has now gotten to the
12 point at which it would be very useful to set down what
13 these conditions would have to be like and that we can
14 then appraise them.

15 DR. RYAN: Dorothy, did you have something?

16 MS. HEIGHT: One other point that I have been
17 struggling with in this list that Al brought out, I think has
18 to do with something that is related to the population and
19 the administration. It seems to me that looking at
20 institutional life one has more of a chance of having a
21 sense of freedom within it if there is pluralistic governance
22 rather than if you have got as we have pretty much in the
23 prison system in the United States you have one kind of group
24 that is in charge and has predominance and others who are
25 in the inmate position. It seems to me there needs to be something

1 of this, and I think that's why I feel less hopeful about
 2 real change in the prison system, because if you go back
 3 through the same kinds of machinery the people who are
 4 administering and you have so built in a whole system of
 5 injustice, then bringing about change is not just a question
 6 of getting a new procedure or a new set of policies or a new
 7 set of standards. You then have the whole problem of how
 8 you get enough change to bring about change, and that is why
 9 I would hope we would think about something that has to do
 10 with a more pluralistic governance. In other words, I feel
 11 more at home if there is at least somebody who understands
 12 a little of what I say, and if you say one point and someone
 13 says, a guinea pig, it says one thing to one sort, and if
 14 we think one way it says another if we think another way,
 15 and you see there is a home in view that I find as we talk
 16 about the prison system that is so much like the community
 17 that we cannot just -- you know, we talk about redress, but
 18 you still have to go back through the same machinery, and
 19 you don't have more representativeness within those who are
 20 carrying responsibility. People have more sensitivity to
 21 what people are up against, then you will not have real
 22 change. So, I would think that one of the conditions that
 23 we need to think about is basic change in the whole question
 24 of governance.

25 DR. RYAN: Dr. Cooke?

1 DR. COOKE: Let me see if I can try this one. I
 2 have been through it before, but let us say that we cannot
 3 alter the prison system to make it a fair place, and I think
 4 that is a reasonable statement, because I agree with you all
 5 along the line. There is enough in the way of injustice
 6 so that at least for my lifetime to have a prison setting
 7 where there was justice and fairness in it, maybe because
 8 the prisoners are not just and fair, maybe they have got a
 9 level of moral development that makes it very difficult and
 10 so forth, as well as the relationship with the caretakers
 11 and relationship to the rest of society, but what if we
 12 looked at each biomedical research project and say to ourselves
 13 is this one -- has this one in some way operated fairly?
 14 What sort of criteria would be required to be able to say
 15 that in that particular situation fairness seemed to have
 16 operated at least in terms of what the real world is and
 17 outside world and so forth. Now, if you ask that question,
 18 I would have to say that fairness would have operated in
 19 regard to a minimum of coercion, if there are a lot of other
 20 people in the non-prison world who are willing to get into
 21 that same act as the prisoners, that is if we have got a
 22 substantial number of non-prisoners who are saying for that
 23 same amount of pay, that same degree of inconvenience, that
 24 same amount of risk, et cetera, I am willing to throw my hat
 25 in the ring and be a subject. Then should those prisoners who

1 are agreeing under those circumstances not be considered to
2 have made in a sense a kind of reasonably fair choice under
3 reasonably fair circumstances?

4 That would mean then that we might permit research
5 where other individuals who are non-prisoners would indeed
6 be volunteer subjects for the same wage, et cetera as the
7 prisoners.

8 Now, that ducks the issue of accreditation which
9 you may want to do for other reasons and so forth, but to me
10 it is more a part of the real world. I don't believe the
11 accreditation, as you do, is going to be able to look over
12 the shoulders as well in a closed environment, et cetera, but
13 if we have reasonable individuals agreeing to participate
14 in these protocols in settings which are concordant with the
15 settings of prisoners, then I think that might be considered
16 a fair test of equity and non-coercion and so forth.

17 DR. RYAN: Pat King?

18 MS. KING: I would like to move the following.
19 I move the Commission defer for the time being the
20 consideration of narrowing our concerns to the research
21 setting in order to proceed with the discussion of the
22 possible development of accreditation modeling. If I can
23 get a second I will explain why I am doing it. I said, "For
24 the time being." Do I have a second? Anybody?

25 DR. LEBACQZ: I will second it.

1 MS. KING: I offer that motion because Bob may have
2 something to the point that he is trying to stress, and I
3 do not want to obscure that. I do think, however, the
4 only way to evaluate a position effectively that he is trying
5 to espouse is to see and have in opposition another
6 perspective fully developed, if we can do it. If we cannot
7 do it, that may bring us to your way of thinking or it may
8 bring some people to your way of thinking, Bob.

9 So, I would like to move, if it takes a vote to do
10 that, to defer that consideration and move on, and then if
11 that passes, I would offer a further motion that we then
12 proceed to take up Dr. Jonsen's suggestions one at a time
13 to see if we can give them any flesh. We may not be able to
14 do it. If we can do it, we have learned something. If we
15 cannot do it we have learned something, and that might be
16 valuable.

17 DR. RYAN: I don't think we need a vote, Pat. I
18 think most of us feel that we are going to have to get on and
19 do that. I just want to call on the other two people who
20 wanted to speak and then ask Al to start out for us and go
21 down that road if it is all right with you, Pat.

22 Dr. Stellar?

23 DR. STELLAR: I would agree with what Pat has just
24 said. It would help me though if in going down this list
25 we were careful in distinguishing what we mean as those standards

1 which would apply to the research process and those which
 2 I think maybe Dorothy and others also have in mind which
 3 would apply to the general setting, not that we should neglect
 4 either one any more than the other, but if we keep them
 5 separate in our thinking, then I think we can do a cleaner
 6 job.

7 DR. RYAN: I don't know, I may be wrong, but I
 8 read the newspapers and watch the television, and it seems
 9 to me that there is a whole revolution going on in the penal
 10 system, at least in our state and so on. There is much more
 11 openness. There is much more going on there. There is much
 12 more concern about what goes on in the prison system, and
 13 I think it is a time when they might be amenable to change.
 14 There is just no question that they cannot do in prisons
 15 things that they did previously without public scrutiny.
 16 The press is more active. The prison groups are much more
 17 active. Now, I don't think that we are to that perfect
 18 world at this time, but I am not as pessimistic as some people
 19 that society cannot make some changes in the system.

20 DR. LOUISELL: The courts are more active.

21 DR. RYAN: Yes, and what did they do in the State
 22 of Georgia in which the --

23 MS. KING: Alabama.

24 DR. RYAN: Alabama, I am sorry, in which they had
 25 something to say about all of the state prisons, so that I thi

1 it would be helpful to go along the road that Pat is
 2 suggesting for us. John, do you want to add anything before
 3 that? Al, why don't you start. We are not going to go late
 4 into this evening. We will go perhaps another 30 minutes or
 5 so, but why don't you start with the things. The first one
 6 you talked about was communication, but you know, that is a
 7 theoretical thing. Let us put it into practical terms for
 8 each one.

9 Can you relate communication inside and outside
 10 into requirements within a prison?

11 DR. JONSEN: I would conceive of that in this way.
 12 You begin by asking some questions about the ordinary modes
 13 of communication, such as letters and telephone, and you
 14 would ask questions like are prisoners permitted to write
 15 letters or not. Are their letters censored or not censored?
 16 Under what conditions are they censored? Do they have any
 17 privileged mail? To whom does it go?

18 So, you develop a range of questions having to do
 19 with letter writing. You develop a range of questions having
 20 to do with the telephone. Do they have access to the phone,
 21 under what conditions? Do they pay for it? Do they not,
 22 et cetera? We found quite different practices in different
 23 places in that respect.

24 You would have something about the flow of
 25 information in, in the sense that do they have access to

1 magazines, books, newspapers, under what conditions, and
 2 then you would talk about the communication that they might
 3 have with other individuals face to face, with attorneys,
 4 which I guess is fairly clear in most places now, but with
 5 prisoner help groups, with people who come in to do a variety
 6 of good works in the institution. What other kinds of
 7 communication?

8 DR. RYAN: Of course, the essential thrust of that
 9 kind of communication, aside that it is nice for someone
 10 inside a prison to have that or humane or something, is that
 11 if research was going on, it would not be able to be kept
 12 from public scrutiny if the communication in and out was
 13 free.

14 DR. JONSEN: That is right.

15 DR. RYAN: And uncensored, isn't that the --

16 DR. JONSEN: Yes.

17 DR. RYAN: Essential ingredient?

18 DR. JONSEN: Yes, there are really two sides to it.
 19 One is that you are assuring that the conditions are such
 20 that volunteers have a flow of information to them and can,
 21 in fact, get information out if they feel a need to. Let me
 22 give you an example of that? Our committee at the University
 23 of California School of Medicine has asked Vacaville that
 24 all prisoners who are research subjects have privileged
 25 mail to the committee in the same way that they do their

1 lawyer and that they have access by telephone to the
 2 committee's office at any time, and the review body at
 3 Vacaville has reviewed that, accepted it, passed it on to the
 4 authorities. We do not yet have an answer. So, we have made
 5 those kinds of provisions.

6 The other side to this would be precisely the side
 7 of public exposure, that is it is not only of value for the
 8 prisoner in his own decision but also the fact that it opens
 9 a window. So, my idea would be that you would start to
 10 develop a range of questions about all of the modes of
 11 communication, and then you try to work out some kind of
 12 ranking, so that you would say, "An institution where there
 13 is no telephone available clearly ranks below one where a
 14 prisoner can get to a telephone when he needs it."

15 DR. RYAN: And if he does not have privileged
 16 uncensored mail and telephone access to research advisory
 17 committee, I don't think there is anyone in this room that
 18 could countenance research under those conditions.

19 DR. JONSEN: Yes.

20 DR. RYAN: Because he would then be a captive with
 21 no redress if there would be no scrutiny.

22 DR. JONSEN: Another mode of communication that we
 23 asked for there was that the prisoner on the review body --
 24 there is a prisoner. The head of the prisoners' council is
 25 on the review body in the prison, that that prisoner have an

1 unhindered access to an outside medical adviser and that a
 2 number of physicians in the community, and there is a
 3 university hospital there are to be given to that person on
 4 a list, and he can call up and talk directly to a disinterested
 5 outside physician which would be another mode of communication.

6 DR. RYAN: Does anyone have anything they want to
 7 add to that, to that concept? It is probably one of the
 8 more fundamental ones.

9 DR. COOKE: That is all after the fact kind of
 10 though. That is the problem. That is after they are in it
 11 and so forth that there are problems.

12 DR. RYAN: No, when we are setting up an
 13 accrediting system we would say you just cannot do research
 14 unless --

15 DR. COOKE: Okay. I see what you mean.

16 DR. RYAN: This is what we are after.

17 DR. LOUISELL: You have got to be very precise
 18 in the specification of the mail circumstances, and there
 19 would have to be taken into account a decision of the
 20 Supreme Court a term or two ago from California that was
 21 quite a detailed consideration of rights to mail and to
 22 receive letters, the impinging necessity that certain
 23 correspondence be subjected to at least x-ray tests for
 24 dangerous instruments and so forth.

25 In other words, we cannot be aloof here from what

1 the courts have actually looked at already.

2 DR. COOKE: Could you amplify for me how that
 3 helps in the issue which seems to me the one that everybody
 4 keeps citing, why prisoners should not be used, namely,
 5 voluntary consent, how this gives greater voluntariness of
 6 the consent?

7 I am not objecting to it, but it would be nice
 8 to see how it fits in in that perspective.

9 DR. JONSEN: The position from which I am moving
 10 is that voluntary consent here is not a description of
 11 something that is going on within the heads of individuals,
 12 but rather refers to a description of the circumstances within
 13 which those people move and that the best way to make
 14 judgments about voluntariness is to judge the way in which
 15 their situation approximates what we would consider to be a
 16 free-living state.

17 DR. COOKE: Their meaning the prisoners?

18 DR. JONSEN: In this case the prisoners.

19 DR. COOKE: That would mean all prisoners then would
 20 have access, et cetera.

21 DR. JONSEN: Sure. It might mean that there would
 22 be some differences. For example, you might be satisfied
 23 that for the general prison population access to the telephone
 24 according to a rule of twice a week is pretty satisfactory,
 25 but you might also add to that that anyone who is, in fact,

1 presently in a protocol should have unlimited access when
2 calling some designated parties.

3 DR. RYAN: Barbara Mishkin, please?

4 MS. MISHKIN: Yes. There was one element which
5 I think you all discussed last time which you might want to
6 add to your list and that is access of the accrediting body
7 or the IRB, one or the other, to relevant records in the
8 prison, to review relevant records.

9 DR. RYAN: Communication has to be two-way. You
10 have to know that the prisoner has the opportunity to do this.
11 You have no way of knowing whether he is exercising that if
12 you don't hear from him unless you go in and ask.

13 MS. MISHKIN: They might want to look at various
14 records, I don't know; and there were some questions last
15 time as to which would be relevant for this purpose. It is
16 another measure of openness.

17 DR. RYAN: Karen?

18 DR. LEBACQZ: I have just a question that is along
19 the lines that Eliot proposed, and that is if you do intend
20 for these to be different from one setting to the other, that
21 is from the prison in general over to the specific research
22 setting, then I might need some more specification on that.
23 Another question is about access of other outside groups
24 to the prison itself. What you have talked about thus far,
25 I think, by and large, is access of prisoners to these other

1 groups so that a prisoner might have the right to get to a
2 telephone to call somebody, but what about a sort of
3 generalized access of groups like the ACLU or some other
4 prisoners' rights group to the prison?

5 Now, this may be moving us in the direction of
6 the review and grievance mechanisms rather than the actual
7 standards, but it might, also, be very important. We might
8 want to decide that a prison which lets people from the
9 inside get out but nobody from the outside get in unless
10 they have been called specifically is not open enough.

11 I would argue that myself because it seems very
12 clear to me that the only way that we have any reasonable
13 hope of insuring that there is no arbitrary power being
14 exercised within is to have outside groups having free
15 access to get in and make sure that someone was not deprived
16 of their privilege to use the telephone.

17 You may get an assurance from the authority that
18 says, "Well, yes, of course, anyone who is in the research
19 program can call such and such a number anytime they want,"
20 but how are you going to know whether in point of fact they
21 were allowed to use the phone when they asked to use it
22 unless there is some kind of openness in terms of a general
23 -- so I would want something along that line, too.

24 DR. JONSEN: John Irwin can verify this, but I
25 understand that in many prisons now there is regular

1 allowance for certain kinds of prisoner help groups to be
2 present regularly in the prisons, to have an office into
3 which prisoners can go.

4 DR. IRWIN: No, I think it is pretty difficult.

5 DR. RYAN: I think that what we ought to do for the
6 time being is to try to identify these concerns and then
7 build on them later. I think we hear you, Karen. Barbara
8 was referring to the same thing when she talked about the
9 institutional review board, I think. So, you have defined
10 one way that we can test whether the environment is going to
11 approach that that we are thinking about and that is the
12 free flow of communication or the extent to which communication
13 is allowed both in and out, and the next thing you talked
14 about was recourse and redress.

15 DR. JONSEN: The order might not be the best order.

16 DR. RYAN: Take another one then.

17 DR. JONSEN: Maybe participation in decision making
18 would be a better one for the second.

19 DR. RYAN: Yes.

20 DR. JONSEN: In that way you would start to specify
21 the way in which prisoners were part of certain structures
22 whereby decisions were made. Is there a prisoners' council?
23 How does it come into being? I am recognizing that all of
24 these things may be heavily political and so forth, but
25 we are just asking a factual question. Is there a review

1 body in which the prisoners are represented? In what way
2 do prisoners -- well, basically the participation questions
3 would go along those lines. We must be able to understand
4 that.

5 DR. IRWIN: That would, under the staff recommendation,
6 be ability of inmates to organize.

7 DR. JONSEN: Yes.

8 DR. RYAN: Yes?

9 DR. IRWIN: Al, the way we are working on this,
10 these are two things we have been working on, in fact, all
11 three of these, the grievance mechanism and the communication
12 modes and the prisoner participation, and we came very close
13 in California to get acceptance of a proposal which tied
14 all three of those together. They do tie together. The
15 type of inmate structure or participation that is required,
16 it seems to me, is one that has access to an outside body
17 or it is meaningless. Without that -- it has to have this
18 outside affiliation to give it the type of minimal
19 empowerment that it needs, that they can carry if something
20 goes wrong or some legitimate question or proposal is
21 presented by the prisoners and is not considered. Then the
22 outside group has a chance to try and use other arenas to
23 get into court, the legislature, the media to get something
24 done about it, if it is a legitimate proposal. Those things
25 all tie together, as a matter of fact, in my conception of

1 them.

2 DR. JONSEN: Participation makes sense if there
3 is redress and grievance process. Otherwise it does not make
4 much sense because you can cut it off at the roots.

5 DR. IRWIN: In order to have a proper grievance
6 mechanism you have to have two-way communication between
7 some outside group who then tries to work the grievance
8 mechanism by going to other sources of power.

9 DR. RYAN: John, you say you have been working on
10 this. Have you fleshed this out any more than it is on
11 page 80?

12 DR. IRWIN: Yes, no. I did not. I felt in kind
13 of a bind because on the one hand I am working so directly
14 in an effort to construct a plan in California which came
15 to nearly reach fruition in California during the month of
16 January which got tabled, got delayed, got put on the back
17 burner was the metaphor used by the Department of Corrections
18 because of some extreme hostility expressed by the
19 Correctional Officers' Association, but it was one that I
20 regret I did not bring. It is one that was worked up in a
21 long series of meetings between the Department of Corrections
22 and our group in an eight-month period, and it included the
23 right for inmate organizations inside to exist, to have an
24 outside affiliate and to regularly meet with the superintendent
25 and the higher echelon, if need be, and to aggrieve certain

1 specified things which were the rules of incarceration which
2 was the contract which we start with which was a very
3 rational and not a very outlandish proposal which the top
4 echelon of the California Department of Corrections helped
5 us construct. It was really one that was mutually agreeable
6 to both sides, but the lower echelon, the superintendents
7 and the guards found it intolerable, at least they do now,
8 but I would love to see that, and I did not bring a copy of
9 it, but I will certainly see that the Commission gets a
10 copy.

11 I might be able to have one sent before tomorrow
12 on an airplane.

13 DR. RYAN: Are there other comments that anyone
14 wants to make now? We are winding down for the day. I can
15 see everyone with sort of a vacant stare and so on.

16 Don, are you going to wake us up?

17 DR. SELDIN: Nothing very abrasive. On this
18 grievance and redress, whatever it is called, I think one
19 has to say something about its composition. I mean the
20 outside component that would lend it credibility. Now, I
21 don't know just how to put this, but we ought to be sure that
22 say, newspapers have access to such a committee, that groups
23 which, in some meaningful sense are identifiable with the
24 interests of various prisoner populations are represented
25 on the committee so that the outside members of the committee

1 are not hollow. In other words, I think there ought to be
 2 some specification that physicians on such an outside
 3 grievance committee are disinterested in the way that Al
 4 mentioned. They might be part of an institutional review
 5 board of an affiliated university, something like that or a
 6 medical school or a hospital, something like that. Newspapers
 7 ought to be involved and perhaps groups like the American
 8 Civil Liberties Union or the NAACP or something like that.

9 What I am trying to suggest is not so much these
 10 particular organizations but a tone and a character to an
 11 outside review board that would ensure that the interests of
 12 the imprisoned are being met.

13 DR. RYAN: Are there other --

14 DR. SELDIN: Nothing shattering.

15 DR. COOKE: I take it that the line of reason we
 16 are developing is one way that might make it acceptable for
 17 prisoners to be used?

18 DR. RYAN: Yes.

19 DR. COOKE: We are not excluding other ways of
 20 making it acceptable?

21 DR. RYAN: Anything we have not talked about we
 22 have not excluded yet, Bob.

23 DR. COOKE: For example, this might be an
 24 alternative way to go, but there might be a way to go which
 25 is not to do the research in the prisons at all, do it

1 outside. You get your public exposure, et cetera. We are
 2 not saying that this excludes. It may be a way of doing it
 3 within the prisons, but there may be other ways of doing it.

4 DR. RYAN: If you recall the letter, I tried to
 5 oversimplify the whole thing, but to sharpen it and to
 6 offer the two approaches which had been brought up before us,
 7 the one you just mentioned, the alternatives, plus the one
 8 that we are working on now, and it is my thought that perhaps
 9 some of us could try and pull some of these things together,
 10 that is the recommendations from the task force for the
 11 federal penal system, some of the staff suggestions, some of
 12 the things that have come out and try it out on us tomorrow,
 13 because the only way you are going to be able to check this
 14 is to say, now given this kind of a prison with these kinds
 15 of assurances and so on, now what are you going to do with
 16 respect only to biomedical research. Then we are going to
 17 have to tackle this with respect to certain aspects of the
 18 behavioral areas, and I just want you to start thinking about
 19 this.

20 Miriam Kelyt came to me and said, "You know, what
 21 are we going to do about rehabilitation, like work programs
 22 and early furlough programs, early discharge programs? Are
 23 they research. Are they therapy? Are they institutionalized
 24 in our society? What do you do when someone wants to validate
 25 them or compare one with the other?" And although everyone

1 that has come to us and talked about all of the things that
 2 are wrong with society and the prisons, there is powerful
 3 little that has been said or that has been written to us that
 4 has recognized the fact that the only way you are going to
 5 make improvements is by that mechanism, that bad word
 6 "research," and the thing is for society to have the wit
 7 to do the right kind of research in the most humane fashion,
 8 decent fashion, to redress some of these problems in the
 9 prison system and society and so on.

10 So, we are going to have to think of some things.
 11 We will try and bring something to the Commission tomorrow.

12 DR. STELLAR: As Pat just said to me in an
 13 aside, if you separate out the behavioral section, we will
 14 surely be here Sunday. Is there any possibility in the
 15 interests of finishing in the two days rather than three
 16 days of taking your remarks into the behavioral area as well
 17 and trying to deal with both, at least in the same day?
 18 I don't mean necessarily simultaneously.

19 DR. RYAN: Every time we say anything that tries
 20 to conserve time for us, the whole United States is listening,
 21 and they are saying that this is so terribly important you
 22 should not -- damn the time, you know, take the time that
 23 is necessary. We will try tomorrow to do what we can.
 24 Then we will send the Commission away to do a lot of
 25 reading, catch up on the reading and so on and so forth,

1 while we are trying to draft the first result of the
 2 deliberations. We will try the best we can to do both of
 3 those, but I cannot be certain, but we don't want to slip
 4 something in so that -- remember Pat was the one who said
 5 to us, "Don't necessarily assume that what we accept for
 6 biomedical we would for behavioral."

7 DR. SELDIN: What time tomorrow?

8 DR. RYAN: We are scheduled to begin at 9 o'clock.
 9 Get up early and read your --

10 DR. SELDIN: I move we adjourn.

11 DR. RYAN: We are adjourned. Thank you all.

12 (Thereupon, at 5:04 p.m., a recess was taken
 13 until 9 a.m., the following day, March 13, 1976.)
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P R O C E E D I N G S

DR. RYAN: I wonder if we could convene our meeting and move along. I would like to plan out for you, plan the day with you and see if you agree. I would like to break for coffee at 10:30 for only 10 minutes, to break at noon for lunch to be back in an hour-and-a-half, that is, 1:30 and go until 3:00 or 3:30 and then adjourn. If you can carry out this schedule, we will try and do it. I would like to devote the entire morning to a discussion of prison research.

The first thing in the afternoon, those other items that are on the agenda, the Quie letter, Congressman Quie, and other things. We are not going to be able to take the kind of time for some of those areas but I think it is terribly important that we continue with the research discussion now. If that is agreeable with you, we will proceed under those general guidelines and you can make your plans. Hearing no objections, I would like to call to your attention, then, a double-spaced, single page, typed memo on your, at each of your places, which is an outgrowth of some of the discussions that Mr. Yesley, Steven Toulmin, John Irwin and I had last night, trying to put together the concept of an accrediting mechanism.

In keeping with that, we were not too specific but what we wanted to bring before you was how it might look and how certain controls might be put in place for those people who are cynical about the possibility that change can, in fact,

take place or that controls can be effective. And if I may, I would just like to review it with you. The Commission recommends that the Secretary may conduct, support or approve and I think in that context one might be, refer to FDA activities, biomedical or behavioral research involving prisoners provided such prisoners are confined in a correctional institution or facility and here, as far as I am concerned, it doesn't have to be a correctional institution or facility. It can be any facility that is regularly inspected, has been certified by an appropriate review committee as conforming to the following standards.

One standard is general conditions of inmate life and John Irwin assures me that there are standards for that. There are probably federal standards and guidelines that the judge invoked when he said certain standards were not being met in Alabama, for example. Two, an adequate range of opportunity for employment, education, occupational training, leisure and cultural activities and these could be defined. Three, comparability and level of remuneration for research and other employment activities. We left out here remuneration vis-a-vis activities in the outside world but I think that this, of course, is subject to embellishment and change and what-have-you.

Adequacy and availability of accredited medical care through some kind of joint commission of hospital association

1 standards which could be defined. I want to come back and talk
 2 about that availability of accredited medical care in just a
 3 minute. Regular access by prisoners to means of communication
 4 with outside individuals and organizations according to the
 5 guidelines, for instance, that Al Jonsen was talking about yes-
 6 terday, that is, provisions for uncensored mail, for access to
 7 telephones. Now, these are conditions for all prisoners in
 8 an institution and are not concerned merely with the conditions
 9 existing for people undergoing research.

10 In other words, the facility itself has to meet these
 11 standards so that the society within the prison can sufficiently
 12 control their own destiny, that one could entertain the possi-
 13 bility that research could ethically go on. Regular access to
 14 prison by outside individuals and organizations, including
 15 media and advocacy groups, and this could be spelled out.
 16 Opportunity for prisoners to organize, to subject grievances
 17 to arbitration and to participate in decision-making regarding
 18 the conduct of research in prison. This goes to the suggestion
 19 in the staff paper regarding the provisions referable to be-
 20 havioral research. Many people said behaviora research could
 21 be acceptable if the prisoners themselves said they wanted it,
 22 if they retained the right to refuse and if they had some par-
 23 ticipation in setting it up.

24 It seems to me that some of the programs that Dr.
 25 Brady described that were not, in fact, research projects

1 involved prisoner organization run participation peer pressure.
 2 Provided further that each protocol covering such research has
 3 been approved by a review board, the members of which include
 4 prisoners, and if you want prison advocacy groups, in and out
 5 of the prison, is accompanied by evidence that the correctional
 6 institution or facility has been inspected and certified accord-
 7 ing to the standards above within some specified time. Here
 8 we just said six months.

9 Now, I want to say a word or two about the one area
 10 of health care and then I will throw it open for discussion.
 11 I just happened to be talking to a classmate of mine, who is
 12 concerned about such things as chronic disease and hypertension
 13 and had entertained the thought of trying to do studies in
 14 prisons and so on and so forth. And I asked myself, in relation-
 15 ship to this, what legitimacy does the federal government have
 16 busying itself with biomedical and behavioral research if it
 17 doesn't busy itself first with the health care, both mental and
 18 physical, of men in prisons. And I think for the federal
 19 government to start setting rules and regulations or to in-
 20 fluence city, county and state jurisdictions in prisons, the
 21 federal government should have the same kinds of concerns for
 22 the health care of the these prisoners.

23 There is a mechanism via Medicaid and via other
 24 kinds of grants that if the federal government did set up this
 25 kind of program, that could ultimately come to the good of

1 society, not only from biomedical research which is generated
2 but the concept of federal government being concerned for the
3 health of prisoners within prisons themselves. This is just a
4 halting step, I think, in that direction but it does provide
5 a legitimate role for the federal government with respect to
6 drug testing and so on.

7 But I think only insofar as the federal government
8 equally assumes responsibility for the health care, the way
9 that federal judge said conditions in this prison are so poor
10 that I am going to take them over and take them out of the
11 jurisdiction of the state. I think there is an opportunity to
12 do something small for the Commission, not too grandiose but
13 perhaps creative, in this particular area. With respect to
14 the question of chronic diseases, this physicians indicated to
15 me, for instance, the concerns about hypertension, seeing what
16 happens in hypertension, the opportunity to provide therapy for
17 such people at a similar time or a standard of health care.

18 So, I would say the federal government really is
19 just scartching the tip of an iceberg if it says to this
20 Commission, hey, worry about research on prisoners but it
21 doesn't really say, hey, worry about the health care of prison-
22 ers. And I would like to stress that. But this document, as
23 a starting point for the Commission's deliberations is offered
24 to you and I would invite discussion and comment.

25 DR. JONSEN: I move that statement.

1 DR. BRADY: I have two things that I would like to
2 add here --

3 DR. RYAN: Why don't you just second? We don't have
4 to vote on it. We will open it for discussion.

5 DR. BRADY: Okay. Moved and seconded.

6 DR. RYAN: Now we can discuss it for the rest of the
7 day or some other day.

8 DR. BRADY: Yes. Well, I think this has the frame-
9 work of a -- there are two things I see here that I just put
10 in in red. Item No. 3, which has to do with comparability and
11 level of remuneration for research and other activities.
12 Nothing in here speaks to the comparability of opportunities
13 for other employment activities, which I think is --

14 DR. RYAN: That was supposed to be under 2, it is
15 perhaps not well-enough stated.

16 DR. BRADY: Oh, okay. I would just add comparability
17 between the opportunities for and in the level of remuneration
18 for research and other employment activities. Down in No. 7,
19 the critical feature there which has to do with the opportunities
20 for the prisoners to organize, subject to grievances and prin-
21 cipally to participate in decision-making, not only regarding
22 the conduct of research in the prison but the objectives and
23 the conduct of research in the prison. I think that is one
24 of the major concerns, not only how it is done but to what end.
25 They should be able to participate in what it is about to the

1 extent that it is in their benefit, they ought to be able to --

2 DR. STELLAR: Would you want us to amend that and
3 say objectives of behavioral research?

4 DR. BRADY: No, they ought -- the objectives of even
5 biomedical research ought to be consummate with what the
6 prisoners want. If they cannot agree with the objectives of
7 the program, regardless of what the research program is, then
8 I don't think they should be required to participate.

9 DR. RYAN: Dr. Seldin.

10 DR. SELDIN: First of all, I think the people who
11 drew this up ought to get some credit for having prepared such
12 an excellent working paper in so short a time. I think it
13 would be helpful to structure these standards in terms of
14 standards for the prison in general and standards for biomedical
15 research in particular, some such phrase as conforming to the
16 following standards with respect to the institutional arrange-
17 ments in the prison in general and of biomedical and behavioral
18 research in particular. Then categorize the recommendations
19 in these two dimensions so as to make crystal clear we are
20 talking about the prison setting on the one hand, certain
21 minimum standards. For example, I think that in view of some
22 of the remarks we heard, it would be very important to ascertain
23 that there was adequate medical facilities in the prison in-
24 dependent of the research project, so that this doesn't become
25 a subtle kind of coercion, to have access to better medical

1 care. It is ambiguous here as it now stands.

2 I think that if one set forth a category, institu-
3 tional arrangements in the prison, certain minimum standards
4 for these arrangements and specify many of the things that are
5 listed here, including such things as biomedical research and
6 so on. Then the second category would have to do with standards
7 for biomedical and behavioral research in prison. Now, under
8 this category there are several things that, to my mind, ought
9 to be spelled out more in detail and the most important thing,
10 I feel, is some sort of regularly seated committee consisting
11 of the things mentioned here, prison members themselves --

12 DR. RYAN: You don't mean an IRB now, you mean another
13 committee?

14 DR. SELDIN: Yes. I am not talking about review.
15 That could be done by some of the mechanisms that Al Jonsen
16 mentioned and, again, I think that should be specifically
17 spelled out. In other words, a review body to scrutinize
18 protocols. You have got that here but I am talking about
19 another kind of body where the prisoners are represented, where
20 members of the community are represented, I mean realistic
21 members of the community. You have mentioned that here.
22 Advocacy groups, that is fine. That is a good way to mention
23 it, as well as physicians, disinterested physicians, the sort
24 of arrangements at the University of California strike me
25 as being very sound, so that there can be no question that the

1 openness is not compromised by the warden or the prison groups
2 or the jailers, as has been termed, constituting a coercive
3 group which cannot be circumvented because there is no access
4 outside.

5 Well, that would be the major thing that I want to
6 suggest, that the body be specified that performs this function
7 in the section having to do with biomedical and behavior
8 research in particular.

9 DR. RYAN: Pat King.

10 MS. KING: I would like to congratulate everybody
11 that worked on the document but I think that the document as
12 it is, and I have specific criticisms, points out my own per-
13 sonal dilemma, I think, even more so and that is that the
14 meanings of the words which probably cannot be defined in any
15 greater specificity are still such that I am not satisfied.
16 I don't know what "adequate" means. Now, if I ran the world,
17 if I ran HEW and set up the final system, I might feel better
18 about it, but I don't. So, I have difficulty with it, and I
19 understand some of the limitations, in trying to be more
20 specific.

21 I have a specific problem with No. 3, about compara-
22 bility and levels of remuneration for research and other employ-
23 ment activities. I have several problems. One, the way it is
24 written that could mean you could pay for research the same
25 thing you paid for license plate making and I didn't think you

1 had that in mind. On the other hand, if that is not what you
2 are going to do, if you are not going to bring participation
3 in research activities down to the payment levels for working
4 in the prison yard and working in the factory, in the shoe
5 factory, et cetera, then it becomes a question of what you
6 are talking about. Are you trying to talk about raising the
7 pay for working in a license plate factory up to the level of
8 what is being paid in terms of participation in research acti-
9 vities?

10 Which brings me to another question, that if it is
11 not regulated by the state and it may very well be already, in
12 terms of how you devise a payment system, if it isn't, then how
13 does one set that standard for pay and what had you in mind,
14 or what had the drafters in mind when they wrote this?

15 DR. RYAN: Let me start out by saying no one has any
16 proprietary interest in this --

17 MS. KING: I understand that.

18 DR. RYAN: It is a creation of the Commission's and
19 you would help us more, Pat, by saying I don't like that because
20 it is not adequate enough. You might help us more by saying,
21 look, I think that the remuneration ought to be somewhat comparable
22 or define it, comparable to what is going on in the outside
23 world, that, in fact, slave labor shouldn't exist.

24 MS. KING: The Federal Bureau of Prisons report
25 adopted a comparability level in their recommendations, that

1 task force's recommendations, with what is being paid in the
2 outside world.

3 DR. RYAN: Okay.

4 MS. KING: That would be the level, I think, that
5 should be used and I only raised that because it seems to me
6 that that creates enormous problems in terms of bringing up
7 the other pay scales in a prison. You are into the situation,
8 I think, that John Irwin stressed yesterday. I am not sure I
9 agree with him, but that would certainly put us in the situa-
10 tion of making it so impossible that states may really consider
11 not funding or not allowing research in prisons because of the
12 problems of bringing up the pay scales for other activities.

13 DR. RYAN: Bob Cooke.

14 DR. COOKE: Well, as usual, I am going to sound a
15 negative note. Let me give you my reaction which is not against
16 the -- I can see what you are attempting to do, all right. But
17 I find this a little bit offensive. I find it a kind of des-
18 cription that the Department of Agriculture might possibly put
19 out in terms of the housing and caging of animals. And I get
20 the feeling that we are talking about a group of slightly sub-
21 human individuals that if we frame things adequately enough,
22 it is okay to work on this group, and I can see why the Euro-
23 peans, maybe, have not taken to prisoner research because
24 this seems to me to make them a kind of special group of
25 people, non-people, where if you do enough things, have the

1 caging and the housing and the feeding and all that right, then
2 it is okay to work on these people.

3 I think you have got to go farther than this, it
4 seems to me. I think you have got to show the comparability of
5 these persons to other people in the free world and I think the
6 only way you are going to have that occur is when you have
7 free world people participating in the same protocols. I think
8 that is the real sign of choice going on. Otherwise, I think
9 this is a lot of maneuvering to sort of be sure that the
10 environment is nice and the air is fresh and so forth, and I
11 am not satisfied with it.

12 DR. RYAN: Your suggestion is an add-on? You want us
13 to throw this out? Or you want us to just say --

14 DR. COOKE: I don't know. I think that this may be
15 a nice way to make the prisons better but I am not sure it
16 really does say that prisoners are like other human beings in
17 regard to research activities. The way they are like other
18 individuals is to have them participating the way other indi-
19 viduals do and have other individuals participating with them.

20 DR. RYAN: That is not exclusive.

21 DR. COOKE: Not necessarily exclusive but I feel
22 that until you add that other element it sounds like the
23 Department of Agriculture to me.

24 DR. RYAN: Okay. You have that on page 80 of the
25 staff report, that is, concordance. You can participate in

1 research if non-prisoners are also included or non-prisoner
2 projects are comparable or research is suitable for non-prisoners
3 as well as prisoners. I sort of accepted that as a given, but
4 you feel that it has to be made quite explicit?

5 DR. COOKE: There is absolutely nothing here that
6 suggests --

7 DR. RYAN: This is not meant to be inclusive but I
8 think that you have identified it as something --

9 DR. COOKE: I am coming down to the protocols now.
10 This is a general description of the prison environment, out
11 of which these people come. But now I am trying to say there
12 ought to be conditions imposed in regard to these particular
13 protocols that assure that these individuals are not guinea
14 pigs, animals, subhuman, et cetera, and the best assurance there
15 is that other people participate.

16 DR. RYAN: Dr. Jonsen.

17 DR. JONSEN: I would like to make three comments.
18 Two of them have to do with what Bob just said. The idea of
19 free living people being involved in the same experiments or
20 being offered the same experiments has some interesting advan-
21 tages to it. I think they largely pertain to risk-taking more
22 than to anything else. They still don't answer the question
23 of what, in fact, happens to people who are behind the walls.
24 All it really tells you is that free living people are willing
25 to take the same risks that somebody inside would be willing to

1 take and there are, in fact, examples of that. Once again,
2 if I can refer to the University of California, we did ask
3 people who do the most prison work to establish similar faci-
4 lities and offer their protocols to their out-patients, which
5 they have done. So the same protocols that are done in the
6 prison are offered to the out-patients. That is the same thing,
7 there is a similar situation at Jessup.

8 DR. COOKE: They would have to be accepted by people
9 in the free world, too, really, not just offered.

10 DR. JONSEN: Well, I cannot tell you what the accep-
11 tance rate is in either of those two institutions but all I
12 am trying to say is that basically the question is of risk
13 and doesn't really go to the issue of what happens when people
14 being offered the same risks are inside the prison and with
15 the prison conditions. It seems to me what this is an attempt
16 to do is to, to use the term I have used before, to approximate
17 the inner conditions as closely as possible to the free living
18 state outside, so that with regard to a number of modes of
19 living there is comparability.

20 So, your concept is valuable insofar as you have an
21 actual test to say would people in the free living state accept
22 the same risks. But you still have the problem of creating
23 an approximation to the free living state within the closed
24 society. I would like to suggest that one nice addition to
25 this might be along the lines of our, in our fetal research

1 recommendations. We included some deliberations showing the
 2 rationale and a prelude to this, or prologue, might make it
 3 clear that this is not the care and feeding of animals, that
 4 it is precisely an attempt to state that the environment of
 5 the prison should be one in which the maximum possible free
 6 interchange of information and choice is made -- that is the
 7 condition we are attempting to create. We are not just trying
 8 to keep clean cages.

9 Just a final, third point. Would it be advisable
 10 to include in these recommendations a recommendation that there
 11 be a national body appointed to oversee the accreditation pro-
 12 cess or do we want to leave it to the Department to do it with-
 13 in its ordinary inner workings? Should we ask for an outside,
 14 public advisory body?

15 DR. RYAN: I think that is an issue --

16 DR. JONSEN: Accreditation body.

17 DR. RYAN: That is an issue that we were uncertain
 18 about and would be a moot point unless the concept was valid
 19 as far as the Commission is concerned. I hope we can get off
 20 the slang expressions about prison life, although I think that
 21 the very descriptive nature of the use of words, "cages," and
 22 so on and so forth, points up the simple fact that although
 23 that is shocking to people when they perceive it in that way,
 24 that is the way the real world is and I suppose if we do
 25 anything to change it a little bit, it might be worthwhile.

1 Dr. Stellar.

2 DR. STELLAR: Al covered most of what I wanted to
 3 say and did it very well. The only additional point I would
 4 make in response to Bob's parallel to animal care is the
 5 decision-making process which these people are participating
 6 in. This seems to me that that alters the situation very
 7 greatly. I think it is a caricature to make this an animal
 8 care, Department of Agriculture situation.

9 DR. COOKE: You know, I don't agree with you, Al.
 10 If you read those essays on the prison culture, I don't think
 11 you are going to affect the prison culture one bit by all this.
 12 I really don't. You have got a culture there that I think
 13 makes it very difficult for individuals to choose freely. It
 14 is quite different from the free world and no matter what you
 15 do in regard to these procedures, I think that kind of culture
 16 is still going to be there and is going to be a kind of oppres-
 17 sive effect and therefore, it seems to me, we have to do some-
 18 thing in addition.

19 Now, as I looked at these there was very little that
 20 seemed to be in there that would have kept people from parti-
 21 cipating in protocols that I think would be unacceptable to
 22 people in the free world. That is why I think we have got to
 23 go --

24 DR. STELLAR: I agree with that.

25 DR. COOKE: It is largely in the risk area that we

1 are talking about, but I think we need that additional protec-
2 tion.

3 DR. STELLAR: That was part of my agreement with Al,
4 I agree with that, the additional protection, but I just wanted
5 to add this other view. I think we won't change the culture
6 but I think for those subjects, prisoners that are involved
7 in research, I think we put it on another level if it works.

8 DR. RYAN: Stephen, please.

9 DR. TOULMIN: I think John Irwin can speak to a lot
10 of these questions much better than any of the rest of us and
11 I think he will when he gets here. I mean here in our dis-
12 cussions last night it was quite clear that item No. 7 was
13 an item which, if it works, would be capable of modifying the
14 conditions that Bob Cooke was just speaking of; if, indeed, it
15 were possible for prisoners to organize and subject their
16 grievances to arbitration effectively and to participate in
17 a lot of the relevant decision-making, that this would make a
18 substantial difference to that decision and take them out of
19 the category of being caged animals and put into much more the
20 category of rational beings who have some control over the
21 relevant aspects of their fate.

22 I am sure John can say much more than the rest of us
23 can from his experience in dealing with the California prison
24 authorities over the last period of time, just how this kind
25 of thing should be cashed in in detail if it is going to have

1 any chance of being effective. But I just want to say that No.
2 7, as we framed it, was directed precisely at the point that
3 Bob has raised and if we can re-word it in such a way as to
4 put his anxieties at rest, fine.

5 DR. RYAN: I am sorry, Karen Lebacqz.

6 DR. LEBACQZ: Like Al, I am operating on the assump-
7 tion or the hope that any such statement of recommendations
8 will be preceded by a statement of deliberations and conclu-
9 sions and would want to reiterate his concern that that should
10 spell out the rationale. I would also like to see that state-
11 ment include your concern, Ken, that we make a very strong
12 statement to the effect that concern about research in prison
13 must be seen in the light of a larger concern about the adequacy
14 of medical care in prison. That seems to me very important.

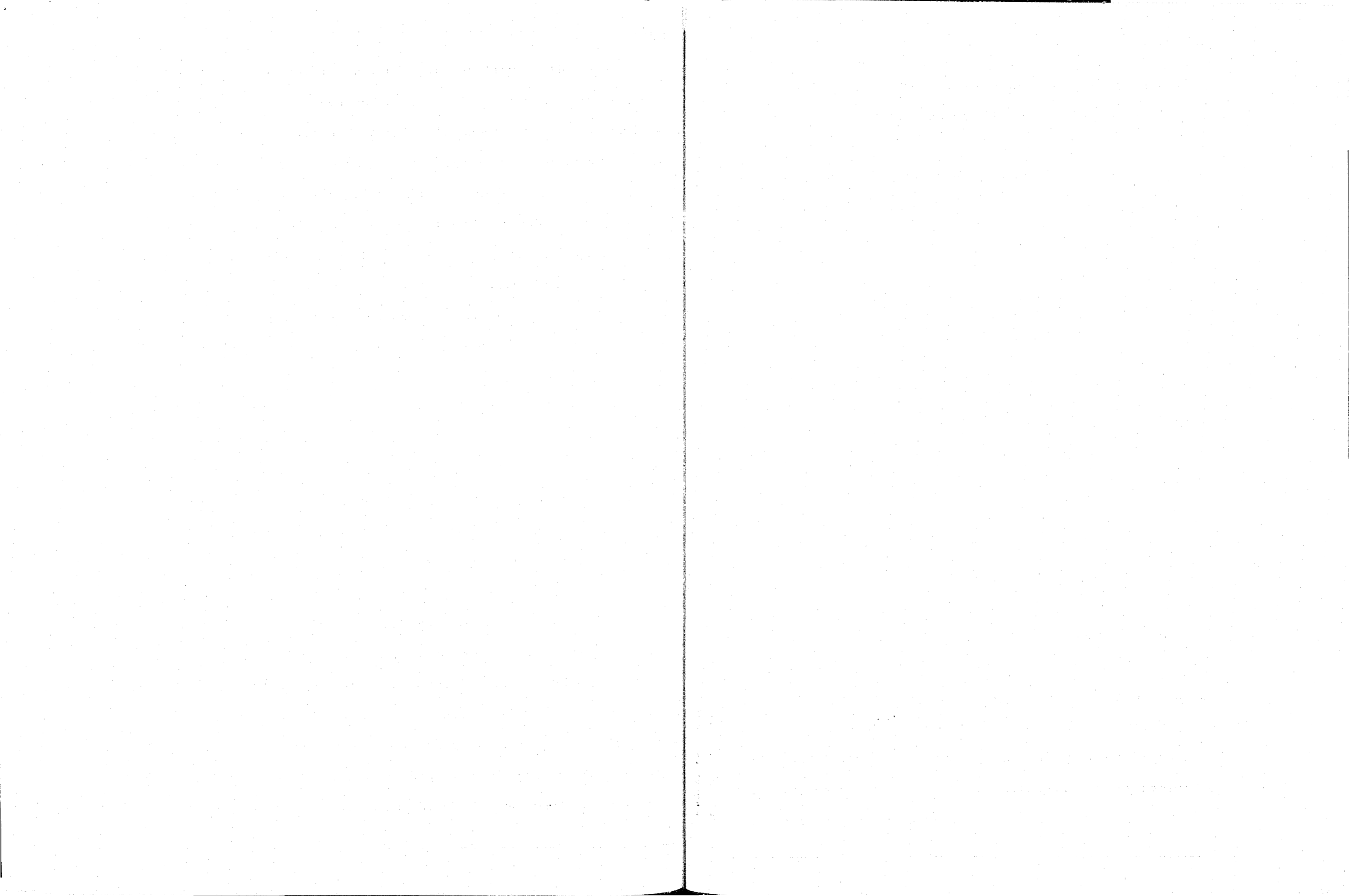
15 Then I had a couple of very specific comments here.
16 I share Pat's concern on the issue of remuneration. I am very
17 troubled by that. It sounds right now as though we might end
18 up saying that the federal government or the drug companies or
19 who else gets a nice, cheap market --

20 DR. RYAN: We should re-word that.

21 DR. LEBACQZ: And I am not sure that is what we want
22 to do.

23 DR. RYAN: Or tell us what you want.

24 DR. LEBACQZ: Well, I haven't figured out how to re-
25 word it yet but it seems very clear to me that what we want is



1 The real thing that we have to confront, and the
2 hardest and therefore, I think, the most immediately important,
3 concerns No. 3 on comparability and level of remuneration.
4 There, I think, the nail has already been hit on the head by
5 the comments made and that is that there must be equivalence of
6 compensation within and without the prison.

7 Now, admittedly, we are then catapulted into a
8 terribly difficult area because by raising the rate of compen-
9 sation of prisoners for research to that which would be accord-
10 ed students or anybody else in the outside, we, of course,
11 directly involve the situation within the prison. In other
12 words, a substantial rate of compensation for the research in
13 juxtaposition to a very low rate of compensation for other
14 industries within the prison, this is the hardest of all the
15 problems. The other problems, the postponement of arbitration
16 until there has been a due grievance proceeding within and so
17 forth, they are all very solvable, very standard, reasonable
18 approaches.

19 But this is the ultimately difficult thing and this
20 may be the thing that will produce in our standards an im-
21 possible norm in relation to the realities of a modern indus-
22 trial society. But how can we give to the prisoner the rate
23 of compensation that goes to the outsider for research? And
24 admittedly, there might be some equitable adjustment here; for
25 example, a compensatory payment by the prisoner to the state

1 for a reasonable apportionment of his maintenance and so forth
2 but even so, it is going to be a significant change and then
3 are we also in a position to pull up the other industries with-
4 in the prison? This, to me, this is the ultimate difficulty
5 that we have got to face and if we can solve this in some both
6 theoretically sound and feasible way, I can almost guarantee
7 the other things, including the method of describing that these
8 are human beings we are talking about and not just Department
9 of Agriculture concerns.

10 Those can all be met, I think. But this one, I must
11 admit, defies me at the moment for a rational solution.

12 DR. RYAN: Joe.

13 DR. BRADY: I think, there seems to me to be an impor-
14 tant distinction that we should keep in mind. Indeed, in fact,
15 we are striving very hard to assure that we don't overlook the
16 fact that we are dealing here with human beings but it is also
17 unrealistic to assume that the status of these human beings is
18 different from the status of other human beings who may be
19 involved in the same kind of a situation and largely by virtue
20 of their own performances in the past.

21 Now, this doesn't represent to me an impossible
22 situation simply because while you can argue to the requirement
23 for comparable levels of compensation, it seems to me not
24 essential that the compensation accrue directly to the indivi-
25 dual. That here is an opportunity, for example, if this is

1 handled properly, to get another feature into this situation
 2 so that the social benefits of the prisoners' participation
 3 accrue not to the society in general alone, but to the particu-
 4 lar society of which he is a part and here is his opportunity
 5 to contribute in that respect. So, that he doesn't necessarily
 6 get \$27.00 an hour but perhaps the institution and the com-
 7 munity of which he is a part profits from that level of compen-
 8 sation in some way and that is an additional contribution which
 9 he makes to his own community, to the limited different com-
 10 munity than the one --

11 DR. RYAN: Joe, that is what Karen was referring to
 12 and it is in here and that is that sufficient money go into
 13 the prison so that the prisoners are given amounts of money
 14 that are comparable, reasonably comparable activities, that
 15 the overage, then, be given to the prison to benefit the
 16 prisoners.

17 DR. BRADY: These are not absolutes we are talking
 18 about, but while, as John pointed out yesterday, what you are
 19 dealing with here is a system which is constantly in flux,
 20 more so now than it ever has been before and as the -- what we
 21 are talking about, really, is for proportionality or comensurabi-
 22 lity. As the standards improve in the general population,
 23 then that adjustment is made within the research system as
 24 well. So, I don't see that as an impossible problem.

25 DR. LOUISELL: Not impossible, but very difficult.

1 DR. RYAN: Pat King.

2 MS. KING: Well, I wasn't going to talk about what
 3 David and Joe were talking about but I would like to make a
 4 preliminary comment about that and that is, I don't trust things
 5 that says the excess has to go to a prisoner fund or return to
 6 prisons. Our experience and history of prisons is you run
 7 into all sorts of problems with prison funds, who controls
 8 them, disappearing money, a whole bunch of things that I won't
 9 get into.

10 It seems to me if you have to talk in those veins,
 11 you are talking about one of two things. The prisoner, all
 12 prisoners, as a result of being incarcerated, must be asked to
 13 work or must work as long as they are physically able, includ-
 14 ing participation in research, to help defray the costs of
 15 their incarceration. That is a totally different kind of penal
 16 model than we have ever had before and if we had that kind of
 17 model, then it seems to me that the proposals for pay and where
 18 they went would make a little bit of sense. We don't have that
 19 kind of model.

20 I distrust asking somebody to work in an area and
 21 then say, if you don't make everybody do it, we are going to
 22 return a portion of this or some measure over and beyond to
 23 some environment -- it doesn't have to be a prison fund, it
 24 can go back to the state. I just don't, I have real difficul-
 25 ty with that. I think it should go to the prisoner for his

1 family, for when he gets out and can, perhaps, get a start back
2 in the world or help with his rehabilitation. We are talking
3 about an entirely different concept, but that is an aside.

4 What I really wanted to suggest was some additions
5 to the sheet of paper that came from the Federal Bureau of
6 Prisons. There are two points that I thought were very good.
7 One was that prisoners must be compensated for all lasting
8 injury or loss of earning suffered as a result of participation
9 in their research projects. We have not discussed the issue of
10 compensation in general but I think that any system, anything
11 we propose should have that as a recommendation.

12 Two, I liked their proposal No. 1, that the indivi-
13 duals who were to serve as subjects -- this one I am proposing
14 tentatively, unless I hear something that could possibly im-
15 pact on this -- who serve as subjects volunteer from a pool of
16 prisoners who have a release date which is not susceptible to
17 modification. I am debating, I think that it might be worthy
18 for the Commission to face the Federal Bureau of Prisons' pro-
19 posals that the prisoners who volunteer must come from a less
20 restrictive environment than the one which they are going to.
21 They suggested that the volunteers should come from camps and
22 kind of trusty-type positions. I think that is worthy of
23 debate. I can see problems with it on both sides.

24 I certainly think that we should not overlook it,
25 that we might want to discuss a little bit about the pool and

1 perhaps that goes back to Don's idea of looking at some point
2 at the research protocol and then at the prison too, and perhaps
3 those two would go to who can actually participate in the
4 research.

5 DR. RYAN: Dr. Cooke.

6 DR. COOKE: I think David has made a point that the
7 compensation issue is certainly one of the most difficult ones
8 to deal with here in this particular situation because if you
9 have equity there, you obviously will have a bribery component,
10 at least, of a sizable degree in relationship to other payment
11 in the prisons. And certainly I have no confidence that the
12 rest of the prison wage scale is going to be raised that much.
13 I must say my agricultural rules here, which I referred to,
14 sound a little more agricultural when Pat says even the manage-
15 ment of the funds is very difficult to supervise, and you want
16 to supervise the ambience of the institution, so I am a little
17 pessimistic about all this.

18 What I would like to say specifically about the
19 compensation and I would hope it would be a general statement
20 and not simply applicable to the prisoners. I think we have
21 to somewhere, when we talk about compensation, make sure that
22 compensation is unrelated to risk and that it is related only
23 to time and inconvenience, possibly. It seems to me that the
24 Berkeley proposal at one time that was, I believe, in the
25 courts, in which there were differences in hazard to the

1 children and greater compensation, as I recall, if there was
 2 more hazard, obviously is really very undesirable feature.
 3 So, I would think we ought to build in a level, some kind of
 4 guidelines, in regard to compensation that simply make it in
 5 terms of time and even the inconvenience issue I find a little
 6 hard to quantitate. But certainly not related to risk.

7 DR. BRADY: A service contract, rather than a product.

8 DR. RYAN: Mike has a question about clarification,
 9 please.

10 MR. YESLEY: Could I just make a suggestion that for
 11 choice of words, you use "compensation" to mean taking care of
 12 a person who has been injured and "remuneration" for --

13 DR. COOKE: Okay, remuneration. Remuneration un-
 14 related to risk.

15 DR. RYAN: Dorothy Height and then Dr. Seldin.

16 MS. HEIGHT: I think I agree with some of what Pat
 17 was just saying, but it seemed to me that those were conditions
 18 that affect the research and maybe, I felt that this statement
 19 the strength in it, was that it was dealing with the thing
 20 that we have heard so much, which is that the prison is not a
 21 place where one can make a decision without a sense of un-
 22 coerced free will. Therefore, it seemed to me, that the
 23 strength in this is that is addressed to the prison as the
 24 prison. And in that regard, I look at the last part of 7,
 25 where we refer to the review board, and I certainly -- you

1 know, it is important to include prisoners -- but considering
 2 what we are reading about, the review boards and their tendency
 3 to be, you know, really bureaucratic bureaucratic, it seems to
 4 me that it is very important if we could say something like
 5 the review board whose members are -- I would like it to say
 6 racially and ethnically representative, has some relationship
 7 to the prison population. I think this is a vital lack in our
 8 whole system and, also, to prisoners. But it seems to me that
 9 that is a very constructive(?) thing to have right there,
 10 whereas we may later somewhere discuss review boards, I would
 11 like to see it still here.

12 DR. RYAN: Dr. Seldin.

13 DR. SELDIN: I want to make a comment on this matter
 14 of compensation and then a general comment. So far as remunera-
 15 tion goes, there seem to be three standards in terms of which
 16 remuneration is being discussed. On the one hand, one states
 17 that the drug companies should not, in a certain sense, have
 18 cheap, exploitable human subjects on which to do research and
 19 in this sense, then, one is saying that the drug companies
 20 ought to spend a fair amount of money to get it. They should
 21 not exploit the posture of a prisoner in order to get cheap
 22 labor, so to speak. That is one standard of remuneration,
 23 what the drug companies are paying.

24 A second would be what research subjects are getting
 25 on the outside as compared with the inside. And a third would

1 be the general level of remuneration within the prisons for
2 other kinds of activities. Now, I take 3 to refer to the
3 third. That is, it doesn't make a statement regarding drug
4 companies and it doesn't make a statement regarding comparabi-
5 lity to comparable wages outside the prison. This statement 3
6 seems to me unambiguous. Other employment activities within
7 the prison I take this to mean.

8 Now, I feel that that is a very, very important point,
9 that the level of wages set within the prison should consti-
10 tute, as Dr. Cooke mentioned, a kind of oblique bribery where
11 one is setting the wages so high that, in effect, one is making
12 research tremendously attractive thing for sort of illegitimate
13 reasons. So, I want to endorse the three just as it specified,
14 perhaps adding "and other employment activities or opportuni-
15 ties within the prison" to emphasize the fact that one is talk-
16 ing simply about what you get, let us say -- what did you say?
17 For making license plates or whatever other wage structure
18 there exists within the prison. Research activities shouldn't
19 be drastically out of line.

20 Now, a second point I want to make concerns issues of
21 adjustment and scrutiny. It seems to me that once again there
22 ought to be ways to change things that are built into it, that
23 things don't become frozen and rigid. It is possible that a
24 wage rate is ridiculous and that is not catastrophic if it can
25 be changed after a reasonable amount of time. It is possible

1 that certain activities, no matter how well-intentioned, get
2 calcified and there ought to be ways to change that. Now,
3 ways to change it constitutes, to my mind, anyway, a call for
4 two different devices.

5 One is some statement about institutional review
6 boards. These are more specifically narrowed to the conduct
7 of the research project, emphasizing what institutional review
8 boards always emphasize. But on the other hand, it seems to me
9 that there ought to be a second one constituted on prisoners,
10 maybe of ethnic and racial representatives, but also public
11 representatives who, in some sense, scrutinize this sort of
12 activity and are able to make judgments about it and who meet
13 at specified intervals so that it is not just when they are
14 called into being by some catastrophe that besets. In other
15 words, they scrutinize and oversee that these activities, both with
16 respect to the prison in general and the research in particular,
17 are proceeding as the protocols specifies they proceed.

18 Now, it says here, has been inspected and certified
19 within the preceding six months. But it is hard to get the
20 sense that there is continuous review. What I am trying to
21 suggest is that two boards be set up and --

22 DR. TOULMIN: Can I speak directly to Don Seldin's
23 point? Very quickly?

24 DR. RYAN: Yes, you may.

25 DR. TOULMIN: I do think the document as it stands

1 is unclear, that we are referring to two committees and, indeed,
 2 that maybe there ought to be three committees. Let us, as a
 3 group, simply remove that unclarity in the document. I mean,
 4 it is clear that there is going to be some overall review
 5 committee or set of regional committees which, under the authori-
 6 ty of HEW, would have the task of certifying that prisons meet
 7 these standards.

8 But within the prison there is going to be an IRB
 9 which would have the normal functions as an IRB but my own
 10 feeling is with you, that there should be a different committee
 11 which has the task of overseeing the relationship between the
 12 entire research activity and the rest of the prison and that
 13 this is the one that you wish to have added to the document.

14 DR. SELDIN: Yes, I think it should be spelled out.

15 DR. TOULMIN: I think this is good.

16 DR. SELDIN: And it addresses to your question, Bob,
 17 too, to make certain that the overall civilization of the pri-
 18 son vis-a-vis not only the research program but its balance
 19 with the rest, be reasonably dignified.

20 DR. RYAN: I am going to call on Bob Levine and then
 21 on John Irwin, but before John Irwin speaks, I want to ask him
 22 some specific questions to respond to. But, Bob, start.

23 DR. LEVINE: On the issue of setting up dual com-
 24 mittees within the prison, some of the functions that Don
 25 Seldin has specified for this second committee, I think, are

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 2 calcified and there ought to be ways to change that. Now,
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 21 on John Irwin, but before John Irwin speaks, I want to ask him
 22 some specific questions to respond to. But, Bob, start.

23 DR. LEVINE: On the issue of setting up dual com-
 24 mittees within the prison, some of the functions that Don
 25 Seldin has specified for this second committee, I think, are

1 represented on the IRB. Some of the things I was asked to put
 2 together on what the ordinary IRB looks like and what it does
 3 do include quite a number of these functions and I do think
 4 that it is quite possible to build the ethnic, racial and
 5 public representation into the IRB so that the sorts of con-
 6 siderations that one would want to address through such represen-
 7 tation could be accomplished in the context of the IRB meeting.

8 I think that, as you were talking, Don, you were
 9 talking about how some sort of structures tend to become cal-
 10 cified and go on doing their thing, possibly in a duplicative
 11 way, and possibly in an unnecessary way, might be accomplished
 12 unless we could really find out what a second committee, the
 13 establishment of a second committee within an institution,
 14 could accomplish that couldn't be accomplished by the first.

15 As I understood it, the way this draft was written,
 16 the other review structure or committee would be outside the
 17 prison, would have much more to do with matters of accredita-
 18 tion and some of the other things that might be coordinated
 19 between institutions. I do wish we might consider the IRB and
 20 how it functions generally before we consider novel variants
 21 of this to apply to separate institutions --

22 DR. RYAN: I think we will have to elaborate that.
 23 Part of the confusion there, Bob, is that the three committees
 24 or agencies, one to accredit, which has to be outside the
 25 prison, one to be composed of prisoners in the determination of

1 their own activities with respect to general prison activities
 2 and, third, the IRB related to research. Then one could define
 3 those three. The third committee, the other prison internal
 4 committee, would be concerned with general prison life to be
 5 sure that there was a mechanism for prisoners to organize, to
 6 get grievances' arbitration, participate in decision-making
 7 regarding objectives and conduct of research and other prison
 8 activities has been added now.

9 Now, John, before you start, one of the areas which
 10 has been of most concern to the Commission members, enunciated
 11 just before you came, was the question of compensation --
 12 remuneration, excuse me -- remuneration as it relates to the
 13 outside world. I think everyone feels that you shouldn't be
 14 given more for research than other things which could be
 15 construed as a kind of inducement or bribery, but what about
 16 the question of the fair return for the prisoner for his acti-
 17 vities while in prison. Pat King's concern that any kind of
 18 prison funds could, like a union fund, for example, could be
 19 subject to misuse.

20 I think in that respect prisons probably don't differ
 21 from the outside world. So, the question of putting it in
 22 trust or going to the prisoner's family and since you have been
 23 talking to prison officials, what sort of an economic problem
 24 is it to not use prisoners as, I use the word in quotes, slave
 25 labor or indentured individuals. To what extent can prisoners

1 find gainful activity or prisons find gainful activity for
 2 their prisoners and remunerate them in the society for that?
 3 And how would we handle the funds? This, David Louisell says
 4 this is a major problem. Can you give us some enlightenment?

5 DR. IRWIN: Well, he is right. It is a sticky legal
 6 problem. There are all kinds of legal barriers, there are all
 7 kinds of administrative policies which get in the way of any
 8 fair distribution of inmate funds. There are all kinds of in-
 9 mate funds. There is usually, in most prisons, an inmate wel-
 10 fare fund which gets fed into by a variety of sources such as
 11 when prisoners sell something from a hobby shop, 10 percent of
 12 the sale goes into the inmate welfare fund. So, it is called
 13 the inmate welfare fund but it is not in the hands of the in-
 14 mates. It is fed at the discretion of the department and
 15 sometimes it is fed in very strange ways. It is fed to pay
 16 staff members wages, and so on.

17 In California we have a couple of suits that are
 18 still in operation on the inmate welfare fund, the misuse of
 19 it. There is another complicating, new development in the
 20 courts. In Soledad they set up a school program for veterans
 21 who have, it was determined by a Veterans Administration deci-
 22 sion that they were going to full-time college which became
 23 possible with an attachment to the local community college,
 24 and they could receive full veterans' benefits which was
 25 something like \$270.00 a month, which piled up very quickly in

1 prison. So they decided to, instead of lodging it in the
2 regular location for inmate funds which the State then draws
3 interest on but does not turn it over to the prisoners, they
4 negotiated with an outside bank and deposited their money in
5 an outside bank and the Department of Corrections went to the
6 bank and threatened them and forced them to return the money
7 to the normal prison funds. But this is being litigated.

8 So, it is a very, very sticky issue. I don't think
9 it is insolvable. I think the solution is to, just for the
10 Commission to, in a document like this to have some statement
11 that there should be the establishment of a general fund which
12 would come out of the difference between what is paid a prisoner
13 subject and an outside subject but also put in some minimal
14 guidelines which would require that it be spent in some dif-
15 ferent direction, such as the supplying general paid possibi-
16 lities for the inmate population at large. I don't think that
17 this -- I think probably presently it would run into, in
18 particular states, some either administrative policies or some
19 legislation but that is not insurmountable either. Those
20 things are very, very quickly changed.

21 I think that this should be a part of the minimal
22 condition, that they break through some of this misuse of in-
23 mate funds so that they require a much more equitable use of
24 the inmate funds. I think this may be the impetus which would
25 require them to do so. I think part of your question was, was

1 it settled by -- excuse me for being late. I am suffering from
2 jet lag, you must understand, because now in California it is
3 just 7:00 and I am right on time, actually I am a little early.
4 Anyway, did you settle the problem of the fantastic differen-
5 tial of the pay on the subject on the outside and the pay on
6 the subject on the inside?

7 DR. RYAN: That is part of the thing you are discuss-
8 ing right now.

9 DR. IRWIN: Yes, I would be in favor of not letting
10 the drug research subject be paid more than the general inmate
11 population. However, though, going along with Don Seldin, I
12 would like to see a mechanism spelled out where the prisoners
13 through time negotiate that wage upward generally, not just for
14 the -- but set up something that the drug research subjects
15 cannot be paid more than just what is a typical wage for the
16 prison population, with the added provision that there are
17 adequate pay slots for a high percent of the prison population
18 and then the mechanism, which I think you are absolutely right,
19 there has to be some ongoing mechanism, but I think contained
20 in this, with minor changes, particularly in provision 7, the
21 opportunity for prisoners to work and subject grievances to
22 arbitration and participative decision-making, if we add in
23 there something about and to introduce policy changes or to
24 be involved in policy changes in the department, they would
25 be a force towards constantly readjusting the income, the

1 general income and also addressing new problems which, you
2 know, we cannot even conceive of.

3 DR. RYAN: Pat wants to ask you a quick question.

4 MS. KING: I am not sure I understood something you
5 said. With respect to remuneration, are you suggesting that
6 what is paid to subjects be the same wage paid, currently being
7 paid to people who do other kinds of work in prison and that
8 the difference between that wage and whatever wage a subject
9 would receive on the outside, then we could worry about? I
10 want to make sure I understood you to say that, so I can ask
11 you a further question.

12 DR. IRWIN: Yes. I think, Don, you mentioned there
13 is a problem in having the drug companies pay outside subjects
14 whatever, \$20.00, something like that, and then pay prisoners
15 \$2.00. They argue that they do so because they don't want to
16 have the incentives so intense. But that still should follow
17 because they are getting by so damn cheap. So, make them pay
18 \$20.00 but \$18.00 goes into a fund.

19 MS. KING: That is not what I am asking, John. I
20 am asking if they pay 25 cents a day to clean the prison yard,
21 or 10 cents a day to clean the prison yard, and \$2.00, however
22 they do it, hour, day, whatever, for participation as a sub-
23 ject, I didn't understand what you meant to do about that.
24 Did you mean to leave that discrepancy in the prison or are
25 you suggesting that what is currently being paid goes down to

1 the level of what is being paid for other prison industries?
2 That part wasn't clear. I understand what you mean by the
3 \$18.00 difference.

4 DR. IRWIN: I am not clear on the other side, either.
5 It is my assumption that most prisons are now paying something
6 like \$2.00 a day for their jobs.

7 MS. KING: Well, it is my assumption that even though
8 drug companies have been very careful and others have been very
9 careful not to make it look too much like an enticement or
10 coercion for participating in research, that the rates for
11 participation as subjects are higher than other prison indus-
12 tries.

13 DR. IRWIN: That varies from place to place and I
14 think that that should be addressed.

15 MS. KING: Well, to the extent that it exists, would
16 you tell me what you would plan to do with that?

17 DR. IRWIN: I think it should all be brought up to
18 some -- then that should be stated, that the general pay, it
19 should be stated in there that there should be the establish-
20 ment of some minimum for all these pay --

21 MS. KING: This is not comparability, John, that is
22 why I am really pushing. I understand comparability but com-
23 parability to what? Do you bring down the research that is
24 going on, down if there is a difference? Do you bring it down
25 to what is being paid elsewhere? Do you bring what is being

1 paid elsewhere up to what you are currently paying? That is
2 what I was trying to find out, what John had in mind.

3 I am going to ask him a further question, to help me
4 clarify what he is saying. Is that were the case, why would
5 anybody, other than through sheer boredom if there were any
6 other prison industry available, participate in research even
7 if we considered it low or minimal risk research? Because
8 prisoners, their perception of the research might not neces-
9 sarily be that, even though scientifically we might say that.
10 We might say, what would be the incentive for the prisoners to
11 participate at all? Over the license plate factory?

12 DR. RYAN: Please, let us keep the transcript clean
13 so that it will be valuable to us. Pat, you have the floor
14 for a minute. Are you done with your question?

15 MS. KING: I was going to ask him a question because
16 I am talking about perceptions and not what may actually be,
17 that in talking to the few prisoners I talked to, sometimes
18 their perceptions about what risk they are taking may vary from,
19 indeed, the risk that they are taking, the actual risk that they
20 taking, so if it was the same in terms of making license
21 plates as participating in research protocol, assuming that
22 the health care facilities are otherwise the same, all kinds
23 of things that we have been talking about doing, I want to know
24 why would anybody participate now?

25 MR. GRAY: May I answer? The study actually provides

1 some data on that.

2 DR. RYAN: Brad, do you want to respond, please?

3 MR. GRAY: Yes. Ninety-four percent of the men
4 participating in research --

5 DR. RYAN: Pat, he is answering your question.

6 MR. GRAY: Ninety-four percent of the men who were
7 participating in research had other prison jobs, which means
8 that they could participate in research in addition to doing
9 their other prison jobs which means it is additional money. In
10 other words, you are not operating with a zero sum game. It
11 does not mean that if you are in research, you cannot do your
12 prison jobs. Many of the tests are walking around tests and
13 so forth.

14 DR. RYAN: Dr. Jonsen.

15 DR. JONSEN: I think this is really a futile dis-
16 cussion. It seems to me that the problem of remuneration can
17 only be solved by inspecting an actual situation, rather than
18 trying to solve it in advance. My reason for suggesting that
19 is that, first of all, I think the economics of prison life
20 are extremely complex in the sense that to make their indus-
21 tries competitive may, in fact, drive the industries out.
22 Because in many prison situations, as I understand it, the
23 work that is done is done for state agencies and they are sole
24 contracts and they are done because they are cheap labor. So,
25 the adjustment of inner prison economics would seem to me to

1 be a very delicate business and you would have to know very
2 carefully, you know, what kind of competition you were standing
3 up against in a particular situation, so I worry about trying
4 to make judgments prior to looking at the precise, real, exist-
5 ing prison economy before I made a rule.

6 The second thing is that the research situation seems
7 to me not to be comparable in a variety of ways to other kinds
8 of industries. For example, it is seasonal and occasional,
9 whereas license plate factory work may be steady work. Book
10 bindery work may be steady work, whereas somebody might volun-
11 teer twice or three times in the course of year for protocol
12 or get on a protocol only in occasional situations. That is
13 probably not in itself a life-supporting way of living in
14 prison, although it might be very advantageous.

15 Thirdly, the data that we had yesterday indicated
16 some figures as to what prisoners were being paid for partici-
17 pation in single protocols. That was not broken down in cer-
18 tain ways that might have been more helpful to us, now that
19 we are in this question. But it did appear to me that the
20 wage rate was not unlike the rates that I usually see on pro-
21 tocols that I see for free living volunteers. Now, I would
22 need to look at that much more carefully but it didn't look
23 terribly different and I imagine the major savings for spon-
24 sors of research come not so much from payment to individuals,
25 but from savings and overhead, whereas you might have to

1 hospitalize free living volunteers for a period of time to do
2 certain drug studies which is very costly to do it in Moffit
3 Hospital. That is not so much the case at Vacaville and the
4 savings are largely in overhead, rather than direct remunera-
5 tion. So, if what I say is the case, then I would be very
6 hesitant to say anything in the general recommendation except
7 to say that the accreditation board or whoever is going to do
8 it, should be assured that there are fair systems of remunera-
9 tion which take into account such factors as what is paid to
10 outside, free living persons, what is paid for other industries
11 within the prison because, you know, you might say you could
12 reduce it all down to the 25 cent a day thing if you made a
13 general rule, and mechanisms whereby the money can be distri-
14 buted in ways which make it less coercive than it might be.

15 In other words, I am just suggesting that here, rather
16 than try to solve the remuneration problem this far removed
17 from the actual problems, that we state our position very
18 generally and leave it to accreditation board to examine par-
19 ticular situations.

20 DR. RYAN: Dr. Cooke.

21 DR. COOKE: Well, I tend to agree with Al a little
22 bit. I would like to ask John Irwin a question. We have some
23 kind of a system in which the rest of the prisoners benefit.
24 I am troubled that this puts an awful lot of pressure on that
25 subject to stay in the protocol. I am getting X number of

1 dollars for the fund and I want to bow out. How well is that
2 going to sit with my buddies back there who are getting some
3 benefits from my blood donations and so forth? Is that a
4 problem?

5 DR. IRWIN: Well, I think there are two sides to
6 that. One is one I think is a positive side, shifting the
7 motivation to altruistic motivation, that is, doing it because
8 it brings about some good isn't a bad thing. We have all been
9 worried about the pursuing individual selfish motives and so
10 on. I guess you are talking about the extreme of that, where
11 a person is really being coerced not by his altruism, but by
12 his peers, that there would be extreme criticism on the part
13 of one's peers. I would see that handled in a different way.

14 The balancing factor, incidentally, in prisons, there
15 is the strong dictive of do your own time, of allowing people
16 to pursue their own -- in fact, that has been one of the big
17 problems in prison, the strong rule of don't call on me to
18 help, it has all kinds of sides. It has a side which means
19 tolerating extreme deviance, it also means don't interfere with
20 another person's exploitation of others and so on.

21 That would balance that, but I would like to hypo-
22 thesize and hope that I am right, that a nice balance between
23 some altruistic motivations and just a little bit of peer
24 pressure to keep going and some system of rotation on it, where
25 a person could say, okay, you know, I have done two weeks on

1 it and it is somebody else's turn. If there was an adequate
2 prisoner organization, I think that would be the one that would
3 occur more likely.

4 It wouldn't be a bad deal. If they saw that as a
5 source of funds, sharing the work a little.

6 DR. COOKE: Isn't that kind of idealistic? I would
7 think if this guy is earning a fair amount for the fund, I
8 think there would be a lot of pressure from his friends back
9 in the prison to keep going in those experiments.

10 DR. STELLAR: If he doesn't, somebody else will step
11 into that slot.

12 DR. RYAN: Excuse me. Bob, I think that if there
13 adequate activities, if it was a requirement that all prisoners
14 participate in some activity, if the pay were equal, there
15 would not be a selective pressure to do one or another form of
16 such activity to redound to the general good, any kind of
17 activity. The pressure would be on prisoners not to be free
18 loaders but to communicate, to participate within the society.
19 As long as you don't single out research as receiving more
20 money and as being something that you could coerce prisoners
21 to do for that reason, but if the activity was there to do
22 other things, then I don't know --

23 DR. COOKE: I think you have to go back and read the
24 essays on the prisoner culture. I must say that may be a
25 loaded description but I cannot see all this altruism operating

1 and so on unless there is an awful change in that culture in
2 a heck of a hurry.

3 DR. RYAN: Well, altruism, as you use it, is in the
4 eyes of the beholder and very often there are group pressures
5 for the general group good and you may want to call that al-
6 truism or you may just want to call it peer pressure. But the
7 practical consequence may very well be the same. Mr. Calhoun.

8 MR. CALHOUN: I guess I am rather worried about this
9 point and I wanted to ask John a question, and a couple of
10 observations along the way. One, this whole process of accredi-
11 tation that we talked about is a very lengthy, very complex
12 and very detailed process that we are trying to outline here.
13 I wonder if we are not in a way saying that we cannot, or can
14 we actually regulate research in prisons. Maybe if we make it
15 so difficult, you know, in terms of this accreditation process
16 we are going to end it. Because I have a sneaking suspicion
17 that there is no way you can implement what you are talking
18 about, for several reasons.

19 The nature of the institution, the nature of the
20 political arrangement that is around those institutions, would
21 not allow you to make revolutionary changes in the system by
22 employing a device which is a minor device in most institu-
23 tions, and that is biomedical and behavioral research in the
24 institutions, to get at the changes that we would all like to
25 see. That we may be, in fact, spending a great deal of time

1 talking about a process that has no applicability to the real
2 world. Now, saying that, I would like to ask a couple of
3 other, ask you to comment on that, John. In addition, if we
4 are to go with this statement, which I must somewhat disagree
5 with, also add two other things. One is an equal opportunity
6 provision to participate. I think that some of the inmates
7 stated at Jackson that the control over access to participation
8 was limited enough in some respects by prison guards or others
9 who had some sort of sway over how people got involved in
10 participation.

11 The other thing that I wanted to raise is in terms
12 of pay rates at these prisons vary from job to job. Are we
13 suggesting that research pay be balanced at the highest point
14 in terms of the highest paid position at that institution or
15 are we suggesting that it be somewhat above that and that the
16 excess funds be drained off in terms of the actual paycheck to
17 the inmate and put in some sort of special fund? I don't think
18 those conditions have been adequately spelled out in terms of
19 how you would define those sorts of things.

20 But I would again say that I think the process that
21 we are going through now is, in a sense, one that may be doing
22 something that we perhaps not at this point intending it to do
23 and that would be to end it, end the research studies.

24 DR. RYAN: John Irwin, do you want to respond?

25 DR. IRWIN: In regard to your first expressed

1 reservation about the likelihood, the danger that this would
2 result in just cessation of the drug programs, rather than
3 changing the prisons, I feel very strongly that this may sound
4 like sweeping or revolutionary changes but it is not true,
5 really.

6 When you look at these, a lot of these things have
7 been recommended very, very strongly by a series of commissions
8 which have looked at the prison world recently. Several prisons
9 have made major steps in the direction of implementing some of
10 these. In Washington, for instance, there is a group which
11 some of you may be familiar with, it is the Center for Correc-
12 tional Justice with Linda Singer as its head, who has written
13 a book with Ron Goldfarb on this issue, who is now -- in fact,
14 didn't they testify before the, they didn't? They didn't,
15 strange. Anyway, they are going around the country trying to
16 sell a grievance mechanism which they have introduced in a
17 couple of states.

18 As I indicated briefly yesterday, California almost
19 accepted something very, very similar to this, spelled out a
20 little more in detail. We still think that we will have it
21 in a year. As Ken Ryan mentioned yesterday, it was his impres-
22 sion that the prison situation because of the extreme criticisms
23 of recent years, the concern over it, is in a state of flux.
24 There are, of course, a lot of pressures which are coming to
25 bear upon it, some of which are very conservative, who want to

1 keep it back in the old status quo, the old form of operation.

2 There is a fantastic opportunity for it to make major
3 steps right in this direction. I don't think it is that far-
4 fetched.

5 DR. RYAN: Karen, please.

6 DR. LEBACQZ: Yes, I want to reiterate a couple of
7 points that have been made. One was made by Lee and that is
8 that it is my understanding that the pay for different jobs in
9 prison differs, so it is not going to be a simple matter for
10 us to say that the pay for research equal the pay for other
11 jobs. The other point was made by Al and that is that, as I
12 understand it, the difference between what a drug company or
13 some other organization would have to pay for free living volun-
14 teers and those in prison, a major portion of that cost does
15 come in terms of overhead, not in terms of the actual pay rate
16 to the individual.

17 Therefore, there will always be some inequity, even
18 if we require that prisoners be compensated at the same rate
19 of persons on the outside are. There is still a sense in which
20 the prison population is a cheaper labor pool for the drug
21 company or other organization. That brings me, then, to the
22 concern that Al raised about whether we ought to be trying to
23 be very specific on these matters or whether we ought to be
24 general. I move in the direction that he is suggesting, that
25 is, that we cannot ourselves get to the point of setting dollars

1 and cents rates for things. There is an additional problem, by
 2 the way, which is that when we talk about compensating for
 3 research in terms of the time involved, I don't know whether
 4 time there means the time it takes to put a skin patch on
 5 someone's arm or the time that they walk around the prison with
 6 the skin patch on their arm, and that is going to be quite
 7 different.

8 So, there are other kinds of problems like that. It
 9 does seem to me, therefore, that unless we were to get purpose-
 10 ly bogged down in all these specifics, that we are going to
 11 have to move in the direction of being general, but I am not
 12 happy with saying that we should simply leave it up to some
 13 accrediting board or other agency to make these determinations
 14 because they will then get bogged down in all the things that
 15 we are getting bogged down in right now.

16 I think it would be most helpful if we could at least
 17 find some of those rules or principles, if you will, some level
 18 principles, that would be helpful to such accrediting agencies
 19 or boards that would have to do that, so that we make it clear
 20 what it is that we are striving for. Where does equity lie
 21 in-between paying people for research, what they would get
 22 paid for other things in the prison and the fact that all of
 23 those rates will be so much lower than what people on the
 24 outside would make? We need some better specification of what
 25 equity requires here, I think. So, I am not happy either with

1 getting into all the specifics or with saying we just make a
 2 general statement and then leave it for somebody else to do.
 3 I think we are going to have to do some of the hard work in
 4 terms of saying what equity is all about.

5 DR. RYAN: David Louisell, I will call on you.

6 DR. LOUISELL: Well, I understand Dr. Jonsen's concern
 7 about trying to be too specific on an abstract level, but I
 8 also saw in your remarks a great danger that we could be
 9 interpreted to imply recession from the principle of equal
 10 remuneration inside as prevails outside. I think we have got
 11 to be very clear and explicit and avoid the possibility of
 12 misinterpretation there. I admit that Karen has introduced an
 13 important cost-accounting proposition because even though you
 14 assume an equal rate of remuneration to the individual inside
 15 and outside, there is also the factor that Karen pointed out,
 16 of greater economy by reason of the inside people being inside.

17 However, that is a mechanical or more or less cost-
 18 accounting proposition and that can be taken care of as a
 19 matter of detail. But I submit we have got to be abundantly
 20 clear and not permit this to slip away, that the rate of
 21 remuneration on the inside is the same as on the outside, even
 22 though not all of that amount of remuneration immediately accrues
 23 to the disposable income of the inmates.

24 DR. RYAN: I am going to let you respond and then
 25 we are going to break for coffee for 15 minutes and start with

1 Dr. Seldin afterwards.

2 DR. JONSEN: I want to affirm that. I didn't want to
3 to be thought, either, that I wanted to be so general that
4 we were going to pass off the problem or that I wanted to
5 retreat in any way from that comparability, but I just want to
6 state that what occurs to me now to be the basis for that.
7 I really had thought of it before. I assume that for most
8 situations in the economy if somebody finds a rare situation
9 that perfectly suits their needs, they are oftentimes going to
10 have to pay more to use that situation. If it is a rare
11 situation, I think our form of economics means that the price
12 is usually higher and in this sense the prison environment,
13 in fact, does provide, if the drug companies are to be believed
14 in this respect, a peculiarly suited environment for certain
15 kinds of their testing.

16 Therefore, there is really no reason in our economic
17 system why it ought to be cheaper.

18 DR. RYAN: With that note, why don't we re-convene
19 at quarter to eleven?

20 (Brief recess.)

21 DR. RYAN: I would like to re-convene. We are going
22 to break for lunch at 12:00 noon and re-convene at 1:30. That
23 will give us an hour-and-a-half in the afternoon to finish the
24 rest of our business. So, we are going to try and keep to the
25 schedule if we can. Dr. Seldin, do you want to lead off, please?

1 DR. SELDIN: I want to return to what seems to me a
2 critical issue. It has to do with item 7 in which the term
3 "opportunity," to my mind, is not sufficiently precise to know
4 how to translate the opportunity into something that is real.
5 I want to suggest that in addition to the two boards that have
6 been referred to in this report, the institutional review board
7 and a national or regional accrediting board, in addition to
8 that that there be a review and grievance committee.

9 I tried to work up some sort of wording with John
10 that might be suitable to express this in a rough sort of way.
11 John, perhaps you would want to suggest some formulation of
12 this.

13 DR. IRWIN: Yes, I think that Don and I are thinking
14 along exactly the same lines and, incidentally, it is a direc-
15 tion which many other persons have traveled down. I think we
16 are coming to something which is very important and I agree
17 totally with your concerns over the way this is stated. The
18 opportunity for prisoners to organize is really very weak and
19 that condition can be fulfilled in a variety of ways which are
20 unsatisfactory for the spirit of this document, I think.

21 What it takes to give it meaning and force, for it
22 to accomplish what needs to be accomplished, is the access to
23 a third body, a grievance or review kind of body which is made
24 up of a variety of community and prisoner representatives,
25 which should be spelled out. There are some minimum ranges of

1 it that should be spelled out, the prisoners, of course, and
2 rights advocacy groups, ethnic and racial representation and
3 so on. I would like to see us re-word the sentence, it will
4 take a little work, so that the two ideas are contained.

5 One is the right for the prisoners to have the
6 organization, the other one is for them to have some regular
7 contact with this structure.

8 DR. SELDIN: You don't think that formulation --

9 DR. IRWIN: Let me read you the way it is.

10 DR. RYAN: Please read it.

11 DR. IRWIN: To facilitate and -- I cannot read this.

12 DR. RYAN: Okay, I think you can work on this.

13 DR. SELDIN: Well, no, it is just something to be
14 specific, Ken. Everybody is saying, why don't you say something
15 specific? This is an attempt to be specific. If you want me
16 to work on it, I will work on it.

17 DR. RYAN: If you have it ready to read to us at this
18 moment.

19 DR. IRWIN: A review and grievance committee separate
20 from the IRB and the national-regional accreditation bodies
21 must exist. Such a committee should be comprised of prisoners,
22 representatives of prisoners, ethnic and racial advocacy groups,
23 and the public. It should meet at regular intervals for pur-
24 poses of review and grievance hearings. I think something
25 in conjunction with that paragraph, coupled with the right to

1 organize, I think is --

2 DR. SELDIN: Yes, that would follow sentence 7, it
3 would facilitate that sentence.

4 DR. IRWIN: Don, I think that that would do it. I
5 agree with that in total. It contains, if I may just have a
6 couple more words about it, when we were working on an accept-
7 able set of values which would prevent drug research according
8 to prisoner groups in California, which would allow us to
9 permit drug research to exist in prisons in our own conscience,
10 this is exactly what came up. This is the final, and this was
11 the big discussion that was on, the existence of this outside
12 review mechanism and its composition. You know, the composi-
13 tion that was suggested in our meeting after a long discussion
14 was very much like this.

15 DR. RYAN: Dr. Cooke.

16 DR. COOKE: I am going to take, again, an approach
17 which I think will get some support from two or three partici-
18 pants but is totally in opposition to the approach that we are
19 going. What I think we are doing right now, Mr. Chairman, is
20 a little bit like fighting the Viet Nam war. Everyone is try-
21 ing to make ways of fighting the war better but the question
22 is, should we be in it in the first place?

23 I think that is probably, we are in it in the first
24 place for two reasons. One, I think there is an effort to
25 improve prisons. I am not against that but I think this is a

1 terrible vehicle for it. Second, to let prisoners somehow earn
 2 more money. I really believe those are the two things that
 3 are underlying this accreditation approach and I would like to
 4 go back and ask what did we do when we were talking about fetal
 5 research. What we did in fetal research was ask a question,
 6 are there alternative ways of carrying out the research so that
 7 the fetus does not have to be used.

8 And we said that we would allow fetal research only
 9 under circumstances in which there were no alternative means.
 10 Now, we have lost sight of that in regard to the prisoners
 11 because I believe we are trying to be fair to the prisoners
 12 to allow them to earn some more money. And we would like to
 13 improve the prisons. Now, what I would like to suggest is that
 14 we would like, I would like to propose that we not use prisoners
 15 at all unless there are no alternative means or unless there
 16 are equal number of non-prisoners participating in research
 17 activities of a particular type as prisoners, in the same sett-
 18 ings, et cetera, to use the comparability of treatment as the
 19 test of the freedom of these people in the real world.

20 I don't believe the accreditation thing is going to
 21 work at all. I think limits in terms of budgets and so forth
 22 that are imposed by legislators representing the public view
 23 will keep any of this from happening and I would like to suggest
 24 this other approach completely, rather than trying to dot the
 25 i's and cross the t's of how to make better the accreditation

1 process.

2 DR. RYAN: I think the general thrust of your recom-
 3 mendation, Bob, was, however, research should not be done in
 4 prisons on prisoners. Is that correct?

5 DR. COOKE: Unless there are no alternative means,
 6 right.

7 DR. RYAN: But the last one is sort of a given.
 8 There are alternative means that have been documented for us
 9 and so what you are suggesting is that research not be done on
 10 prisoners in prison.

11 DR. COOKE: Unless there are no alternative means.
 12 Now, you can say that, Ken, that there are alternative means
 13 or alternative means for some projects. I can visualize
 14 circumstances where it might possibly be necessary to use
 15 prisoners and then that would be reviewed on its own merits,
 16 et cetera, by an appropriate body. But what I am saying is
 17 that as long as there are alternative means and we know what
 18 they are and they can be done, that is what we should encourage.

19 DR. JONSEN: Mr. Chairman?

20 DR. RYAN: Yes.

21 DR. JONSEN: I would like to say that I simply
 22 couldn't accept Bob's proposition. If he could argue no
 23 prisoner research whatsoever, he might be embarking into that
 24 position. But if he appends "except there be no alternative,"
 25 I simply couldn't accept that because if there were any research

1 whatsoever done in a prison, I would require the things that
2 we are working on now as the conditions under which any sort
3 of research be done in a prison setting. Because --

4 DR. COOKE: All right. That doesn't, that in no way
5 -- all you are saying is that if there are no alternative means
6 found, to go ahead and do it in the prisons we have to have
7 all of that, that is okay.

8 But I am just saying that if you do all those things,
9 I am not satisfied that you are really going to change the
10 prisons that much, so that that is adequate protection and
11 therefore, I guess I am saying you shouldn't do it on prisoners.

12 DR. RYAN: Mr. Turtle.

13 MR. TURTLE: Well, I think I would like to speak in
14 favor of the position that Bob Cooke has taken. I too gather
15 that there really has been no justification for research in
16 prisons other than the arguments in favor of reforming prisons
17 and that seems to be some, you know, extrinsic value that we
18 are dealing with. On the other hand, I think we have been able
19 to identify certain things in the prison environment or settings
20 which give us great concern about allowing research in prisons
21 on prisoners. I think some of those have been identified and
22 situations set forth.

23 What I would like to say or see is a formulation which
24 says that based upon the world as it is now, we would say that
25 there ought not to be any research in prisons on prisoners

1 because of the following conditions that exist in prisons and
2 list out some of these conditions. Say if and when those con-
3 ditions are alleviated and the prison situation begins to more
4 closely resemble the outside society in terms of alternatives
5 and freedom, then under certain circumstances at that time we
6 could -- the conditions that lead us to the conclusion that
7 there is to be no research having been eliminated, we would
8 then suggest that the problem be re-considered.

9 But I think we have to deal with what is. The prob-
10 lem really is, what is going to happen in the interim? I
11 wholeheartedly agree with Bob. It is not a problem for the
12 drug companies and it is not a problem for the stated prison
13 officials. In most instances, no concern, really. I think
14 the drug companies would be willing to pay the price in terms
15 of providing remuneration to prisoners and making sure that
16 they did their part to make the program work. I think the
17 state prison officials would, in all probability, be the first
18 ones to push for prison reform and added alternatives in the
19 prison and so on and so forth. The real problem is the funds
20 available to undertake prison reform on such a mass scale and
21 the constraint will be the unwillingness of the public to pay
22 the price that we are talking about, the economic costs of
23 reforming prisons in general are a price that over and over
24 again it has been demonstrated states are not willing to pay,
25 that is, the legislators and the people. The bond issues have

1 all been voted down.

2 Now, that means that over the next, you know, five
3 or 10 years we may have situations in which accreditation is
4 requested because somebody most closely approximates the con-
5 ditions that we are setting forth or is at least working in
6 that direction or hasn't done anything, really, to retreat from
7 the progress that they had previously been making in that
8 direction and that, to me, would be unacceptable. I think we
9 identified the problems and we have to come to a conclusion on
10 what we know today. My conclusion would be no research in
11 prison on prisoners.

12 If the conditions are eliminated at some point in the
13 future, I think any reasonable man would re-consider the problem.

14 DR. RYAN: Or a woman. But you haven't really shared
15 with us in our discussions up until now and the question is
16 not whether or not the conditions exist now which would allow
17 research, but whether or not after setting this as an accredit-
18 ing scheme, if this were achieved, would we allow research?

19 MR. TURTLE: Why does the problem have to be posed
20 that way? I think that is the wrong way to pose it.

21 DR. RYAN: I know but we have been talking for a
22 day-and-a-half and we thought it was the right way to pose it.
23 Now the question is, given that, would you then not allow
24 research if you had these conditions in place? Now, if that
25 is the case, then we can finish our discussion very, very

1 quickly.

2 MR. TURTLE: I think we are discussing the same
3 conditions and I think the only difference, really, is what
4 is the position in the interim?

5 DR. RYAN: That is another question.

6 MR. TURTLE: But it is a very important question to
7 me. I think we could all agree upon the problems that we
8 perceive in prisons now and the conditions we would want before
9 research could be allowed. The question really is what happens
10 between now and then.

11 DR. RYAN: Okay, that is another issue which the
12 Commission could address itself to and hasn't yet, Bob, and
13 that is an important issue. Dr. Louisell.

14 DR. LOUISELL: In the interests of brevity, I would
15 like to adopt verbatim Al Jonsen's statement. If Bob Cooke
16 were urging us totally to abolish research in prisons, I would
17 be within a hair's breadth of supporting him. If, however,
18 he insists upon the alternative, "unless no alternative means
19 are available," then I, like Al, feel compelled to the specifi-
20 cation, even for the rare incident of the very conditions and
21 limitations we are now talking about.

22 DR. RYAN: Karen.

23 DR. LEBACQZ: I just want to submit that it seems
24 to me that prisoners are in a very different situation than
25 fetuses are. Among other things, by and large they are adults

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1 who can speak for themselves and it seems to me, Bob, that you
 2 haven't really come to grips with that question in making your
 3 proposition. I don't understand why you would begin by saying
 4 that no research should be done in prisons unless it is because
 5 you think that the conditions in the prison are such as to
 6 render informed consent impossible or whatever. And if that is
 7 what you think, then those are the very conditions that we are
 8 trying to address here in order to say that if we could change
 9 those conditions, it might be possible to do.

10 So, I would be very surprised, then, that you are not
 11 in favor of the general thrust of what is happening.

12 DR. COOKE: I have no confidence in your accreditation
 13 process.

14 DR. LEBACQZ: Well, I don't have any confidence in
 15 the process, either, but we haven't gotten to that. What we
 16 are talking about now is what would be the conditions that
 17 would make it necessary --

18 DR. COOKE: No, these are live processes. There are
 19 no results on this piece of paper. You have got a lot of
 20 different things, you are going to have regular access by
 21 prisoners to means of communication and so forth. I think it
 22 is a lot of meaningless stuff.

23 DR. RYAN: Pat King.

24 MS. KING: I am going to try to do something that I
 25 hope is not meaningless. I certainly hope it is not

1 precipitous but I want to re-focus this again and get us focused
 2 again, rather than off in these directions. I have been sitting
 3 here trying to outline what I think a report, given my own
 4 personal feelings inside about how I may feel about the out-
 5 comes of some of these issues, and it seems to me that the
 6 report that we want to have, and I am going to state some con-
 7 troversial things, should look like the following.

8 The Commission has addressed the issue of research
 9 in prisons and research on prisoners, they are two different
 10 things. The Commission has determined, and the first thing I
 11 want to propose is that we stop using this word "accreditation."
 12 It is a bad word. That is not what we are doing. We have
 13 done something different. We have been attempting to specify
 14 standards and principles because we are not an accrediting
 15 agency nor do we presume to be one and we are not getting down
 16 to nitty gritty kinds of details. We have been dealing at a
 17 different kind of level, so I would love to abolish all use of
 18 the term "accreditation" and anything that is a derivative
 19 thereof.

20 That, one, the Commission has found that given the
 21 following sets of standards, principles, blah blah blah blah
 22 blah, to the degree that they can, if they can be met, a
 23 majority or all or less than all the Commission would then
 24 permit research in prisons. If there is no institution current-
 25 ly meeting that model, so be it, then you cannot do any research

1 in prisons until you find something.

2 Two, it seems to me that Bob's idea is not inconsis-
3 tent with what I was proposing.

4 DR. RYAN: Bob Turtle, you mean?

5 MS. KING: Bob Turtle and Bob Cooke. He won't vote
6 for the first part of my proposal but you could then have a
7 section that said research on prisoners that would also permit
8 research on prisoners outside of a prison setting, given the
9 following set of circumstances and conditions. It would seem
10 to me that the beginning of this report or at the end of this
11 report the Commission -- my controversial statement -- would
12 therefore call for an indefinite moratorium on research on
13 prisoners and on research in prison until such time as it could
14 be determined that these conditions or standards have been
15 met and in addition, we could have a request for someone to
16 specify or break down the standards in greater detail and that
17 if we want accreditation, we are not the agency to do it, we
18 are not the commission to do it, that we call for somebody to
19 take what we consider basic principles and break them down
20 into very concrete and quantifiable standards, which we are not
21 going to do here.

22 It is the model, if we stop and think about it, that
23 the Federal Bureau of Prisons just took. They are essentially
24 saying, I don't think they go far enough, but they are essen-
25 tially setting out their perspective of the standards,

1 principles and conditions they have determined if their insti-
2 tution does not meet those standards and they have decided to
3 call a moratorium on what they are doing.

4 If we could concentrate or agree that that is what
5 we are trying to do, that even satisfies me in terms of my own
6 quarrel -- I may take a more extreme position than some people
7 and that, to me, is a middle road position, that I have just
8 stated, around which we may be able to get some agreement, if
9 we would focus it that way. Maybe we can bring to Bob's along
10 with us. If they vote down the first part, fine, but at least
11 if we concentrate that that would be our outline of where we
12 are going, I think we may have it.

13 DR. RYAN: It was my assumption and that is why, when
14 Bob Turtle re-stated it, he started out the way Bob Cooke did,
15 because Bob was for no research except under conditions which
16 then made it untenable because we wanted conditions in prison,
17 Bob Turtle said, look, if you get these conditions I don't think
18 you can get them, but if you get them, then I would be willing
19 to consider research and I think Pat King has put it now in
20 the --

21 MS. KING: I said something a little bit different
22 from Bob, in all fairness to him. He would like to say condi-
23 tions are bad, no research in prisons, without, if I heard him
24 correctly, attempting to specify standards under which the
25 majority of us might permit it, even if those standards are

1 impossible to reach. He said we posed the question wrong and
 2 I understand what he meant about how one poses the question
 3 may be critical. I suggest that I prefer proposing the ques-
 4 tion the way we have proposed it to say the conditions are bad
 5 and leave it alone. It seems to me to do nothing but state
 6 the obvious.

7 MR. TURTLE: Just to correct that. I would include
 8 these seven conditions. I would say in reality the reason that
 9 we, you know, are not allowing research is because these con-
 10 ditions do not exist, one, two, three, four, five, six, seven.
 11 And if they did, you know, we would think that under those
 12 circumstances --

13 DR. COOKE: There may be others in addition to these
 14 seven.

15 MS. KING: Well, yes.

16 MR. TURTLE: I think we have a duty to identify the
 17 reasons we don't at the present time feel very good about
 18 research in prison or research on prisoners. But once we do
 19 that, I think that we can then formulate, you know --

20 DR. RYAN: I think we should also be aware that we
 21 are making recommendations to the Secretary of HEW and so on
 22 and so forth with respect to the conduct or support from the
 23 federal system and that we would have to ask ourselves to what
 24 extent should this impinge on state systems, county systems and
 25 what devices there may be for that to return to the Congress

1 with recommendations. Yes?

2 MR. GRAY: I would just point out that I don't believe
 3 the Commission at this point has in its hands the documentation
 4 to support a statement that says these seven conditions do not
 5 exist in any prison. It is one thing to say that they should
 6 exist and then we can see the extent to which they do. But to
 7 say that they do not exist anywhere, implying that you know
 8 they do not exist anywhere, and I don't believe that we have
 9 that documentation.

10 MS. KING: I didn't say that, I said --

11 MR. GRAY: That is what Bob Turtle said.

12 MR. TURTLE: No, I said these are the things that
 13 concerns us based upon what we have seen to date. These are
 14 the conditions that seem to exist in prisons which give us
 15 difficulty.

16 DR. RYAN: And now, just to throw other Commission
 17 members of a mind with respect to this that it is worthwhile
 18 trying to grapple with, you didn't like the word "accredita-
 19 tion," grapple with the kinds of standards that we would like
 20 to see in a prison if research is going to occur, that unless
 21 those conditions are met and identified by an appropriate
 22 body, our recommendation would be that the Secretary should
 23 not support, approve or conduct research. I thought that was
 24 the direction we were going.

25 Are all the Commission members of like mind with

1 respect to this? Bob Turtle, this might very well end up with
2 the Secretary being unable, if he accepts our recommendation,
3 to support research in prisons until he could satisfy himself
4 that they were met because that would be our recommendation.

5 DR. COOKE: I think the weight is so -- I think you
6 are minimizing the differences here between the Turtle approach
7 and the rest of the approach. I really do. They are really
8 saying the situation is such that the burden of proof has
9 to be on proving that the conditions within prisons are abso-
10 lutely changed before we have anything going on in the way of
11 research. You are saying that the research is going on and if
12 we can do these things it is okay to continue.

13 DR. RYAN: I didn't say that at all.

14 MS. KING: I didn't say that either.

15 DR. COOKE: That is the weight.

16 DR. RYAN: No.

17 DR. COOKE: I think the impetus so far, the approach,
18 has been much more supportive of research in prisons. I must
19 say that is the flavor of it, at least, than the Turtle approach
20 which says no research in prisons.

21 MR. TURTLE: Because of one, two, three, four, five,
22 six, seven.

23 DR. COOKE: Right.

24 MR. TURTLE: And a statement at the end that basical-
25 ly says were one, two, three, four, five, six, seven to be

1 eliminated, then we would have no objections.

2 DR. SELDIN: But that is not what Pat said. If you
3 declare a moratorium I think it is only fair to say that to
4 reiterate the point, that a moratorium be declared until these
5 standards can be scrutinized prison by prison to see if they
6 qualify. If it turns out that no prison qualifies, then essen-
7 tially -- this is neutral, Bob, to my mind, anyway, with respect
8 to endorsing or criticizing. It simply acknowledges that there
9 is a major problem and these are the standards in terms of
10 which minimal criteria are specified which must be satisfied
11 if research is done.

12 The moratorium would take care, to my mind, as she
13 said, of the two points you both make.

14 DR. RYAN: Karen Lebacqz.

15 DR. LEBACQZ: Yes. I am very much in support of
16 what Pat is proposing and the problem with doing it your way,
17 Bob, is very simply what Brad said. We don't know because we
18 don't have data on every prison enough to say that no research
19 should be done because of all these different things. We have
20 to say it the other way around. We have to say these are the
21 standards that would have to be met before research could be
22 done. We can then call for a moratorium since we don't know
23 until such time as an appropriate body, not this one, but some
24 other body, can make the determination whether there are any
25 institutions that meet the standards that we have set and that

1 seems to me to be the way that we have to go. We cannot say
2 there may be no research because there is no institution that
3 meets these seven or ten or however many items, because we
4 don't have the data to say that.

5 We have to do it the other way around and I am very
6 much in support of what Pat has proposed as a general way for
7 us to move. It seems to me to make eminent good sense.

8 DR. RYAN: Where do we stand on this Commission-wise?
9 Are we of a mind about this or not? Can we take a straw vote?
10 It involves a tremendous amount of work to develop these
11 accreditation, these --

12 DR. COOKE: So, let us take a straw vote.

13 MS. KING: Let us take a vote.

14 DR. RYAN: These standards -- now, Pat made a sugges-
15 tion and let me re-phrase it and listen to it very carefully
16 because, and that is, that we ask that research not go on un-
17 less assurances are made that these conditions exist and that
18 we ask for a moratorium until that determination is made and
19 that research not be allowed unless they can be realized, in
20 appropriate language. Is that the general thrust? Who, sitt-
21 ing here, Commission members, would agree with that if the
22 standards were met there?

23 DR. LEBACQZ: Straw vote.

24 DR. RYAN: Anyone who would disagree? Yes, there
25 is just one.

1 MR. TURTLE: I really don't know. I would have to
2 see it written out. It brings us to the same place, as Karen
3 and Pat suggest.

4 DR. RYAN: We are not playing with words.

5 MR. TURTLE: Well, we are playing with words because
6 we are writing standards and you get into very difficult prob-
7 lems again, the burden of the proof and who has the burden of
8 going forward in any particular instance.

9 DR. RYAN: You are making the presumption that those
10 conditions don't exist unless you know. You just said prison
11 research shouldn't occur because prison conditions are so bad.
12 You have to define what is bad about those --

13 MR. TURTLE: Well, define them, then you should know
14 what is good about them.

15 DR. RYAN: And we are trying to say what is bad and
16 what conditions we would say would be acceptable.

17 MR. TURTLE: The absence of the bad conditions would
18 be acceptable. I would prefer to see the conditions stated
19 as the problems that we perceive in prison research and say
20 when those problems, if those problems don't exist or if they
21 are resolved, then we would, you know, then it wouldn't be
22 any different than any other research, given certain constraints.
23 Now, you are saying you should do the converse, which is to
24 state the standard and I don't really know how I could do that.

25 MS. KING: I have a suggestion, Bob.

1 MR. TURTLE: I know what the problem is but I don't
2 know what the answer is.

3 MS. KING: I have a suggestion, Bob, and it is one
4 I just made to Michael and that is, you may not like it anyway,
5 but in the deliberations or conclusions which would precede
6 any set of recommendations that we made, I think we should have
7 a section on our perceived, our perceptions of what is bad
8 about about prison and the reason I emphasize our perceptions
9 is because I quite agree with Brad that we are very ignorant
10 about an awful lot of things. To proceed to talk about standards,
11 even though our perceptions may be skewed or our perceptions
12 may be what they are, it seems to me we have approached this
13 from a different perspective.

14 I go back to the efforts. We started with this and
15 we were really concerned about is it something special about
16 a prisoner in a prison that requires that we, perhaps, treat
17 them a little bit differently, not differently, provide extra
18 protection, is he vulnerable, is she vulnerable, and we
19 approach what are the standards and the conditions under which
20 we think it would acceptable for human beings in institutional
21 setting like a prison, what standards must be met before we
22 can involve them in research.

23 That is not to say that the research is bad. That
24 is not to say anything about what has been going on. To the
25 contrary. My perceptions about the research that has been going

1 on has not been that it has been all bad research or that it has
2 been a bad influence. It is to say we want to examine and
3 worry about this category of persons like we are going to worry
4 about other categories of persons and attempt to set out and
5 lay out some standards so that our concerns can be met.

6 I think I can do that without having visited every
7 prison in the United States. I don't think I could do, Bob,
8 what you were suggesting without having spent an incredible
9 amount of time dealing with the details of prison life and
10 experiences in order to set out every bad condition for fear
11 that I might have missed some.

12 MR. TURTLE: Well, this is what troubles me. I would
13 certainly agree with Brad's point and your point that we
14 obviously don't know enough to say that all, you know, prisons
15 are bad and don't meet the conditions. By the same token,
16 we really don't know enough to know that we perceive all of the
17 problems and therefore, to say that it is okay if it meets
18 these standards, have we really missed something else?

19 MS. KING: They are minimal -- let me explain some-
20 thing else -- they are minimal conditions. That is the only
21 way we have been trying to say it. They are standards stated
22 in terms of general principles which we, as a current Commission,
23 might find acceptable research in prisons if we could at
24 least meet those standards. That is all we are saying. We
25 may have missed something, I agree we may have missed something

1 but it seems to me that by stating them as a minimal system of
 2 standards, set of standards, we cover quite a bit of territory
 3 in stating them as minimal conditions. I am sorry, I feel much
 4 more comfortable approaching them that way than from the way
 5 of listing what is bad and saying because we know these bad
 6 things or think we know these bad things, we will now say
 7 absolutely nothing and then give no guidance about what might
 8 make it permissible, if anything.

9 DR. RYAN: Dr. Cooke.

10 DR. COOKE: I would like to take a crack at this.
 11 This has gone more extreme every time I hear the arguments but
 12 what I would like to suggest is the following. That because
 13 there are alternative means that are quite feasible, because
 14 the realities of prison support, funds to do the kinds of things
 15 that are laid out here, all the problems inherent in some kind
 16 of review process, and all the inadequacies and all the dif-
 17 ficulties, the coercive influence that exists within prison
 18 groups and such and such and such, I would propose that there
 19 be no research done in prisons and that the industry be en-
 20 couraged to develop alternative means much more fully. I
 21 think that is the extreme position. That is an essentially
 22 permanent no research in prisons.

23 DR. RYAN: Okay.

24 DR. STELLAR: Bob, you have narrowed it to drug
 25 companies now. You don't mean that, do you? What about

1 behavioral research and rehabilitation?

2 DR. COOKE: I am talking about non-therapeutic bio-
 3 medical research.

4 DR. STELLAR: Okay.

5 DR. TOULMIN: Which is not all done by industry.

6 DR. COOKE: But that alternative means be developed
 7 by people that need to do this kind of research.

8 DR. RYAN: Of course, that is gratuitous advice.

9 If you stop the prison research, you are going to have to do
 10 that anyway.

11 MS. KING: Didn't my proposal take into account that,
 12 Ken? What I tried to do was to say we would find these things
 13 acceptable for research in prisons and the second section of
 14 the report would be we find acceptable research on prisoners
 15 in the following list of conditions, under the following cir-
 16 cumstances which, in fairness to Bob, we have not detailed. But
 17 I proposed that we do that as the next step and I think that
 18 we have to, of necessity, really, since all research we cur-
 19 rently know is not done in prisons on prisoners, that we have
 20 an obligation to do what Bob is suggesting.

21 He may not favor the first section and I am saying
 22 that but it seems to me I would favor what he is proposing but
 23 I want something in addition. I am not excluding what he is
 24 proposing. He would ban the first and I would not.

25 DR. RYAN: I think it is a question of emphasis, what

1 you put first and so on. Other people want to be heard. Dr.
2 Jonsen.

3 DR. JONSEN: I am just wondering how Bob got so far
4 from where he was yesterday morning. He was arguing very
5 strongly that no one ought to be excluded.

6 DR. COOKE: And I am not excluding anyone, Al, that
7 is exactly it.

8 DR. JONSEN: It sure sounds like it.

9 DR. COOKE: No. That is the point. I am talking
10 about research in prisons. I am not talking about research on
11 prisoners.

12 DR. JONSEN: You are excluding anyone who is in prison.

13 DR. COOKE: No, from research carried out in prisons.

14 DR. JONSEN: It makes no difference. Wherever you
15 put them they are going to be in some kind of a correctional
16 modality.

17 DR. COOKE: No. I can see them in a clinical research
18 unit at Johns Hopkins Hospital.

19 DR. JONSEN: In an unlocked ward without a policeman
20 out front?

21 DR. COOKE: Right. Indianapolis --

22 DR. JONSEN: Then they are not prisoners.

23 DR. COOKE: They are in a parole situation where
24 they have been before the parole boards and so forth, where
25 they have no incentive to escape essentially because they are

1 going to be freed, et cetera. Those are some of the means that
2 we haven't even looked at, ways of using prisoners.

3 DR. RYAN: It is not necessary for us to look at
4 them because they are then having research conducted under the
5 guidelines that will apply to all free living individuals.

6 DR. COOKE: That is right and that is what we are
7 saying.

8 DR. RYAN: Dr. Seldin.

9 DR. SELDIN: I think it might not be amiss to raise
10 the question along somewhat philosophic ethical lines. Now,
11 we started out by saying that we ought not to deprive people
12 of rights sometime ago, unless it is absolutely mandatory. We
13 recognized that being in prison, being confined, incarcerated,
14 is, in a certain sense, a deprivation of rights. But no one
15 wants to dehumanize people more than that. The idea would then
16 be in some ethical way that we say that given these boundary
17 rules, we would then want to allow the prisoner to have as
18 much right so as not to dehumanize him, so as to afford every
19 opportunity and one of the modest little rights in human ex-
20 perience is to participate in a research setting.

21 I think thus far everyone -- let me just finish.
22 Now, the problem here is the fact that there may be subtle
23 forms of coercion, there may be conditions of a detestable
24 sort which prevent the prisoner, in fact, from having real
25 rights, that his exercise of his opportunity to be a research

1 subject is, in a sense, a facade. Okay, so what we are doing
 2 now, it seems to me, the exercise we are going through, is to
 3 specify particularly what minimal conditions might exist in
 4 order to insure that the exercise of these rights is not abused.

5 Now, to my mind there are two components to this.
 6 It is not merely an accrediting set of standards. We have here
 7 review mechanisms which are constantly operative and which
 8 John tell us, and I can only bow to his wisdom and knowledge
 9 in this area, are not unrealistic. There is a lot of turmoil
 10 about prison. It is not the case that prisons represent a
 11 garrison kind of state which is solid and immutable forever.
 12 The Alabama decisions, the various other things, indicate that
 13 prisons are in a state of flux and you just heard that there
 14 may be a major revision in the State of California.

15 My own feeling is that if things don't work out along
 16 the lines that are indicated here, there will be no prison
 17 research. Fine. Because these are the minimum conditions which
 18 make it dignified. But I think going through the exercise of
 19 specifying these conditions is very, very important and I
 20 personally think the thrust here of setting forth a moratorium,
 21 then specifying the conditions under which research will be
 22 tolerated, is a very reasonable one.

23 DR. RYAN: Mr. Turtle.

24 MR. TURTLE: We have heard from the beginning about
 25 this issue of a prisoner's right to participate in research and

1 I think we have become a little bit confused by it. Nobody is
 2 talking about affecting a prisoner's right to do anything ex-
 3 cept insofar as he may not have access to a research program in
 4 the prison. That is the same thing as if you were throwing
 5 a party out in Texas and I had a right to come because you
 6 invited me and I didn't have the money to get the airplane to
 7 get there.

8 I mean, he is constrained by some other extrinsic
 9 mechanism which prevents his participation. It would not be
 10 us simply saying you cannot participate because you are a
 11 prisoner. We are simply saying that to put it into the prison,
 12 put the research project into the prison environment, causes
 13 us some problems. Now, we are not depriving him of any rights,
 14 any deprivation is a result of his incarceration and not of
 15 any decision that this Commission makes. So, I think we
 16 really have to, you know, get off this point about what we
 17 would be doing to prisoners' rights.

18 DR. SELDIN: If you want to define the state of
 19 imprisonment as involving, by definition, no research, that is
 20 fine. Now, you are saying that imprisonment, by definition,
 21 involves no access to the possibility of being a research
 22 subject --

23 MR. TURTLE: Access within the prison.

24 DR. SELDIN: Actually, there was some such formula-
 25 tion to say that we reject that yesterday. Nothing happened

1 to it. I guess we didn't vote. There was, someone spelled it
2 out. I forgot who did.

3 DR. RYAN: Pat King wants to respond to that.

4 MS. KING: Mr. Chairman, we took a straw vote. In
5 light of the straw vote, I respectfully request that we go
6 back and agree to do what we were doing. So much of what we
7 are now discussing, with all respect to Bob, we hassled out
8 yesterday. We are going to hassle out again when we see the
9 precise wording because if I know this Commission, we will
10 all have eleven different words to offer for the same thing.

11 I suggest that we go on in light of the straw vote
12 and attempt to come to grips with what we are going to do with
13 respect with both setting up standards and conditions that we
14 find minimally acceptable and to doing what the two Bobs have
15 suggested and that is, under what conditions we would allow
16 research on prisoners outside of the prison setting.

17 MR. TURTLE: I would go along with that, although
18 I concur with Bob Cooke in the extreme statement that if we
19 should have research I would be willing to work on it, on the
20 conditions, at least for the purpose of seeing whether anything
21 would happen that would change my mind.

22 DR. RYAN: Mr. Calhoun.

23 MR. CALHOUN: I think we have gotten ourselves in a
24 bind. We are talking about rights again and rights are
25 relative types of things. I think the problem that we are

1 running into when we talk about this system of standards or
2 principles by which research will be conducted and principles,
3 we may, in effect, be denying the rights of prisoners, in a
4 sense, by trying to improve their rights.

5 Because if we make these standards and principles at
6 such a level as I see them going, then research -- and we declare
7 a moratorium -- research is banned. So then, if that happens,
8 and no one can meet those standards that we set here, what
9 becomes of the right of the inmate then? In terms of the
10 present situation?

11 MR. TURTLE: What right?

12 MR. CALHOUN: The right that he has now to participate.
13 That he is exercising now. That as the inmates at various
14 places have told us, as Mr. Lawson, who was at a hearing here,
15 and several other people have said, that we want to do it and
16 we enjoy doing it. And that we don't perceive these to be
17 as coercive as, perhaps, you do but we do want that right.
18 I think that there may be a subtle sort of coercion unless we
19 are very honest with ourselves in terms of speaking out about
20 it, that we are employing it at this time.

21 DR. RYAN: I want to try and follow Pat's suggestion
22 because I think it is the only way for us to go. I don't think
23 there is any reason for us to try and convince one another.
24 We have really hashed out the prison issue. I would like to
25 call to your attention that the staff did a lot of work in

1 drafting a report called Biomedical and Behavioral Research in
 2 MModel Prisoners. I presume all the Commission members have
 3 read this and I would like for the, and this represents, I
 4 believe, a factual description of the kind of contract work
 5 which the Commission has worked for.

6 Now, it is a draft and you can make suggestions, but
 7 I think you are going to have to make suggestions on this
 8 pretty soon so that we can, in fact, get this out as the back-
 9 ground material on which we are going to make decisions. I
 10 don't want to hear people saying we do or do not know this if,
 11 in fact, we have already commissioned information which was
 12 supposed to provide us with that if we had only read it.

13 So, that I would like some expression from the Commission as
 14 to whether they perceive represents what they asked for, do
 15 they have what they need, so that we can go on with the deli-
 16 berations as Pat has suggested. Karen?

17 DR. LEBACQZ: I was one yesterday who asked to have
 18 some time to look at that document. I do have some specific
 19 comments on it. But I am not sure procedurally that it is
 20 helpful for us to stop where we were going and look at that
 21 now.

22 DR. RYAN: No. That is just for your background.

23 DR. LEBACQZ: I hope that we will get to it this
 24 afternoon before we close, but I would like to make a proposal
 25 for where we are going right now. I would like to know whether

1 anyone on the Commission has additional items besides the sever
 2 that are before us and all the others that we have thus far
 3 talked about as important minimal standards and unless there
 4 are other suggestions there, I will make a proposal for
 5 standards for research on prisoners outside of prison, so can
 6 we please re-direct our attention back to the question of
 7 standards and principles.

8 DR. RYAN: There is a motion, actually we have been
 9 discussing a motion which was made by Al Jonsen to accept
 10 this and it has been seconded. We have been discussing it all
 11 this time and all of the comments that people have made have
 12 gone on the transcript, such as Bob Cooke's requirement for
 13 concordance, Dorothy Height's comment that she wanted ethnic
 14 and racial representation, the suggestion of someone that we
 15 get objectives as well as the conduct, Joe Brady, and so on.
 16 All of those will be incorporated into this, it is my under-
 17 standing, because they seem to flow naturally. The comparabi-
 18 lity of remuneration within the setting, some relationship to
 19 remuneration outside the setting is going to have to be worked
 20 on. We cannot do that here.

21 But all of those things have been heard. Now the
 22 question Karen is asking is, what more do you have to add?
 23 David Louisell.

24 DR. LOUISELL: I have two further thoughts. One
 25 concerns the risk factor of the protocol. I am not convinced

1 that risk should be excluded as a legitimate factor for pur-
 2 poses of remuneration. It seems to me that is included in-
 3 evitably when the protocol concerns non-prisoners and I am not
 4 convinced that it should be excluded where it concerns prisoners.

5 DR. COOKE: David, the point I was making is that
 6 it should apply to non-prisoners as well as prisoners, that
 7 compensation for risk I consider to be bribery and not accep-
 8 table. If you have got to pay \$1000 to get somebody to take
 9 some very dangerous drug, I don't believe that kind of research
 10 should be permitted. It seems to me it is the inconvenience and
 11 the time that we ought to compensate people for.

12 In reading that paper on compensation, prostitution,
 13 et cetera, the only way I felt that compensation -- I don't
 14 mean compensation, I mean remuneration -- is acceptable was to
 15 take it out of the category of remuneration for risk and have
 16 remuneration for inconvenience and time spent. That is what
 17 made it no longer prostitution.

18 DR. BRADY: We would never have a bridge built, Bob,
 19 if that principle were --

20 DR. COOKE: No. The point is that in that essay it
 21 was very clear that the reason one pays in research is for the
 22 so-called risk. And that is what differentiates it from other
 23 hazardous occupations. Participation in research was iden-
 24 tified as being different from participation in coal mining
 25 because the purposes were, one, taking risks. The other was

1 in mining coal. What I am saying is if the remuneration intent
 2 is for inconvenience, not risk, then it is like other kinds of
 3 occupations.

4 DR. RYAN: But it isn't, because as Joe Brady just
 5 said, when you go in the submarine service you get more money
 6 than if you are on the surface.

7 DR. BRADY: Both factors are involved is David's
 8 point. You cannot exclude it as a consideration. It may not
 9 be the exclusive characteristic for which you are paying.

10 DR. COOKE: I think it is inappropriate to offer
 11 dollars for increasing risk.

12 DR. RYAN: You might offer compensation.

13 DR. LEBACQZ: You do it all the time at work and I
 14 personally am not convinced by the essay that was submitted to
 15 us that distinguishes research from work. I mean, we can argue
 16 about that if we need to, but I am not sure it is appropriate.

17 DR. RYAN: Who was next, please? I think Dorothy
 18 Height was next.

19 DR. LOUISELL: I have, still, another point but I
 20 will hold it until this discussion is over.

21 MS. HEIGHT: I will wait.

22 DR. LOUISELL: No, my other point is not germane to
 23 this. It is an addition to what --

24 DR. RYAN: Add it while you have the floor, David.

25 DR. LOUISELL: Oh, okay. My question is and I am not

1 sure I have come up with a crystallized conclusion yet, but
 2 should we add to all our criteria here an explicit one that
 3 would defer to local or state law insofar as that law super-
 4 imposed additional detailed considerations, rather than what
 5 we have done? After all, we are an isolated group in a sense,
 6 sitting right close to Washington. People on the spot may have
 7 additional insights according, particularly, to local condi-
 8 tions and maybe we should have some covering additional deference.

9 DR. RYAN: You wouldn't mind if conditions were
 10 better, is that it?

11 DR. LOUISELL: We would only say that if there is any
 12 additional protection accorded under state law, that we would
 13 also pay obeisance to that additional requirement.

14 DR. RYAN: Thank you. Dorothy Height, please.

15 MS. HEIGHT: I have two points. I had wanted earlier
 16 to ask on No. 7, when John Irwin was talking about opportunity
 17 for prisoners to organize, was that a specific reference to a
 18 particularly type of organization or are we talking about
 19 collective bargaining?

20 DR. IRWIN: Again, I feel a conflict of roles because
 21 on the one hand I am a person who is involved in trying to get
 22 a particular kind of organization into prisons. But in recom-
 23 mending general principles to the Commission I would not want
 24 them to adopt something very narrow in their definition of what
 25 an organization was. I think just the right to form organizations.

1 and to have some kind of a total say in what kind of organiza-
 2 tion they want to organize, within limits -- the departments of
 3 corrections, of course, are going to insist upon some limits.
 4 They are not going to, those which are consistent with their
 5 concerns about incarceration.

6 DR. RYAN: You are talking like student government,
 7 for example, self-governance and discipline, there are certain
 8 limits that are placed within institutions, whether it be a
 9 school or a prison.

10 MS. HEIGHT: I think in general usage, I would say,
 11 the opportunity or the right to organize, for me, speaks a
 12 particular way and it might be useful for us to state that
 13 when we are talking about prisoner organization.

14 DR. IRWIN: Mr. Chairman, may I comment on that?
 15 Just a brief comment to add to Dorothy's concern.

16 DR. RYAN: Could you speak a little louder?

17 DR. IRWIN: Just one comment on that. When we were,
 18 in fact, engaged in the series of negotiations, this issue
 19 of the nature or what kind of organization came up constantly
 20 and their fears were that, in California, particularly, where
 21 a series of organizations emerged which they felt were not only
 22 bothersome but were dangerous to their operation. We gave
 23 them that they had the right to set parameters on what the or-
 24 ganization could do and they must have the right, it seems to
 25 me, to suspend the operation of the organization and submit

1 that to some outside, impartial body for -- because of the
 2 operations. All of these things, it seems to me, will natural-
 3 ly be developed when the actuality of organizations are emerg-
 4 ing. But there will be special organizations which can be
 5 contained within the correctional enterprise.

6 MR. GRAY: It might be clarifying on that if we
 7 specified, I think this is Dorothy's concern, if we specified
 8 the purpose or organizing rather than the from of the organiza-
 9 tion. I have the right to organize a softball team but that
 10 isn't what we are talking about.

11 DR. RYAN: If you want to be more specific, it is
 12 for governance and self-discipline.

13 MS. HEIGHT: Something of that sort because other-
 14 wise, I think, I mean we have to face the political realities
 15 and I think that this, to me, when I ask for the right to
 16 organize, I am talking about collective bargaining. I think
 17 that is what would be generally indicated. I think our chances
 18 of even having people discuss what we are talking about are
 19 limited if it is seemingly too weighted in one direction.

20 The other point that I want to make is just an aside
 21 and that is, even in our language as we say it, we have been
 22 a little inclined to say that we would have racial and ethnic
 23 diversity and the public. I think that is the heart of the
 24 whole minority conference. The public is made up of racial
 25 groups, ethnic, different ethnic groups. I would hate to have

1 us slip into that. I think when you say the public, this is
 2 part of the whole racial climate in the country. The public has
 3 not meant the racial minorities and so if you say racial,
 4 ethnic minorities and the public, you have to find some way of
 5 saying -- because the racial and ethnic minorities are part
 6 of the public.

7 DR. IRWIN: Well, what about and other public?

8 MS. HEIGHT: That would be good, yes. And other
 9 public -- something of that sort.

10 DR. RYAN: Dr. Brady.

11 DR. BRADY: To the motion. Despite Lee Calhoun's
 12 protestations on several occasions, I am not convinced, I am
 13 not personally persuaded that these guidelines cannot be
 14 developed in a workable way and adhered to within some prison
 15 setting. Secondly, I find myself almost at the other end of
 16 the continuum to the two Bobs. I am not sure whether that is
 17 to the right or to the left. I am not at all convinced that
 18 I am prepared to vote for a moratorium until -- in other words
 19 the logic of the situation says to me that if we vote this
 20 motion and look at these criteria, that before I vote a mora-
 21 torium let me at least explore the situation as to whether
 22 anybody is in compliance or can be in compliance with these.

23 MR. TURTLE: How long would that take you, Joe?

24 DR. BRADY: Well, I don't know.

25 MR. TURTLE: That is exactly why Bob and I go to

1 the other approach.

2 DR. BRADY: We are arguing that we don't have the
3 facts so that we cannot do anything, okay. I have some reason
4 to believe that at least in some limited institutions there
5 may well be an approximation to this. In any event, I am not
6 persuaded that this is an impossible set of requirements and
7 I think there may even be an institution that will come into
8 compliance very quickly and even if there was one, it seems to
9 me we have made an advance in this regard.

10 So, that is why I am not prepared to vote for mora-
11 torium.

12 MR. TURTLE: Could I ask a question?

13 DR. RYAN: Yes.

14 MR. TURTLE: When you say even if there was one, we
15 would have made an advance.

16 DR. BRADY: With the seven model.

17 MR. TURTLE: Well, if there is one institution which
18 exists, what have we done, you know, to advance anything by
19 allowing research to be done? We have identified it as meet-
20 ing our standards.

21 DR. BRADY: We have increased the level of conscious-
22 ness.

23 DR. RYAN: Pat King, please.

24 MS. KING: Yesterday in the report on the survey of
25 prisens there were some suggestions made about inadequate --

1 remember Don Seldin said we should consider writing some of
2 these standards in two ways, first, those that apply overall
3 to the prison and some standards that we find are necessary
4 for the research setting itself. There were some things yester-
5 day in that report, for example, the language, the difficulty
6 of language used in consent forms in prison, for example, that
7 I think should be incorporated in terms of standards too.

8 I am not trying now to be exhaustive. I am just
9 suggesting that we go through and cull from those documents
10 where we have had factual data some of the suggestions or
11 inadequacies, to have them pointed up. I also would like to
12 suggest that we go back and discuss the remuneration issue and
13 the reason I would like to suggest that is if I were the staff
14 having to draft a recommendation on that, I, for the life of
15 me, haven't heard anything that this Commission has said yet
16 that would give them any guidance on what the final recommen-
17 dation should look like. Even the question of the term of
18 comparability between, you know, jobs leaves itself unanswered
19 questions and perhaps we could try to do a little bit better.

20 I don't have any suggestions right now, I can still
21 tell you that it is a hole in giving them some guidance. Mike
22 wants to respond to that.

23 MR. YESLEY: Well, I just want to say on the remunera-
24 tion issue that I think that some general language might be
25 satisfactory to all, language to the effect the remuneration

1 generally be comparable to what is otherwise available in pri-
 2 son industries and, secondly, that it generally comparable to
 3 what might be necessary to attract outside volunteers in a free
 4 environment.

5 MS. KING: My problem, and I thought that was about
 6 as far as we had gotten, my problem with that is that every-
 7 thing we do know suggests to us that to say that is almost to
 8 say nothing, that we should go a little further and to try and
 9 figure out if there is any feasible means of being more specific
 10 in that area. Not detailed, but a little more specific.

11 DR. RYAN: Well, that is identified as a problem.
 12 I want to call on the others who have their hands up. Al
 13 Jonsen first.

14 DR. JONSEN: I would like to speak to the moratorium
 15 issue. I conceive of the problem, conceive of our work proceed-
 16 ing in this way, that we set these standards and we ask for
 17 a prior approval in accord with these determined standards.
 18 In other words, we are not saying that ongoing programs will
 19 be reviewed in accordance with these standards but we are,
 20 rather, saying that there will be a willingness on the part of
 21 the accrediting body to entertain evidence that an institution
 22 is in compliance.

23 I think that, in effect, is a moratorium, although
 24 conceivably an institution could come tomorrow and say, we are
 25 in compliance. But it seems to me that Joe's remark about the

1 size of the problem is opposite. It might only be one insti-
 2 tution in the United States. At most, we have got a list of
 3 16 institutions that were presented by the drug company, there
 4 are probably a few more.

5 DR. RYAN: That is the whole point. There aren't that
 6 many institutions involved.

7 DR. JONSEN: I would like to suggest that the more
 8 we think of this in terms of reforming the entire prison sys-
 9 tem in the United States, the more absurd it becomes. We are
 10 really talking about can any single institution meet standards
 11 that we are setting down?

12 DR. RYAN: David Louisell, please.

13 DR. LOUISELL: In response to the moratorium, can't
 14 we for the present agree that it is a separate issue, that we
 15 don't need to face up to it right now and our attitude on
 16 whether to make it explicit ultimately may be dependent upon
 17 satisfaction with these criteria? So, we don't need to get
 18 bogged down with the moratorium now, I don't think.

19 DR. RYAN: Eliot Stellar.

20 DR. STELLAR: Could I ask the Commissioners whether
 21 we are discussing therapeutic as well as non-therapeutic
 22 research? Bob made this distinction earlier in our interchange.
 23 It seems to me there are some differences and I would like to
 24 hear our views on them, particularly in research directed toward
 25 rehabilitation, the behavioral research, but perhaps other

1 therapeutic research.

2 MS. KING: Can we hold the behavioral? Hold the
3 behavioral for a minute and --

4 DR. RYAN: I had thought about that. Pat had asked
5 us to keep in the back of our mind that we might keep them
6 separate and when Bob Cooke said research that could not be
7 conducted on any other subjects, he was referring largely to
8 biomedical research. If you start talking about research in
9 the rehabilitation system, the penal system, into recidivism
10 or other kinds of activities, you are talking about something
11 that is specific for the prisons.

12 And, in point of fact, none of the things that are
13 wrong with prisons are ever going to be improved unless one
14 uses some kind of research model to try new methods and see if
15 they work. On the other hand, I feel very strongly that if
16 the quality of prison life is so bad that you wouldn't allow
17 biomedical research to go on, that you certainly would place
18 the prisoners in even greater jeopardy to have research going
19 on with respect to their lives and so on and so forth, that
20 was in an environment that was that poorly controlled.

21 So that in the hope to come to some minimal standards
22 of biomedical research, having a prison organization that would
23 have responsibility for the objectives, conduct and kinds of
24 research done in their institution along behavioral lines,
25 as Joe Brady has talked about and is in the staff report, I

1 would not be concerned. It is only if we lower our sights, if
2 you will, that then we would have to specifically go down the
3 line and say that we mean only biomedical research and not
4 behavioral research. That is how I have interpreted it.

5 There are other people that want to speak and I think
6 it was Don Seldin first, and then Karen.

7 DR. SELDIN: Two quick points. One is if the staff
8 should re-draft this thing in a formal way, I would like to
9 suggest once again that there be two separate categories of
10 recommendations, one concerning prisons in general, the minimum
11 conditions, and the other concerning the research aspect busi-
12 ness. That is not a big deal but I do think that should be
13 highlighted and make things more unambiguous.

14 The second point is that there was an addition to
15 item 7 which was drafted and handed to Michael. I don't recall
16 if that was read to the Commission or whether it needs to be
17 read but it is available and it answers one of Karen's points,
18 is there anything in addition? I do think that the establish-
19 ment of a redress and grievance board independent of the IRB
20 and the accrediting group is necessary and that has been added.
21 Now, whether you need to read it, I don't know.

22 DR. RYAN: Karen next, please.

23 DR. LEBACQZ: This is another very specific matter.
24 I don't know what the situation is in Michigan or some of the
25 other places that we have not looked at, but I do know that in

1 California there is a phenomenal movement of prisoners from one
 2 institution to another, so that prisoners are in point of fact
 3 being transferred and can request to be transferred in a system
 4 within the State. Therefore, if we are going to talk about
 5 equal opportunity to participate in research, we are going to
 6 have to impact on more than just those 16 individual institu-
 7 tions in which research might be done, because we are also
 8 going to be saying something that has implications for the
 9 movement of prisoners from one institution to another.

10 I think it is very important that we acknowledge that
 11 recognize it and get it before us. Equal opportunity to par-
 12 ticipate will also, of course, have ramifications for the fact
 13 that most research is done in prisons which are populated by
 14 males and not by females and there may be some ramification in
 15 that direction as well.

16 DR. RYAN: Brad, please.

17 MR. GRAY: Two points that I think perhaps the
 18 desires of the Commission are not entirely clear to the staff
 19 or at least to me. One is the extent to which the conditions
 20 that are being set forth, under which biomedical research can
 21 be done, would also apply to research which involves inter-
 22 views, questionnaires and that sort of thing, and does the
 23 Commission intend that the only prisoners who can receive a
 24 questionnaire are those which are in prisons that have been
 25 accredited and so forth, maybe I shouldn't use that word.

1 The other thing that I don't think is clear at the
 2 moment is the Commission's desire with regard to this concor-
 3 dance that I think you have said before is something that the
 4 Commission expects to be in the staff document and I am some-
 5 what uncertain about the Commission's overall feeling about
 6 that.

7 DR. RYAN: I think the last point, of course, the
 8 staff did include in the document you prepared three aspects
 9 of the concordance phenomena. One with respect to the kinds
 10 of projects or risk-taking that would be allowed in prison
 11 versus outside, another with the actual offering and taking of
 12 the same kind of research, participating in the same kind of
 13 research protocol inside and outside, and I don't sense that
 14 the Commission has any unanimity on that point. I would suggest
 15 that we put those alternatives down in our deliberations and
 16 those that have to go into our final document, we are going to
 17 vote them up or down. I don't see any -- I mean, the issues
 18 have been joined.

19 MR. GRAY: That is what I sensed. I didn't know
 20 if the expectation was that the staff was to resolve what I
 21 saw as non-resolution within the Commission.

22 DR. RYAN: I doubt it. I think the extreme of that
 23 is I doubt the Commission, they can advise me if my perception
 24 is incorrect, would allow very high risk to go on in prison
 25 just because it is a prison. That is further demeaning of the

1 quality of life or the perception of the quality of life of
 2 the people within it. How far that goes down the road, whether
 3 it goes to equal opportunity outside plus counting the numbers
 4 that participate may show that they are equivalent, as Bob
 5 at one time suggested, I don't know whether we would all agree
 6 to that. Barbara.

7 MS. MISHKIN: Yes, I just wanted to indicate the
 8 reason you have three different things there, with an "or"
 9 between the second and the third, is that from the last trans-
 10 cript it was entirely unclear which of the -- there are three
 11 gradations in the concordance principle -- it was very unclear
 12 to the staff which, if any, would be supported by the Commission.

13 DR. BRADY: What page are you on?

14 MS. MISHKIN: On page 80 of the staff paper here,
 15 D1, A, B, and C are three different variations, all of which
 16 were suggested in the meeting and there was no resolution.

17 DR. RYAN: I think with respect to your first ques-
 18 tion, Brad, that isn't clarified. That is the questionnaire.
 19 We don't know to what extent they are being allowed in prisons
 20 at the present time. I think one of the things that we focused
 21 on largely has been biomedical research, FDA Phase I drug
 22 testing, because it is the most visible. When, in point of
 23 fact, we have looked for behavioral research, we cannot find
 24 any and no one would suggest, necessarily, that the questionnaires
 25 -- some people would maintain they are not really research.

1 But I would like to point out that somewhere along
 2 the line the Commission should, with respect to prisons as well
 3 as to other kinds of research that we make pronouncements on,
 4 come to grips with the fact that research can be conducted to
 5 evaluate ongoing therapy, ongoing behavior, or just research to
 6 see whether or not the prison is a good place to live. We have
 7 to build into our thinking and the thinking of the public that
 8 that kind of research is mandatory, that it is an essential
 9 ingredient of therapy, that is, monitoring the quality of
 10 therapy, that it should be structured as research if it is
 11 going to be valid and the kinds of requirements that we would
 12 make for that might very well be different.

13 We might say, look, if you want to evaluate what you
 14 are doing in a prison now and you are not going to change any-
 15 thing, then the kind of requirements you would have for doing
 16 that research might be different than one in which you are going
 17 to manipulate people.

18 MS. KING: I want to say in fairness to -- it may not
 19 be what Brad had in mind, but it is something I think we should
 20 keep in mind. You know, there is a lot of research done in
 21 prisons on X, YY, whatever you call it, syndrome, or whatever,
 22 in an attempt to determine -- and this is on the borderline --
 23 in an attempt to determine the presence of whatever they are,
 24 chromosomes, in prisoners. Ken, I could see, and I think this
 25 is what Brad has raised or perhaps getting to, I can see a

1 connection with that type of research, not only the physical
 2 and how you determine about genes and stuff, but that you would
 3 want to do, for example, background and survey information
 4 and demographic, and obtain demographic material, that would
 5 go along with what you are talking about in the biomedical as-
 6 pects of it. So, I understood the point he is making. I also
 7 understand that we have got to deal with that.

8 But we also have to understand that there are some
 9 things that are not drug research that go on in prisons and
 10 we have got to meet the question of whether they can only go
 11 on like an X, YY protocol --

12 DR. RYAN: I am glad you brought that up because, in
 13 point of fact, everyone was saying that research is not done
 14 in European countries. To my way of thinking, all of that
 15 X, YY originally came out of European countries and as I under-
 16 stand it, there was no informed consent and none of the things
 17 that we are worried about and perhaps there were none of those
 18 things and that is an even more subtle kind of control of
 19 people's lives.

20 Perhaps, because they don't have other kinds of
 21 research, they haven't even wondered or worried about the safe-
 22 guards for those prisons. But I think we should get a report
 23 on that. No, I am really quite serious because that goes to
 24 the heart of behavior, social stigmatization and everything
 25 else that people have been concerned about with prisons. In

1 point of fact, most of that research was done outside the United
 2 States without the kinds of safeguards that we are worried about
 3 for a much less risky kind of research procedure.

4 I think, I really think it is terribly important,
 5 Pat. Bob Turtle.

6 MR. TURTLE: In view of Pat's proposal and recognizing
 7 Joe Brady's reservations, I would like to move an amendment to
 8 the document that is presently on the floor, which would strike
 9 out "may" in the first sentence and insert "should not." And
 10 strike out the "why that(?)" in the second line and substitute
 11 "unless, " so the document would begin, the Commission recommends
 12 the Secretary of DHEW should not conduct, support or approve
 13 biomedical or behavioral research involving prisoners unless,
 14 and then proceed.

15 DR. RYAN: Okay. Now, with those changes, you would
 16 vote for this document?

17 MR. TURTLE: I am not sure but I would --
 18 (Laughter.)

19 No, but I think the point is that --

20 DR. RYAN: Well, don't go down the road and make
 21 changes like that and then say, well, I don't like it.

22 MR. TURTLE: I gathered that this is basically what
 23 Pat was saying. I am concerned about what Joe is saying. I
 24 guess my feeling is that I would not want to work on these
 25 conditions at any great length if it was not going to be clear

1 that there would be a requirement that the conditions must be
2 met before the research could go on.

3 DR. RYAN: I would agree with that. I am just teas-
4 ing you a little, Bob. I wouldn't want to work on these
5 things, either, unless we are going to do something on it.

6 MR. TURTLE: Basically I would say that I could not
7 vote for any situation in which the current situation was
8 allowed to continue without a prior review and the burden being
9 on establishing that the conditions had been met. That is why
10 I moved this, to find out if we really are all there in view
11 of Joe's concern about it.

12 DR. RYAN: I am going to break for lunch in just a
13 minute. Al Jonsen wants to speak.

14 MR. TURTLE: We don't have a second on the amendment.

15 DR. JONSEN: I will second it.

16 DR. RYAN: Do you want to discuss the amendment?

17 MS. KING: I want to ask him and we can do this
18 after lunch, to have us discuss the propriety of taking a vote
19 at this time, as being more than a straw vote. I think that
20 we should discuss that before we actually vote on the motion.

21 DR. RYAN: Well, we, you know, one of the alternatives
22 is to table it until the report comes back and then you can
23 make a formal vote, if that is what you want to do. Al Jonsen.

24 DR. JONSEN: With regard to appointed breadmade(?)
25 that may have some bearing on the way in which this is worded,

1 we may not want to be as strict about certain kinds of research,
2 namely, making clear that therapeutic research may, in fact,
3 take place in settings where the institution has not met all
4 these standards. That is a possibility.

5 Also, just a second, Don, it is a possibility but
6 also, other kinds of evaluation research of the sociological
7 type, we may permit in a wide variety of institutions, many of
8 which would be far below these standards, precisely for the
9 reasons that the Chairman mentioned, that that might be impor-
10 tant research towards changes in the prison system and things
11 of that sort. So, it seems to me that we ought to at least
12 take into consideration that this primarily applies to the non-
13 therapeutic and that we might want to set certain other kinds
14 of standards. For example, I imagine that one of the, that
15 two of the problems that might accompany all sociological
16 research in any institution, in any prison, would be the con-
17 fidentiality question and the clarity about objectives of the
18 research which some prisoners might not want to participate in.

19 DR. RYAN: I think what I said before, I think the
20 evaluative research is all right but when you are worried about
21 confidentiality and coercion, what good is the research if
22 it is conducted, even if it is a questionnaire?

23 DR. COOKE: It is evaluative research. I want to
24 study the quality of health care in various kinds of prisons.

25 DR. RYAN: Well, that is separate.

1 DR. COOKE: I mean, you have to have bad ones as well
2 as good ones or it is meaningless kind of exercise.

3 DR. RYAN: Right. That is why we should short those
4 out. Lee wanted to speak and then I do want to break for
5 lunch.

6 MR. CALHOUN: This is my final observation. I have
7 looked at these proposed principles and standards and I thought
8 about research conducted in the so-called free world environ-
9 ment and I thought about the fact that if I were a poor black
10 person in the ghetto, I could probably go out and get myself
11 involved in research project with these standards coming nowhere
12 near, the possibility of my getting these standards to apply
13 is out of this world. I would certainly not have an adequate
14 range of opportunities for employment, education, occupational
15 training, leisure and cultural activities, and yet we are
16 going to apply these standards to persons who come from that
17 sort of environment oftentimes and I question whether that is
18 realistic in the sense that we may deny them certain oppor-
19 tunities and if you go down this whole range of standards,
20 I think that it becomes more and more an elitist type of docu-
21 ment that may have very, very few implications for reality in
22 terms of posing certain standards that don't apply.

23 I will leave it at that.

24 MS. KING: Initially in this discussion on prisons
25 I think we should all keep in mind at least certain of us

1 recognized that in the free world there are all forms of
2 coercion, there are all kinds of reasons why people sell their
3 bodies, their blood, almost their souls to keep body and soul
4 together and that if we were to focus only on the coercion that
5 existed in the world we would get nowhere, that what we were
6 trying to recognize was a situation that we were asked to deal
7 with and perhaps our deliberations, in the deliberations,
8 Michael, in terms of the staff paper, perhaps there should be
9 some explicit recognition of the fact that we do appreciate
10 that coercive factors exist in the free world but we were asked
11 to focus on a particular setting to see if that setting would
12 permit research.

13 I think to say that the world is bad is not an excuse
14 not to make the prisons a little bit better. Maybe the next
15 commission will tackle the world. It is unreal to do the
16 opposite of what Lee suggests because we cannot do anything
17 about the world, not to do anything about a prison.

18 MR. CALHOUN: No, no. I have an alternative. What
19 I am suggesting is that if, you know, if one has certain
20 standards, wants to adopt, you know -- you have a choice here.
21 If you are going to have these types of standards, then what
22 population would it realistically apply to and who can realis-
23 tically come under these types of standards?

24 DR. SELDIN: Prisoners.

25 MR. CALHOUN: No, I am suggesting something entirely

1 different.

2 DR. RYAN: I am suggesting that we break for lunch,
3 hear me out, that we re-convene at 1:30. I believe the
4 Clinical Center is open if you don't want to rush. We are
5 going to start at 1:30. We are going to finish at 3:00.

6 (Thereupon, at 12:08 o'clock p.m., the meeting was
7 recessed until 1:30 o'clock p.m., the same day.)

1 AFTERNOON SESSION

1:37 P.M.

2 DR. RYAN: I wonder if we could reconvene, please?
3 Coffee will be available until 3 o'clock. We are not going
4 to break for coffee. Anyone who wants to may go out and get
5 it, however. I think I would like to break our train of
6 discussion and take up one or two items of business if we may
7 as we go along to help us.

8 Mike, why don't you just tackle what we have to do
9 in April for the public hearings?

10 MR. YESLEY: Okay. We have advertised in the
11 Federal Register. I guess maybe that is not advertising.
12 We have given notice in the federal register of a hearing
13 to be held at our next meeting on the use of children as
14 research subjects, and the use of the institutionalized
15 mentally infirm as research subject. In addition to giving
16 notice in the Federal Register we sent out a few hundred
17 copies of the notice to particular organizations that might
18 be interested, and of course, the ones in the media. In
19 response to the notice we have requests from 23 individuals
20 or organizations to speak on the issue of the use of children
21 as research subjects and another 15 individuals or
22 organizations to speak on the use of the institutionalized
23 mentally infirm, for a total of 38 presentations.

24 Now, this obviously presents problems because
25 what we had anticipated for the next meeting was a two-day

1 meeting on Friday and Saturday with Friday being given over
 2 to the hearing and Saturday for business, and this business
 3 would include, of course, a return to the prison issue
 4 with a discussion of the draft report that the staff will
 5 prepare and also your initial deliberations on the use of
 6 those two categories of subjects. So, there is some business,
 7 and also the special study people will be coming in at that
 8 meeting. So, I think that you need a full day for
 9 Commission business, and you may need most of the day for the
 10 hearing.

11 Now, there are some alternatives which I will
 12 present to you and see which way you want to go. First of
 13 all, there is the question do you want to hear all 38 people?
 14 I would estimate that you can hear 24 in a day if you give
 15 them each 10 minutes, plus not more than five minutes of
 16 questions. If you do want to hear all 38 people do you want
 17 to cut down their presentation time to five minutes each,
 18 and that way you can still get through in one day?

19 Another way to get through in one day would be
 20 to hold simultaneous hearings on the Friday, one on the
 21 institutionalized mentally infirm and the other on children.
 22 All of these are possibilities, and finally the final
 23 alternative which may be the most likely is to schedule an
 24 additional day, perhaps the Thursday to commence the hearings,
 25 have them run through Friday and then have the regular

1 meeting on Saturday or possibly start on Friday and go
 2 through Sunday.

3 DR. RYAN: Public hearings are not necessarily
 4 Commission business meetings.

5 MR. YESLEY: That is right. So, they don't
 6 require a forum.

7 DR. RYAN: But we would like as many Commission
 8 members to be present given that range of alternatives.
 9 We need some guidance. Pat?

10 MS. KING: I would really prefer to structure
 11 it by doing mentally incompetent persons on one day of
 12 hearings, children the second day of hearings and the
 13 third day a business meeting. I think if we are not going
 14 to meet tomorrow which took away the having to do double
 15 three-day meetings that a three-day meeting in April might
 16 be manageable if we all had enough advance notice, but
 17 Sunday, not Thursday.

18 DR. STELLAR: Sunday, absolutely.

19 MS. KING: Sunday, not Thursday because you are
 20 back into all our schedules which we did not block off
 21 before.

22 DR. RYAN: That would mean then that there would be
 23 a public hearing on all day Friday. It would be half a day
 24 of public hearings on Saturday. Saturday afternoon would
 25 be a business meeting and all day Sunday would be a business

1 meeting.

2 MS. KING: Or we might even be able to finish if
3 we do the half day, if we don't talk so much which this
4 Commission likes to do, if we don't talk so much during the
5 hearings and can get some business done Saturday afternoon.
6 Maybe it would mean that we would be really needing Sunday
7 morning with just a full day of business meeting.

8 MR. YESLEY: If you did that on Friday you would
9 have the institutionalized mentally infirm, because that is
10 23, and that will take a full day, and that is a question of
11 how long the 15 -- I am sorry, the 23 children would be
12 on Friday, and the other would be 15 on Saturday morning,
13 and it is a question of whether it would take the whole
14 morning or less, but as soon as the hearing ended we could
15 go into the meeting.

16 MR. TURTLE: Is there any problem with having the
17 hearings run into the evening starting them either Thursday
18 evening or letting them run Friday?

19 MR. YESLEY: There is not a problem except as to
20 your endurance.

21 DR. SELDIN: Why don't we say, Friday, Saturday
22 and Sunday, and hopefully we can get through Sunday at
23 noon?

24 DR. RYAN: I think that if we are going to be here
25 on Sunday please count on a day of that Sunday, please.

1 DR. STELLAR: Is it Easter Sunday?

2 DR. BRADY: No, it is Mother's day.

3 DR. RYAN: What are the dates?

4 MR. YESLEY: It is the 9th, 10th and 11th.

5 DR. RYAN: Karen, please?

6 DR. LEBACQZ: Just a question on the limitation
7 of speakers. I am still a little bit concerned about whether
8 we can really hear 23 speakers in one day and do any justice
9 to their views, also whether we would, indeed, restrict the
10 speakers on Saturday to a similar length or if one wants to
11 call it, shortness of time so as to get through with the
12 hearings, not to spend the entire day on Saturday on hearings,
13 but perhaps the morning or morning until 2 p.m.

14 DR. RYAN: We could do it with 10 minutes for them.
15 That is what we have done with the other public hearings.
16 Each one will be invited to present something in writing
17 which they have to do in order to come to the public hearings.
18 This will give you the flavor of public input. It won't
19 allow you to have a prolonged dialogue with each individual,
20 but if you want more time the Commission can structure
21 another day of meetings or of hearings at which perhaps
22 fewer might --

23 MS. KING: The proposal then is what, 10 minutes
24 of presentation and how much of questioning?

25 MR. YESLEY: Five minutes.

1 MS. KING: Why don't we do just the opposite?
 2 Why don't we ask each public speaker to present us with
 3 a written thing which they always do anyway and come for
 4 oral delivery, not to read what they have written for us but
 5 to read a summary of the high points, the critical points
 6 that they think that they would want to focus our attention
 7 on and let us ask some questions for 10 minutes. Quite
 8 frankly, I found the questions more valuable than anything
 9 because I can go back and read the speech. So, I would
 10 reverse the timing and ask that they summarize what they
 11 have said in five minutes and then let us question for 10
 12 minutes.

13 MR. YESLEY: If I could just make a suggestion, I
 14 have a different perception. People will be traveling a
 15 long distance, and at least, I think in their minds the
 16 thought of coming to make a presentation in five minutes,
 17 they might feel that they were not being given adequate
 18 opportunity to express their views.

19 DR. COOKE: The last time we did it, you remember
 20 some of the speakers really only spoke for a couple of minutes,
 21 and the time was not too badly handled.

22 MS. KING: Can't we do it this way? If you are
 23 worried about people's perceptions, can't we send a notice
 24 to them, giving them 10 minutes but suggesting that the
 25 greatest value to everybody would be in the increased

1 interaction between the two, and we feel further --

2 DR. RYAN: We are going to allow them 15 minutes.

3 DR. STELLAR: Why don't you tell them that.

4 DR. RYAN: They must keep their remarks under
 5 10 minutes, and if they can keep them to five it will allow
 6 a more meaningful interchange for the Commission. So, they
 7 are traveling a long distance to spend 15 minutes, not five.

8 Karen, did you have anything to add? I think if
 9 that is settled we should go on to the next item on the
 10 agenda, and that I would like to -- it is not clear in the
 11 agenda, and that is the Congressman Quie, Mrs. Kaysac's
 12 letter, your concern, Bob, the question of what we do about
 13 behavioral research in the educational system.

14 My suggestion and the suggestion that has been
 15 made to me by Charles Lowe is that we give the staff the
 16 opportunity to try to select someone who could come on for
 17 a short period of time and develop the information, the
 18 fundamental information that we need to identify the kinds of
 19 research that are going on and what the nature of the problems
 20 are, and then to go from there, because at the present time
 21 we cannot even talk about getting information. We don't
 22 know what sorts of information we need, what is going on out
 23 there. So, the staff is prepared to try and seek someone,
 24 perhaps on a short-term basis to look into the issues that
 25 were raised in that correspondence about behavior modification,

1 experimentation in the educational system.

2 DR. BRADY: Do you have some candidates for that job?

3 DR. RYAN: No.

4 MR. YESLEY: Basically what we would like is sort
5 of an instruction to develop information either by adding
6 someone to the staff on a temporary basis, conceivably by
7 short-term contract --

8 MS. KING: So move.

9 DR. BRADY: Second.

10 DR. RYAN: Is there further discussion?

11 If there is none, all those in favor?

12 (There was a chorus of ayes.)

13 DR. COOKE: Then do we reply back to the General
14 Accounting Office?

15 DR. RYAN: Charles' letter to Congressman Quie
16 says that we are going to take it up at this meeting.

17 DR. COOKE: So, now we are going to tell them that
18 we are going to tackle the problem.

19 DR. RYAN: We are going to tell them that this is
20 the way we are going to proceed. We are going to try and
21 identify it and see at what level we can, yes.

22 MR. TURTLE: What is the department's position
23 have to do with all of this, and what department is Charles
24 referring to in his letter?

25 MR. YESLEY: Charles' letter of March 4 is -- what

1 constrains action at the moment is the obvious need to
2 develop detailed background information on the department's
3 position and the time constraints --

4 DR. RYAN: I am sorry he is not here. I cannot
5 answer that question.

6 DR. BRADY: Health, Education, and Welfare,
7 obviously.

8 MR. TURTLE: Quie asked us what we thought about it.
9 I was not sure that he was asking the department for anything.

10 DR. RYAN: In any case the feedback I get from
11 various Commission members is that we want to look at it.

12 MR. TURTLE: I think we ought to correct the letter
13 to the congressman so that it makes some sense. If this is
14 just a freudian slip by Charles that is one thing, but even
15 so it ought to be corrected.

16 I have the impression that the congressman is
17 asking us for our position on the matter. If I am wrong
18 I --

19 MS. KING: I agree with Bob Turtle that it is an
20 unfortunate choice of terms.

21 DR. COOKE: Our position is we are going to look
22 at it.

23 DR. RYAN: As a matter of fact, as I look at that
24 now, what he is talking about or what he should be saying is
25 what constrains action is the obvious need to develop

1 detailed background information.

2 MS. KING: The department's position. That is an
3 unfortunate choice of words.

4 MR. YESLEY: Delete the next four or five words.

5 MS. KING: Yes.

6 DR. RYAN: Let us not get embroiled with that.

7 We know what we are about. We have been asked --

8 MR. TURTLE: I wonder sometimes.

9 DR. BRADY: You know what Charlie's posture is
10 on what this Commission is.

11 DR. RYAN: No, I won't accept that.

12 MR. TURTLE: I won't either.

13 DR. RYAN: I will set the record straight, Bob.
14 Does this meet the intent of your letter so that we are
15 going to go ahead and do that?

16 DR. BRADY: I will provide you with some sources
17 for recruitment, Michael, at least places you can look around.

18 DR. RYAN: I think other people who have thoughts
19 on this should also help us.

20 I think the next thing I would like to point out is
21 that you have some papers in your books. You have the
22 discussion of the draft of that Belmont report. We cannot
23 discuss that in detail now. I think that what we should do
24 is for Commission members to read this, to make their
25 specific suggestions, feed them into the staff so that when

1 we can take up the Belmont document and I hope we will have
2 time in April to do so, that changes, suggestions and so on
3 so that it conforms with the Commission's desires can be
4 addressed.

5 DR. BRADY: You are talking about the individual
6 section reports that have been circulated.

7 DR. RYAN: Ethical principles. I mean what
8 ultimately is going to be the Commission's report. The same
9 is true for the Bob Levine papers. He has one paper here,
10 the selection of subjects which we have not had a chance to
11 go over in detail. I don't know how many Commission members
12 have read it as yet. The staff could be instructed to take
13 that into account because the selection of subjects is going
14 to have to be a major part of the Commission report, along
15 with the others.

16 DR. SELDIN: I certainly would suggest that the
17 papers be taken into account in the preparation.

18 DR. RYAN: Okay. Bob Levine, please?

19 DR. LEVINE: I would like to make one comment on
20 that paper and that is that before it gets incorporated in
21 any sorts of things that the staff might want to synthesize
22 on the overall as there is a developing synthesis on some
23 of the other specific charges to the Commission. There are
24 some things in there that have not been discussed at all
25 by the Commission, some of which as far as I know, some of the

1 procedures for selection of subjects, such as the development
 2 of community consent and so on has not had any discussion.
 3 I don't know the extent to which the Commission might want
 4 to use some of these things or reject some of these
 5 concepts and consider alternatives. It may be quite difficult
 6 for the staff to work them into any documents it is developing
 7 until they hear the reactions to them.

8 DR. RYAN: Whatever they will do will be in draft
 9 form, Bob, and I think your concept of community participation
 10 with respect to selection is not too far into the kind of
 11 self-governance you were talking about within prisons or
 12 the objectives in conduct of research and who gets chosen and
 13 so on, so that we may very well develop some thinking about
 14 that as we go along.

15 There is one thing that Pat King had been concerned
 16 about and that is under Tab 5, I believe, and that is the
 17 application of any principles we develop to protect human
 18 subjects of research, the extent to which such guidelines
 19 or other appropriately developed guidelines could be used for
 20 the protection of individuals receiving health care services
 21 under the aegis of the Secretary of HEW. The staff has
 22 suggested starting at this by developing a staff paper and
 23 getting a colloquium of consultants as a first step, to get
 24 the background information.

25 MR. YESLEY: I might say that Dr. Lowe, if he were

1 here would express the suggestion that the Commission review
 2 the staff paper and then determine whether or not the
 3 colloquium should be held. However, we would, in advance,
 4 set up the colloquium tentatively.

5 MS. KING: It sounds like a very good idea. I am
 6 always willing to wait just to see if I might be wrong, but
 7 I am definitely in favor, at this stage, even, of having
 8 a colloquium of experts for several reasons which do not
 9 go to the concerns that perhaps Dr. Lowe is talking about.
 10 One, at some point I want to have an interaction again from
 11 representatives of minority community, not at a minority
 12 conference. It would be a very appropriate mechanism to
 13 again allow some of the participants in the conference who
 14 are also experts to participate at this stage in the health
 15 care area. So, I think a colloquium may be needed because
 16 of that aspect of it even though staff paper may be adequate
 17 in some sense and may be very good in some other sense.
 18 It is, again, a chance of input in an area which is of
 19 acute concern.

20 It sounds good, Mike.

21 DR. RYAN: Mr. Calhoun?

22 MR. CALHOUN: Yes, I think the staff paper on the
 23 colloquium serves different functions. The staff paper
 24 as was envisioned in staff anyway was to give some
 25 identification of the types of programs that are under the

1 Secretary that might be relevant in terms of principles, but
 2 the idea of the colloquium was to go further than that, to
 3 do something very different, to have people actually look
 4 at these ethical principles, so that they should not, I don't
 5 think perhaps be viewed as one without the other in a sense.

6 DR. RYAN: The Commission can decide now if it
 7 wishes to for the staff to proceed with both of these things.
 8 I suspect you are going to need both of them. Do the best
 9 you can with the staff report, but we are going to have to
 10 get people in the public sector and providers and users of
 11 this kind of service talking to us on the subject if we are
 12 going to have any credibility of having looked at it.

13 MS. KING: The staff is to be commended for its
 14 promptness, its conciseness and its worthwhile ideas, and
 15 I so move that we adopt a two-page outline.

16 (The motion was duly seconded.)

17 DR. RYAN: Any further discussion?

18 All in favor?

19 (There was a chorus of ayes.)

20 DR. JONSEN: If we are going to vote, I am going to
 21 add something.

22 DR. RYAN: We have already voted.

23 DR. JONSEN: Did we vote already?

24 DR. RYAN: What was it?

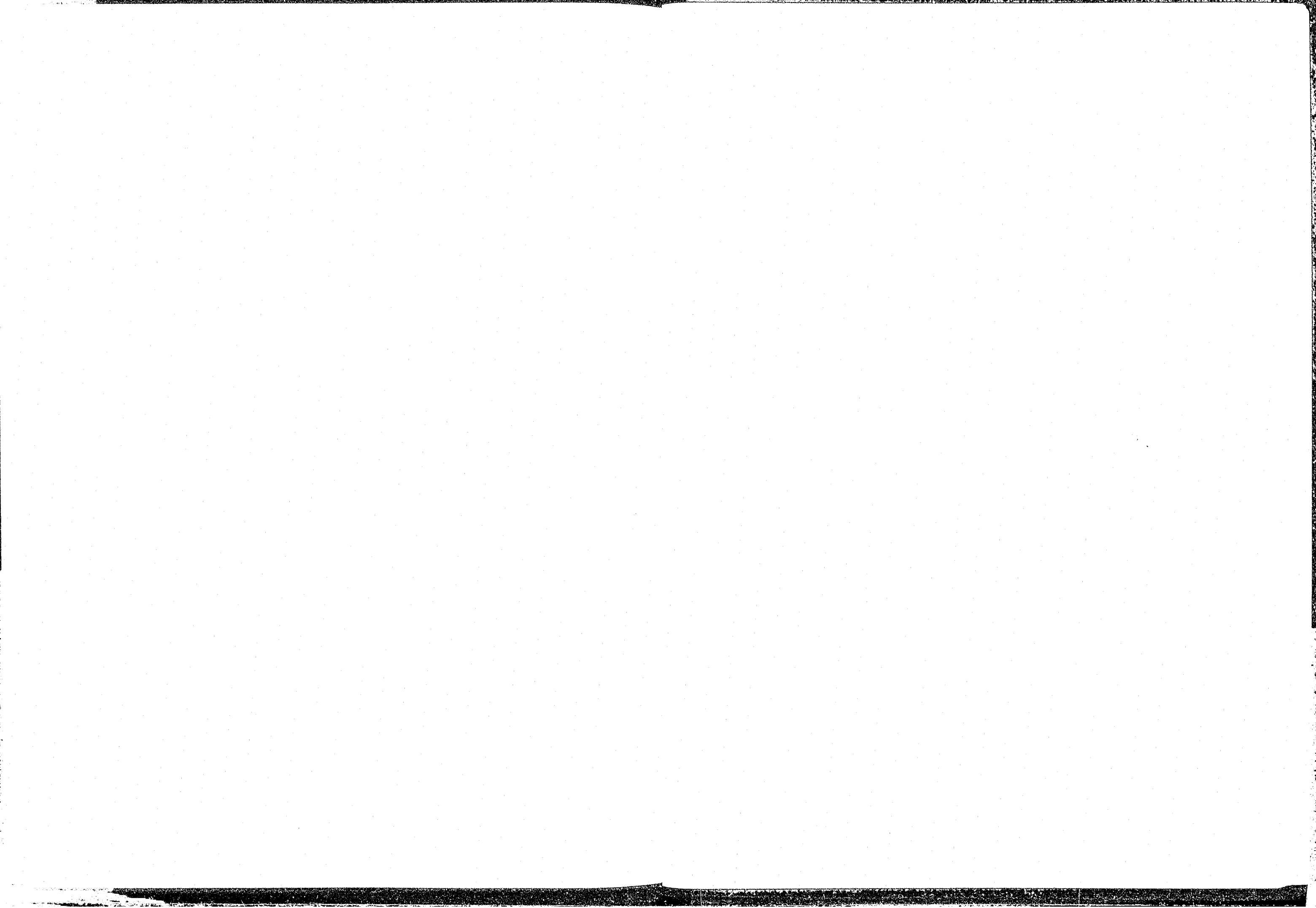
25 DR. JONSEN: It has been suggested to me that the

1 Medical Research Council in Great Britain has approached
 2 this problem in their setting, and that they might be able
 3 to provide some useful information. I think Sir John Gray
 4 was the person whose name was mentioned. Does anyone --
 5 if we want a cross-cultural experience.

6 MR. YESLEY: Could I make a suggestion, both
 7 with respect to this colloquium and possibly with respect
 8 to some activities in connection with the special study,
 9 that is a convocation of scholars that we are working on?
 10 Both of these events we might schedule for June perhaps before
 11 or after the Commission meeting. June is a good time to
 12 get together scholars perhaps after their academic duties
 13 are finished and before they have gone off for the summer
 14 so that you might, in terms of your own vacations, postpone
 15 vacations until, say, at least after the third week of June
 16 because we may have one or both of these activities in
 17 addition to the June meeting, and both of the activities are
 18 ones where while they would not be held at the meetings of the
 19 Commission, they would be open to Commissioners' participation
 20 and observance, and as soon as we have dates we will mail
 21 them out to you.

22 DR. RYAN: I don't think your suggestions are at
 23 cross purposes. They can look into that, and I don't think
 24 they have to incorporate it into a vote.

25 DR. BRADY: Michael can fly over to London this



1 I think that we might want to add that.

2 DR. RYAN: Duane?

3 DR. ALEXANDER: This was never reported on to my
4 knowledge at the Commission meeting. Could you give us
5 something in writing?

6 DR. LEBACQZ: Didn't we make an oral report on
7 that someplace? I thought we did, but we can certainly
8 give you something in writing and make sure that you get
9 appropriate data to do that.

10 DR. RYAN: Yes, I noticed that that was not in
11 there, and I wondered why. I think the transcript will show
12 that Al Jonsen spoke about it and perhaps Karen.

13 I think we did.

14 DR. JONSEN: As I recall --

15 DR. BRADY: It was probably done in conjunction
16 with one of the other reports when we were talking about --

17 DR. RYAN: But unless there is some substantive
18 thing, they are right. They cannot refer to it because they
19 don't know what to say.

20 DR. LEBACQZ: Okay. Second, there is one
21 sentence on page 4 that I think is misleading. I am not
22 trying to nit-pick. It is a more important point. The
23 sentence is at the top of the page in that first paragraph
24 and reads, "Phase I testing in establishment of these
25 amendments involved evaluation of safety of new drugs in

1 normal volunteers under controlled conditions obtainable
2 only in institutionalized subjects." I would like to
3 scratch the last part of that "obtainable only in
4 institutionalized subjects." It is not clear that that
5 information can be obtained only in institutionalized
6 subjects, and I think that that may skew the background
7 for the deliberations that we have had about whether it is
8 necessary to use prisoners or whether there are alternative
9 populations available. My most --

10 DR. COOKE: There is a point if it is correct
11 that you have to have people who are cloistered, and we
12 could substitute cloistered rather than --

13 DR. LEBACQZ: Perhaps the word cloistered would be
14 better than institutionalized.

15 DR. RYAN: I think that is probably the intent.

16 DR. TOULMIN: Under controlled conditions.

17 DR. LEBACQZ: Yes, that is right. I would have
18 thought that if one simply stopped that sentence after
19 controlled conditions, that that would have been sufficient
20 and not have the potential for being misleading. I am not
21 fussy at this point about what the particular wording is in the
22 reworking of it.

23 My most substantive concern comes on page 2 and
24 several pages immediately following under the discussion of
25 the development and nature of research involving prisoners.

1 I don't think that the staff is inaccurate here, but I think
 2 a misleading impression is given at the bottom of this page
 3 and on the subsequent pages. One gets the impression in an
 4 initial reading of this that behavioral research is by
 5 definition therapeutic, and I have raised objections to that
 6 before and will raise them again and put them on the record
 7 at this point in time and also that most of the biomedical
 8 research that is done or all of it is to be non-therapeutic.
 9 That is corrected at a later point. I believe on page 5
 10 there is a statement made that there are non-therapeutic
 11 forms of behavioral research and so on. It is misleading
 12 and a bit unclear when it is first presented. Also, there
 13 is a sentence that reads, "By contrast" -- this is at the
 14 very bottom of page 2. "By contrast the use of prisoners
 15 in innovative approaches to rehabilitation is relatively
 16 recent." The implication is that innovative approaches to
 17 rehabilitation is in some way a form of research, and we have
 18 not established that yet, and that seems a little confusing
 19 to me.

20 DR. RYAN: That needs to be made clear.

21 DR. LEBACQZ: That language, I continue to be
 22 troubled by the use of the term "therapeutic" in conjunction
 23 with behavioral research, and I think that usage rests on
 24 some assumptions that I do not share. So, at some point
 25 the Commission may need to discuss whether we are going to

1 even use those two words in conjunction with each other.

2 DR. BRADY: There are no instances in which you
 3 think behavioral research is therapeutic?

4 DR. LEBACQZ: Unless we want to discuss that now.
 5 You might hold that discussion.

6 DR. RYAN: Let us hold that discussion in abeyance.
 7 I think in addition to the kinds of things which Karen
 8 was talking about which are the thrust and meaning of words
 9 and so on and so forth which is important, the other is, is
 10 everything in here reflective of the large amount of information
 11 the staff has received, and does it accurately reflect the
 12 data as we have received it, essays and so on, and I think
 13 we need from the Commission members some sentiment sometime that
 14 that is going in the right direction, and it needs to be
 15 cleaned up.

16 DR. LEBACQZ: May I add, since I have raised
 17 several points of criticism, that on the whole I found the
 18 document to be very good, and I thought the summaries by and
 19 large were quite accurate. You could go over them all with
 20 a fine tooth comb, but they look good.

21 DR. RYAN: That was my perception. If there is
 22 no further need to deal with this at this time except to say
 23 that you should read it and get your thoughts back in --

24 MR. YESLEY: Could we receive those thoughts, I
 25 hope, by the end of this week, because we will go through

1 another revision, but I want to get started right away on it
2 so I can get this back to you in advance of the next meeting.

3 DR. RYAN: Dr. Jonsen?

4 DR. JONSEN: I wonder if in between this paper
5 and the kind of thing we worked on this morning there is any
6 need for some conclusions that we might draw out of the
7 information prior to going to our recommendations? That
8 would be something we would have to do commonly. I mean
9 an example might be the conclusion that from this evidence
10 that the experimentation which has gone on in the last
11 decade did not represent high risk, things of that sort that
12 might be drawn out of the data.

13 DR. RYAN: I presumed we were discussing all about
14 this from that vantage point, Al, but in point of fact, we
15 may have to state things much more specifically with a
16 reference back as Karen did to West's article, for instance,
17 based on this.

18 DR. JONSEN: Would we have a conclusion, for
19 example about the statement that a prison is inherently a
20 coercive environment on the basis of the information
21 presented here. Would we draw some conclusions that that
22 is true, false, needs to be distinguished or whatever?

23 DR. RYAN: Okay.

24 DR. JONSEN: I certainly have drawn a lot of
25 conclusions, and I have talked -- you are quite right. I have

1 for the last few days on the basis of conclusions I have
2 drawn.

3 DR. RYAN: I think that we are going to have to
4 identify them not only individually as we have discussed those
5 but I think that the staff may out of the thread of the
6 transcript and our discussions, identify things that the
7 Commission, the bases on which the Commissioners are making
8 their statements because we usually challenge one another
9 when we don't agree, and we very often quote what we are
10 about, so that Tannenbaum's data which we did not have
11 available could be included, his IRB material, and I think
12 the staff could look at it from that point of view as well.

13 Are there other items now?

14 The arguments for and against the participation
15 of prisoners in research pose the questions, but then did not
16 give the answers based on the material. They did not want
17 to presume to prejudge our discussion.

18 DR. COOKE: I hope we could try to sharpen the
19 in prison versus the involvement of prisoners in research,
20 in prison research. I know we discussed it a fair amount
21 this morning, but that is not the way this has developed, and
22 it seems to me there are substantial differences.

23 DR. RYAN: Could you elaborate?

24 DR. COOKE: Just the differences between research
25 involving prisoners and research carried out in prisons, and

1 I think there is a very great difference.

2 DR. RYAN: What is that difference, Bob?

3 DR. COOKE: The circumstances under which the
4 research is carried out make a great deal of difference as
5 far as I am concerned as to whether or not it is acceptable,
6 and the settings, I think, are different.

7 DR. RYAN: I think that the point where we all
8 agree is that the setting -- let us use the Lilly example.
9 Is that what you are talking about? That setting is fine
10 because it is open to public scrutiny. The prisoner is under
11 no constraints then, and he is acting like someone who is on
12 a furlough.

13 The thing that that would not satisfy is the fact
14 that the prisoner comes from a pool of people in a coercive
15 environment over which we have no control, and that we would
16 want to see the same kinds of safeguards. I don't think we
17 are at cross purposes. I don't think there is anyone here
18 who objects to the Lilly model.

19 MR. TURTLE: How about the safeguard though being
20 Bob's idea that in order to check on the voluntariness of
21 his informed consent, even if he is going into research outside
22 the prison which solves my problem in terms of the closed
23 society, the check on the true voluntary nature of his consent
24 is half the people in that project are also volunteers from
25 outside. Now, it seems to me then we might be able to have the

1 situation where you could have research outside the prisons.

2 DR. RYAN: That is just with respect to the risks
3 that people are willing to take as we said before.

4 MR. TURTLE: It deals with the voluntary nature
5 of the consent. You see, there are two problems that I
6 think we are dealing with. One is our concern about the
7 coercive element of prisons. The other is our concern or
8 at least my concern about the closed nature of prison as an
9 institution.

10 It seems to me you can solve the closed nature by
11 having the research outside the prison. You still have to
12 deal with the problem about the voluntariness of the consent,
13 and there Bob's approach serves as a check on it. That is,
14 if people in the free society will volunteer for this
15 project in equal numbers, then maybe we can assume that the
16 consent is all right.

17 DR. RYAN: I think that the only difference is, and
18 I don't want to delay this any longer, but I do want to
19 respond because I feel entirely different. I satisfy myself
20 in the few places that I have been that these prisoners are
21 pretty autonomous individuals with respect to voluntarily
22 consenting to the kind of biomedical research they were
23 involved in, and I don't need any other tests to test that
24 voluntary nature of it. You know, the motivations for
25 people outside and people in the prison are going to be

1 entirely different as we know, and I think the thing that
2 still provides a problem for me is that prisoners come out
3 of a coercive environment and then go into a place where
4 you can observe them. I am not against that and perhaps
5 we may join forces in saying that that is a good device which
6 can go on also. I would not want to exclude it. I think it
7 might very well be one of the ways to get out of the dilemma.

8 DR. BRADY: There is a fourth cell in the four-fold
9 table, however, and that is the case in which the non-prisoner
10 comes into a prison to participate in research. You cannot
11 overlook that if you want to characterize this the way you
12 guys are working on it. It is a four-fold table, and there
13 are, in fact, instances I probably can cite right now where
14 non-prisoners come into a prison to participate in research.

15 DR. COOKE: But it has the disadvantage of having
16 less public scrutiny.

17 DR. RYAN: That is right. It is closed.

18 DR. COOKE: And I think that is an advantage of the
19 outside.

20 DR. RYAN: Right, we all agree. We want to get
21 more public scrutiny inside as well, but now --

22 DR. LOISELL: Can you lose track of the reality
23 that even though the prisoner is out of the prison's immediate
24 environment, outside the walls, he is still frequently
25 subject to many of the disciplines of being a prisoner. The

1 conditions of his release, in other words, for purposes of
2 the experimentation are not a wholly effective withdrawal
3 from prison life, and therefore we have got to be very
4 careful in these delineations. In other words, being outside
5 the four walls hopefully diminishes but does not remove the
6 problem of being subjected to prison discipline.

7 MR. TURTLE: It can even provide a greater restraint
8 where the sole condition for which he is released is the
9 research, and if he wants to terminate the research he has
10 got to go back to prison.

11 MS. KING: I think what we have not addressed,
12 and I think we should do it is in order to be a prisoner
13 participating in research outside of the immediate walls of
14 prison must the prison from which you have come qualify
15 under the standards? That is a very difficult question
16 because it is conceivable to me that you can have certain
17 types of programs where it is true you are still under some
18 constraints, furloughs, work release programs, halfway houses,
19 we all concede that they are still under restraint. Where
20 we might permit research on the prisoner in that setting and
21 environment and he not or she not be from a prison but
22 necessarily met all the conditions, that is what we need to
23 talk about.

24 I know this was what Bob was trying to get to.
25 What kinds of things are we willing to accept once we have

1 defined -- I mean accept in terms of the pool, from whence
 2 they come if we are talking about research where the setting
 3 is slightly changed or does a change in setting make no
 4 difference to anybody's mind and they would not permit any
 5 research even in a different setting unless the prison
 6 qualified, and I think that that is the issue that we must
 7 deal with.

8 DR. RYAN: I think that it comes very quickly
 9 up against the question of now dealing with a prisoner who is
 10 on work release or furlough, still under the jurisdiction
 11 of the court but in all other respects has no restrictions
 12 on his activity except that he is not supposed to deal in
 13 crime anymore. Presumably that would cause his going back
 14 to jail under these programs. Then the question is does the
 15 Commission want to start talking about that individual in a
 16 different context than any other individual in society.

17 MS. KING: Yes, I do.

18 DR. RYAN: Because of the fact that you think
 19 the individual is going out doing research as part of his
 20 activity somehow makes him different?

21 MS. KING: I see the potentiality for abuse.
 22 For example, one of the things I might want to make a
 23 condition for research going on outside of prisons on
 24 prisoners would be the same provision about your sentence
 25 being changed or the final disposition in terms of how long

1 you have to be under correctional authority cannot be
 2 a basis for participating in the research. I might make as
 3 a condition that the only way one can participate in a
 4 work release program or furlough program is that you agree to
 5 participate in research. I mean I can think of some things
 6 that the prisoner is still different. He or she is not
 7 a free member of society because they still are subject to
 8 have the work release revoked or the furlough revoked or
 9 some other things revoked and being sent back to prison, and
 10 I think you have to take into account that, and I think that
 11 is what Bob was saying, that we have not fairly dealt with
 12 his alternative unless we begin to attempt to specify some
 13 conditions under which we would permit such research.

14 DR. RYAN: I think you could join that issue and
 15 probably focus it very, very sharply if you asked the
 16 question if the -- and we were in Southern State Prison in
 17 Michigan, Jackson, Michigan, if you took that clinical
 18 research unit and moved it outside the walls --

19 DR. COOKE: Put it in Ann Arbor.

20 DR. RYAN: You require a certain distance between
 21 the physical --

22 DR. COOKE: No, but I am just saying that under
 23 an environment in which you have other bits of research
 24 going on non-prisoner volunteers in that same setting,
 25 you put it -- Ann Arbor would be the place.

1 DR. RYAN: All right.

2 DR. COOKE: University participation, et cetera.
3 What conditions would you like to see this?

4 DR. RYAN: Would you approve that now and if not
5 why not and how would you change it? Yes, Stephen Toulmin?

6 DR. TOULMIN: To the /extent that the crucial question
7 would have to do with how the prisoner gets into the pool
8 of research subjects, or the arbitrariness that prison
9 administrators can exercise in controlling that, it remains
10 unchanged whether the locus of research is within the
11 prison or outside, so that /at the very least/ Item 7 in our
12 list here, which has to do with the participation of prisoners
13 in /government, is absolutely essential whatever the locus is.

14 DR. RYAN: That is one concept. Brad Gray?

15 DR. GRAY: Similar to this, plus an additional
16 point. It seems to me there are two assumptions that are
17 here that I think are quite questionable. No. 1 is the
18 assumption that if prisoners are participating in research
19 outside the walls consent will be obtained outside the walls,
20 and the question that I would like to know is how do they
21 get there? How do they get selected out if one gets to
22 what Stephen was talking about? They get recruited within
23 the walls. So, whether it is done inside or outside, that
24 remains the same.

25 The second assumption that I see here, I don't

1 know whether it is an assumption or a completely new
2 conception, but I have never heard of the idea -- well, let
3 me not put it that way. There is an assumption that subjects
4 are good monitors of research and that the subjects that are
5 recruited to participate in research are to be paid and so
6 forth in drug testing research and would be good monitors, and
7 I think we have to look at the data we have which is the
8 data from Kansas City on the Arnold data on who in fact get
9 recruited into research that is done on the outside, and it
10 looks to me like it is basically the same population that
11 is on the inside. So that is one thing, and the other thing
12 is if we are concerned about monitoring it seems to me that
13 what we should be talking about is a direct mechanism for
14 monitoring and not saying, "Well, we will recruit subjects
15 from among ex-prisoners, and we will call them monitors."

16 DR. COOKE: But what we are saying is that that
17 setting is so much more public. You have got people going
18 back and forth. There are no constraints on the movement of
19 other individuals. There are visitors into that of non-prisoners,
20 et cetera. The opportunity for complaints, et cetera is just
21 so much greater.

22 DR. RYAN: Barbara Mishkin, please?

23 MS. MISHKIN: To /extent that the setting is
24 even more different when you move the research clinic
25 outside the walls, you have increased the disparity between

1 that from which the prisoner comes--his need for medical
 2 care, his need for contact with outside people, his need for
 3 all sorts of other changes in his environment--and you have
 4 then made more complex rather than simplified, it seems to me,
 5 the question of why he wants to go into the research and what
 6 constraints there are on the kinds of consent he gives to
 7 leave the prison environment and go out.

8 DR. RYAN: John Irwin?

9 DR. IRWIN: I think you are operating with some
 10 kind of a very, very vague mistaken notion of what that
 11 outside place would be like. Unless you wanted to only
 12 allow persons of a certain custody which would be very,
 13 very minimum custody, and that would be discriminatory -- then
 14 you are barring out large categories of prisoners, the
 15 society outside, around the place wherever it is, you know
 16 that there are prisons right downtown, incidentally -- Salem,
 17 Oregon has a prison which you can hit it with a rock from the
 18 city hall. I mean it is a very closed off prison.

19 Whether you mean by close to the downtown center, it has
 20 nothing to do with whether it is a prison or not. If it is
 21 going to be on a college campus I guarantee you that after
 22 four weeks of operation it will have welded onto it steel
 23 bars. They will have a system of controlling flow in and out
 24 which will be every bit as restrictive as any prison in the
 25 world because citizens do not tolerate convicted felons who

1 are still serving a sentence to be in a place where they can
 2 walk in and out. They just don't, and so it becomes closed
 3 again, and you know, it is just naive to think that
 4 locating it somewhere like on a college campus and a hospital
 5 it becomes a place where it is open.

6 DR. SELDIN: I think the operation at Lilly is
 7 very minimal in restrictions.

8 DR. IRWIN: Right.

9 DR. RYAN: Excuse me. Let me just respond to
 10 Bob Cooke. Let us not keep asking that question. Let us
 11 ask how that unit is used, how the prisoners are selected,
 12 what they are under, and let us put that to rest so that we
 13 know for a fact how it is used. May I instruct the staff
 14 to do that, and let us get it?

15 Pat King?

16 MS. KING: Let me say something. I see us going
 17 off in 18 million directions again which I did not intend
 18 that we go off in 18 million directions about. First of all,
 19 Bob asked, it seems to me, a most reasonable thing. This
 20 talk about discrimination is driving me up the wall. I don't
 21 understand why it is that we cannot regard prisons in some
 22 way as giving incentives for people to want to do certain
 23 things on the outside, just like we want to reform the system
 24 on the inside, and it could very well be a condition for
 25 participating in a research program on the outside that you

1 have to meet all the requirements that people now meet to be
 2 on work release programs or on halfway house programs or
 3 whatever else has already been set up so that there are
 4 people on the outside in certain conditions and not with
 5 bars on the windows. That could be one of the conditions
 6 that Bob is talking about.

7 The second point that I wanted to make is we are
 8 talking in some sense of a balancing system. We talked
 9 yesterday about insuring open communication in the system.
 10 If all of us did not realize that at some level that is a
 11 farce, then we really have fooled ourselves. We can do
 12 everything to maximize communications within the closed
 13 institution. It is still a closed institution, and the
 14 last analysis the people who monitor the mail are the
 15 prison officials. So, when we are talking about perhaps
 16 moving the setting on the outside, maybe what you gain by
 17 moving it to another environment, work release or furlough
 18 programs is a better or increases, perhaps, the possibility
 19 of real communication going on. That may mean that you are
 20 willing to accept a decrease in some other area. I am only
 21 saying that that is what we are talking about. We are crazy
 22 to think that we can solve the problems of the prisons
 23 by setting up all these conditions in prisons, and I don't
 24 even presume to think I would have solved everything by
 25 putting it outside of the prison.

1 It seems to me if we are not going to contemplate
 2 a ban on research in prisons or research on prisoners then
 3 we are dealing with a world in which we have certain
 4 constraints and that we are trying to maximize certain types
 5 of opportunities. I think in fairness to Bob's proposal
 6 we have not addressed what kinds of conditions would, perhaps,
 7 make acceptable the same as we did inside the prison,
 8 acceptable certain types of research.

9 DR. RYAN: I know, but I think that probably all
 10 that needs to be said has been said. Let us test it, Pat.
 11 One was that to be sure the selection process is as fair
 12 as possible, that the minimum is the prisoner should be
 13 drawn from an environment where he is free to organize and
 14 can bring up grievances in arbitration and to have some
 15 decision made with regard to objectives and conduct of
 16 research. That is one thing.

17 Then Bob has added, but no one has either said
 18 yes or no that it would be fine with him if it were conducted
 19 like any other kind of research project, and the permissibility
 20 for prisoners is based on the fact that non-prisoners
 21 participate in equal numbers.

22 MS. KING: I said something different.

23 DR. RYAN: Then I did not understand you.

24 MS. KING: I said that I would not require the
 25 conditions that we listed this morning.

1 DR. RYAN: Yes, I understand.

2 MS. KING: That it be that kind of prison from which
3 the pool is drawn in order to have people be able to
4 participate in research as prisoners on the outside. That
5 is a very different statement. That means we have got to
6 talk about what for those who do not agree with me, what it
7 is about the conditions that we set out that we would drop
8 or modify to some degree if we were going to permit research
9 on the outside and what additional ones we would impose.

10 Ken, if you are suggesting in the interests of time
11 that we first get a description of those Lilly models so
12 that we work from a model because that is a more efficient
13 use of time, I am perfectly willing to do that, if you think
14 that that is more efficient, as long as we do do that.

15 DR. RYAN: I did not understand you, Pat. Now,
16 I think I do. What you are saying is okay, given that we
17 are going to do what Bob said, we have got seven, only
18 No. 7 was cited by anyone around the table that said I want
19 that even for Bob's model.

20 MS. KING: I am saying that I may drop that one
21 on Bob's model.

22 DR. RYAN: Okay, but now you are also asking us
23 do we want 1 through 6.

24 MS. KING: I wanted to hear other people express
25 what it is. I think Stephen expressed what he considered

1 was critical to keep.

2 DR. RYAN: That was No. 7.

3 MS. KING: And that was No. 7, and I think that
4 is what we need if we are going to give the staff any
5 guidance. I feel differently from Stephen about the
6 necessity for keeping that precise one.

7 DR. RYAN: You would drop all seven? Which ones
8 would you drop, Pat?

9 MS. KING: I would keep 3. I think 2 is difficult
10 to analyze right now unless we talk about work release and
11 I know some more about work release and furloughs. I don't
12 know what 1 means to tell you the truth. I think that
13 regular access by prisoners to outside may need rewording
14 because there will be a difference in communication forms.
15 If you are outside you can communicate with the doctors.
16 You have access to the telephone, et cetera.

17 DR. RYAN: But before you get out you don't.

18 MS. KING: You see, that is my point. My point is
19 does the prison from whence these people come have to meet
20 these criteria.

21 DR. RYAN: Tell me, do you want 5 or not?

22 DR. COOKE: May I take a crack at it?

23 DR. RYAN: Let Pat finish because she has got to
24 settle it in her own mind.

25 MS. KING: Thank you, Bob, I do want --

1 DR. TOULMIN: Let me make one remark about the
2 document as it stands. The document as it stands is stated
3 in terms of research involving prisoners. The document, as
4 it stands was drawn up to apply to both classes of cases.
5 If we are going to make a different set of rules for research
6 as it is conducted outside the prison environment we do need
7 to change the whole document.

8 DR. RYAN: Yes, if that is the case. I think that
9 in making it up, you are right, Steve, it was our impression
10 that we would not want to condone because it would be
11 whitewashing, just pulling the prisoners, those selected
12 prisoners, outside the prison to have research done without
13 really addressing the question of the environment. Now, you
14 reject that. That is a difference of opinion, but we are
15 entitled to differences of opinion.

16 Karen?

17 DR. LEBACQZ: It does seem to me that I don't
18 know very much about the work with these programs and whatnot,
19 but it seems to me that we really have to begin talking about
20 two different institutions now, if we are going to talk about
21 prisoners who are outside of prison and that all these
22 qualifications which we talked about as being applicable
23 to prison when research is done in the prison are surely
24 qualifications that we would apply to this institution that
25 is on the outside wherein the research is conducted. We would

1 assume that that institution would have to have all of these
2 qualifications. Then the question is in addition to that,
3 do we have some concerns that remain because of the fact
4 that people who are in this new institution remain yet under
5 the authority of the state in one of its manifestations and
6 can be taken out of that environment and sent back into the
7 other environment and also that in order to get into this
8 new institution they may have come out of another extremely
9 tightly closed setting, and I share Stephen's concern about
10 what it means to say that someone can get out of prison into
11 a nice environment if they are willing to go into research.
12 That strikes me as being quite coercive if I may use that
13 term.

14 MS. KING: No one wants to --

15 DR. LEBACQZ: Just let me finish, okay? I also
16 share the concern that someone who is outside now and in this
17 nice setting is still subject to what I would call the
18 arbitrary exercise of power, and I still want to be sure that
19 there cannot be that kind of arbitrary exercise of power that
20 says, "If you do not participate in X research program back
21 you go into this other place."

22 Minimally it seems to me, those two extensions, if
23 you will, are present, the one that has to do with people
24 coming out, where they come from and whether the coming out
25 could be in any way coercive and the other that has to do with

1 the possibility of them being sent back in. There may be
2 others, but those two are minimally problematic to me.

3 DR. RYAN: Let Don Seldin talk and then we will
4 go to the side.

5 DR. SELDIN: It is just an extension of Karen's
6 point. The dropout rate of research subjects is a good way
7 in part to look at overall coercions. I think the figures
8 we got from Tannenbaum within the prison were about 14 percent.
9 Unless I miss my guess the dropout rate of the Lilly project
10 is zero.

11 DR. COOKE: Oh, no, it is rather considerable.

12 DR. SELDIN: Not when I was there. You had better
13 check on it.

14 DR. COOKE: When I was there I viewed it, and it
15 was rather considerable. We have someone sitting here
16 who I think might have some data, but it was largely boredom.

17 DR. SELDIN: We ought to look at it.

18 DR. ALEXANDER: John Arnold's rate is 1.5 percent,
19 very low.

20 DR. SELDIN: But what I am trying to say is, if it
21 is the case, let me put it this way, Bob, if it is the case
22 that the dropout -- it raises the suspicion that the coercive
23 overcome of being returned to prison is frightening, and that
24 possibility exists that the prisoner now in the Lilly
25 setting or some similar setting may be subtly coerced into

1 remaining in the research project because he faces the
2 threat of being returned to the prison environment, and the
3 prison environment may be an alternative, while on the
4 other side of the coin the kind of person who emerges from
5 the prison may also be, in a certain sense, the subject of
6 considerable bribery in the sense that he has the chance of
7 escaping from an unattractive environment. For both these
8 reasons I think one should look very carefully at an item
9 like 7 applying to the prison situation and a special
10 stipulation regarding what happens in the second setting
11 that might coerce him to remain a research subject.

12 DR. RYAN: Thank you. I have three who want to
13 speak over here. Pat?

14 MS. KING: I want to say that I agree with Karen
15 about the outside setting meeting the conditions. I don't
16 have any quarrel with that.

17 I think, however, that some things seem to be getting
18 very confused around here. We have talked already that we
19 have not removed coercion. We have not removed enticement.
20 For a prisoner a work release program is an enticement.
21 The difference between the work release program and an
22 opportunity to do something in the neighborhood and the
23 opportunity to participate in a research project takes us now
24 back to the question of what is there about a research project
25 that we may object to that is so different from work. If that

1 is the concern, it seems to me that maybe some people would
2 like to think about only certain types of research may be
3 permitted in this setting, and that is one way to solve it.

4 The second problem is things that are carrots or
5 sticks may also be carrots and they may have a good -- I
6 don't see anything inherently bad about attracting a person
7 to try to stay on the outside of the prison hopefully go back
8 into a normal life if it is not dangerous to the person,
9 and I think if it is risk that we are worried about in terms
10 of the risk he is taking because he will stay in a project
11 rather than to return to his prison environment is perhaps
12 something that can be dealt with by setting out conditions.
13 That is the second point, and I have so many points --

14 DR. RYAN: Before you go on, Pat, I just want to
15 be sure I understand this. You are wondering why people
16 are concerned whether or not it is coercion. I don't think
17 it would be, and I don't think we would be discussing it if
18 the prisoner is given work release and is given an opportunity
19 to choose what he wants to do as a free man outside prison.

20 MS. KING: That is No. 2 in your thing if you are
21 talking about --

22 DR. RYAN: But --

23 MS. KING: Wait a minute. People go on a work
24 release or furlough program. Karen said the setting into
25 which one goes, and she did not define the setting narrowly

1 to be only the place where the research is conducted, the
2 setting into which one goes in terms of alternatives that
3 one has, I said the conditions could be that you may have to
4 qualify for work release. You may then have an option or we
5 may require that that option be that you be able to select
6 among types of work.

7 A third one may be that the pay among the alternatives
8 that you were given be comparable. It seems to me that what
9 people are saying about the worry of being returned to the
10 prison environment which may not be a good environment is
11 some help. That fear is so coercive, and I can understand
12 how that may be a coercive fear, but I don't understand how
13 that differs from work release and furlough programs.
14 People don't want to go back to prison.

15 DR. RYAN: I don't think it does, Pat.

16 MS. KING: Unless we are talking about the risk
17 in the research program.

18 DR. RYAN: I don't think it does. I think there
19 is perhaps some misunderstanding about the conditions under
20 which the prisoner is outside in this unit.

21 DR. COOKE: It would be perfectly easy to
22 assure that a prisoner would not have to return to a prison
23 environment if he was through. He would remain for the
24 duration of the protocol as he agreed in his contract even
25 though he did not participate.

1 DR. RYAN: But if he is out on work release does
2 he have to stay on the job or go back to prison?

3 MR. TURTLE: He can find another job.

4 DR. RYAN: But he is a free agent.

5 DR. COOKE: Yes, but he does not have to stay in
6 the research project. The worry that has been expressed --

7 DR. RYAN: That is right. He can go and get another
8 job.

9 DR. COOKE: Or he might even remain in that
10 environment. You could draw it up so that he would not have
11 to return to the prison if he chose to withdraw.

12 DR. RYAN: John Irwin, please?

13 DR. IRWIN: You are really talking about Mars
14 because there are some realities here that just must be
15 confronted. Let me make some distinctions. If you are
16 talking about an outside unit which is available to the
17 general prison population with some exceptions which we have
18 already mentioned, such as those persons who are in
19 isolation being established on the outside because of
20 something like the Lilly experiment which I have no idea
21 what it is like, it will be different in that it will be
22 more open to the public. That is pie in the sky because
23 that just will not occur.

24 What happens is when they build a new component
25 for all classes of prisoners, including medium, maximum

1 and close custody prisoners in a new location, be it downtown
2 in the boondocks or an island, wherever, it becomes a prison
3 just like the prisons that you saw. Let me pursue this.
4 If you are talking about work release let me tell you something
5 about the experiences with work release. If you allow
6 people to go on work release very far before they are
7 normally to be released the public outcry becomes intense.
8 In California it resulted in almost abandoning work release.
9 In Alaska it resulted in banning work release. The citizens
10 of the United States do not allow people on a large scale to
11 be removed out of prison during a sentence and placed in some
12 outside place where they can run around free and from the
13 public's viewpoint rape, rob and pillage. Washington, D.C.,
14 right here is coming under the same intense criticisms for
15 their early release programs from Lorton. You are just not
16 going to go over those barriers. You are going to end up
17 servicing one small percent of your population, those persons
18 who are almost finished. In California it has to be their
19 last 60 days to go on work release.

20 Just one more point and I am going to shut up.

21 If, in fact, you have some population which has considerable
22 amount of freedom, say work releasees, then the contamination
23 into your drug program is going to be unbelievable. The
24 one big problem with work release programs is that they
25 are drugged. People who are released from prisons happen

1 to like drugs, and they get drugs, and they are going to
2 get drugs, and you are going to have all kinds of problems
3 doing biomedical research on people who have access to the
4 community.

5 DR. RYAN: There is no question we can get the
6 facts about the Lilly program. We should not deal in
7 ambiguities there. I think we all agree that if prisoners
8 are allowed outside the prison they are going to have to be
9 the kinds of individuals who would be allowed their freedom
10 in other circumstances in which case the concerns of the
11 Commission for that individual will probably be no different
12 than the kinds of safeguards we would want for any citizen
13 and get to our basic ethical principles. The only point is
14 the ethical consideration of how they get out and the fact
15 that the biomedical or other kind of research is just one
16 of the many opportunities they have after their release.
17 I think we all understand that. So, unless there is something
18 more you can contribute to that point we ought to find out
19 about the Lilly program, and if that is all it applies to,
20 it applies to a relatively small portion of the research
21 going on in prisons because the people who are involved there
22 probably would not be suitable for the Lilly program, that
23 is lifers and so on. They might not be, and so I don't
24 think we have to say that we are going to consider only
25 one or the other alternatives. We can consider both, but

1 we need more facts.

2 MR. TURTLE: A clarification. It goes back to the
3 point that Don and I have discussed off and on over the
4 past couple of months, and I am surprised at his position
5 today, by the way. Don has argued that prisoners have rights,
6 and I guess I have argued that I agree that prisoners have
7 rights, but I don't see what that has to do with the problem
8 of whether you put research into a prison or not, because
9 people can have rights that they cannot enjoy just by some
10 extrinsic influence. This is by federal recommendation. It
11 is not a question of a physical impossibility. You could
12 put it in there or you could take it out, and we are going
13 to make recommendations for a governmental agency. So you
14 are exercising authority over people, and when they don't
15 have that right, they don't have a right. They do have a
16 right, but it is a question of being able to exercise or
17 facilitate that right. What we are really talking about here,
18 I think, to distinguish it is No. 1, a set of guidelines for
19 research in prisons. That is No. 1. No. 2 a set of guidelines,
20 if we need them and we are wondering about that, some of us
21 for research on prisoners, in what way are they different
22 except for the fact that they are in prison than other people,
23 and I think the second element is the one that is causing
24 us some confusion here. It is not so much how they get out
25 or what they use to get out. That is a different problem.

1 That is one that is involved in all sorts of coercion.
 2 People will do almost anything to get out of prison. Now,
 3 if this is one of the options available to them, we would
 4 suggest, I suspect some of us anyway that it not be treated
 5 differently than any other option.

6 The only constraint would be probably in the
 7 risk-taking involved, and for that we would include some
 8 sort of provision, as Bob suggested that people on the
 9 outside who are volunteering for this protocol or project
 10 as well, and that is it, but I think we could proceed ahead
 11 if we direct our attention here to research in prisons and
 12 then wait to get some information about research on prisoners
 13 outside of prisons.

14 DR. RYAN: And with respect to this question of
 15 having a distribution of prisoners and non-prisoners outside,
 16 that goes back to a basic ethical principle of, I guess
 17 distributive justice and so on and so forth, not putting
 18 aside any one component of our society that is used for
 19 something that all of society is going to benefit from.

20 MR. TURTLE: It is also the check that I think we would
 21 like to have to answer some of the coercive aspects.

22 Obviously there is coercion in almost anything that anybody
 23 volunteers to do, but that would be true for poor people.

24 DR. RYAN: That is right, and you want to make sure
 25 that poor people and rich people get involved in research

1 in the same way.

2 MR. TURTLE: I am not sure we are going to be able
 3 to do that.

4 DR. RYAN: I am not sure that you are going to be
 5 able to do the other either, but I think that that is just
 6 as important, especially for biomedical research because
 7 rich people as well as poor people enjoy the fruits of that.

8 I think that we perhaps could go on. We have only
 9 a few minutes. If you could identify for us points that you
 10 think need to be developed further and in the few minutes
 11 remaining if you could identify what is different or what
 12 we have to be aware of as we go from the biomedical to the
 13 behavioral model, I think it would be helpful.

14 DR. COOKE: I think one of the things it would seem
 15 to me very important would be to try to do what we did in
 16 the biomedical area that Seldin and his group did at Elk Ridge
 17 in regard to the biomedical boundary issue. The problem that
 18 I see -- maybe, Joe, you don't agree, but it seems to me there
 19 are a lot of individuals in the prisons that are getting
 20 handled in a way that would be called behavioral therapy or
 21 rehabilitation or whatever else, using various techniques
 22 that I would have to say are being handled in a way that
 23 is not well substantiated at all, and could be harmful to them
 24 or may be for the benefit of the caretakers but not much to
 25 their benefit, et cetera, and it is very easy for these

1 institutions to go on doing that and say, "We are not doing
2 research," and indeed when we did a survey we found nobody
3 is doing research in this field at all, and yet nothing is
4 established, not nothing, but very little is established as
5 beneficial to the subjects or non-beneficial to the subjects.
6 It is just a great deal of uncertainty.

7 So, it seems to me that whatever we say in this
8 area ought to try to put emphasis on the fact that where what
9 is done is poorly established, not well confirmed and so
10 forth that we try to encourage as much as possible this
11 coming under the research mode and subject to review and
12 subject to scrutiny and careful analysis and subject to
13 many of the conditions of the environment of the institution
14 et cetera that we are going to impose. Otherwise everyone
15 is going to go on doing just what they are doing because
16 none of them is doing research.

17 DR. RYAN: Joe Brady?

18 DR. BRADY: The issue is whether we have the
19 same kind of standards of routine and accepted practice
20 which we could fall back upon in the biomedical area and with
21 the hospital review boards. We don't have a comparable
22 institutionalized approach in the prisons as I see it unless
23 we are moving in that direction. I don't quite see how we
24 are going to get at this, except to the extent that this
25 No. 4 those standards get extended to the behavioral

1 research area.

2 DR. RYAN: You mean adequacy and availability of
3 accredited medical --

4 DR. BRADY: Accredited medical care.

5 DR. RYAN: Give us a for instance. How would you
6 word it?

7 DR. BRADY: You would have a review mechanism
8 very much the same as you have now for surgical procedures
9 in Mass General Hospital, that there is a routine, as you
10 described to us, there is now beginning at least a routine
11 system for reviewing radical medicine and deciding when
12 the hospital board for example decides that that particular
13 procedure is innovative and should be submitted to the
14 clinical investigation division for research.

15 It seems to me a mechanism like that could work
16 equally as well in prison. The thing I objected to in the
17 implication of some of Karen's remarks that there are no
18 therapeutic behavioral -- I think by and large what you are
19 referring to in the prison it is true. They are not well
20 established procedures for that purpose, but that there are
21 therapeutic behavioral procedures that are applicable to
22 prisoners it seems to me self-evident, systematic desensitiza-
23 tion for both of these and research in that regard. It is
24 a well established therapeutic behavioral research procedure.
25 So, I would vote against excluding those terms, but with

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1 respect to the kinds of things Bob is referring to, I have
2 to agree with him. For the most part they are not systematically
3 applied in prison.

4 DR. COOKE: What Joe said is very, very critical
5 it seems to me for the issue that Congressman Quie has
6 raised. That is the very nub of the problem. In the whole
7 educational field we have got things being done that may be
8 usual and customary but not tested, et cetera, and it means
9 that behavioral research has to be encouraged very greatly
10 in prisons, in schools, et cetera which makes it even more
11 important that we try to establish some ground rules for the
12 conduct of this, and I am not satisfied that in the prison
13 setting as yet we have come up with this as an adequate
14 coverage for behavioral research in prisons.

15 DR. RYAN: Don Seldin and Eliot Stellar.

16 DR. SELDIN: I want to take up slightly a
17 different tack. I don't agree with any of the puzzlement.
18 I am not sure in my own mind that it is clear to me how one
19 draws boundary rules between behavioral modification as a
20 form of education, behavioral therapy, behavioral research
21 and so forth, and then veering off to biomedical science on
22 the other hand, but I do think there is a very critical
23 problem that remains even assuming that we could solve that,
24 and that is irrespective of whether we say we are doing
25 research or treatment or education, irrespective of all those

1 labels, there are two outcomes which are sometimes
2 ambiguous. One is there is rehabilitation in some sense,
3 and the other is there is pacification. Now, a great deal
4 of the public outcry regarding behavioral modification is the
5 fact that we seem to be or at least some people allege that
6 there is a kind of widespread pacification of radicals, this
7 that and the other thing where there is in a certain sense
8 an attempt to change their character which has political
9 and social overtones rather than, let us say in quotation
10 marks, medical overtones.

11 Now, I am not sure how to draw this distinction.
12 I really don't. I am just expressing it in a vague
13 puzzlement, but I don't think it is unimportant. I think
14 that one of the great public concerns with behavioral
15 modification is just hinging around this point. Are you
16 really pacifying something, quieting, making more socially
17 acceptable like a nice suit of clothes instead of being
18 sloppy, like a close-cut haircut instead of long graceful
19 hair like Al has? It is very important to distinguish
20 between pacification and rehabilitation. I think if the
21 staff has any ideas on it or if any of the consultants do, it
22 would be worthwhile expressing themselves. I have tried to
23 touch upon this many, many times, but we have not evidently
24 gotten very far and I know it is a lousy problem. There is
25 the second point I want to make. It has to do with the

1 previous item where I still do not agree with the formulation
 2 of prisoners outside of the prison not being under coercion.
 3 The threat of returning to prison if they do not continue is
 4 a threat which is in some sense different from the kind of
 5 threat of taking a risk of some danger in research. It is
 6 a threat that you continue the investigation on pain of being
 7 returned to the prison irrespective of what you may think
 8 about rights, this, that and the other thing, and I don't
 9 think one should neglect that.

10 There is a danger of dislocation. We should take
 11 cognizance of it, and when you write it up I think that I
 12 would like to point out to the staff that they ought to
 13 build that into some consideration.

14 DR. RYAN: Okay. Eliot Stellar wanted to --

15 MR. TURTLE: Could I just respond?

16 DR. RYAN: We are done with that subject now.
 17 I think we really are because we are confusing our base of
 18 operation, whether that prisoner has to go back to prison
 19 or whether he goes and gets another job. That is the issue.

20 DR. STELLAR: I don't know if we can settle the
 21 boundary question because I don't think we have any clear
 22 conception as medicine does of what routine and accepted
 23 practice is. For example, an honor block in a prison is
 24 a form of altering behavior, maybe pacification of people
 25 who can get there and be pacified while there, maybe for

1 management purposes rather than the benefit of the prisoners,
 2 and that has been traditional in prisons. On the other hand,
 3 the kind of thing we heard at Furnall School, regrouping
 4 people, new kinds of housing units which might occur in a
 5 prison setting as well might be thought of as experimental.

6 I think we do have a very serious problem on that
 7 half of the continuum. The other side, however, upon research,
 8 including survey research, including research of an
 9 experimental design, such as in the case of behavior
 10 modification, I think we can begin to list those. The
 11 problem is that I don't have a conception. I don't know
 12 whether you do, Joe, of the continuum that actually goes on
 13 in the prisons today that would represent the experimental
 14 extreme at one end and the routine and accepted practice on
 15 the other, whether it be educational practice or social
 16 management practice, and I don't know whether the staff has
 17 any way or whether John Irwin has any way of leading us to
 18 data of this sort.

19 I think we are shooting in the dark. We know of a
 20 few behavior modification programs, and that is about it as
 21 far as experimental behavior programs that I am aware of.

22 DR. RYAN: We are obviously going to have to work
 23 on this. We have identified it as a problem. Before we
 24 depart I want to just be sure that staff and Commission are
 25 of one mind about what we are going to do in the interim.

1 We have taken this document and changed it a little
2 and said that the Commission recommends that the Secretary
3 of HEW should not conduct, support or approve biomedical
4 or behavioral research unless -- and then these conditions
5 that we are trying to develop, the ones that are stipulated
6 and the ones that have been added will apply to research
7 within prisons.

8 Staff will also develop the concept based around
9 the Lilly model, getting those facts and analyzing the
10 points with respect to the types of prisoners that might
11 be released, develop that, and thirdly we are going to
12 develop this boundary issue in some way or think about it
13 so that the problem that Bob Cooke has raised, that is
14 innovative behavioral modification that should be research
15 being introduced into practice without proper evaluation, and
16 then the fourth item which I have requested and that is
17 validation of existing things with the proviso that we don't
18 at least to the extent that the Secretary supports or
19 conducts this, we ought to encourage him to engage in research
20 which evaluates or validates what is going on in standard
21 prison methods and so on, and it should not be construed
22 -- for instance, if they want to validate the quality of
23 health care within prisons with federal money, I think they
24 have enough sense not to pay attention to us no matter what
25 we said with respect to that, but I would hope that we would

1 encourage them to, for instance find out what is going on
2 with health care in addition to being concerned about
3 prisoners' rights with respect to research.

4 DR. SELDIN: Just one small point to Bob Turtle.
5 I am not going to go into this business of rights, but there
6 is a terrific article in the latest Hastings Bulletin by
7 David McKanick in which he responds to an article by Charles
8 Freud and discusses the distribution of rights in society
9 and the fact that while there is access to rights not
10 everybody has them now. I think there is a fundamental
11 flaw in your argument, but rather than go into this I want
12 to take the posture of McKanick's reply to Charles Freud.

13 DR. RYAN: Bob?

14 DR. COOKE: In regard to your last statement about
15 let us say evaluation research, I don't want to be silly
16 enough to think that we prohibited it and so on, I do think
17 we have got to be awful careful if we are going to have some
18 very restrictive kinds of impositions that they are spelled
19 out carefully enough so that the investigators in the country
20 don't stop doing things that are okay.

21 Now, you will recall that when the ban on fetal
22 research was imposed a lot of people stopped even looking at
23 fetal tissues in dead fetuses because they said that that
24 had all been banned and so forth and you cannot do that sort
25 of thing. So, it does seem to me that it is very important

1 that we not assume that the investigators and so forth
 2 -- because an awful lot of work has got to be done on prisons
 3 and prison health and prison behavior and all the rest, and
 4 if we lay it out so that it sounds as though you cannot do
 5 these things an investigator is going to shy away from the
 6 prisons and the prisoners in the long haul are going to be
 7 hurt by it. So, I think we have got to be careful how we
 8 spell out.

9 DR. TOULMIN: Could I underline one thing? What
 10 we are doing is making recommendations that have specifically
 11 to do with the question of what the Secretary of HEW should
 12 finance. I mean if another John Howard or Elizabeth Frye
 13 wants to go into the prisons to do research on the
 14 psychological effects of being incarcerated under extremely
 15 inhumane conditions, God bless them. It may be that they
 16 will have to do it out of their own pockets rather than
 17 getting the research financed by HEW, but nothing that we
 18 say should be interpreted as creating a state of affairs
 19 in which the impression is given that people who want to do
 20 that kind of thing for the good of all of us should be
 21 prevented in doing it.

22 DR. RYAN: I think there is an exception to that,
 23 and that is there has been before the Congress a bill which
 24 would have far-reaching consequences in barring all prison
 25 research and using all of the federal power to grant money

1 to enforce it, and so the Congress is going to be looking
 2 very, very carefully at the kinds of recommendations that
 3 we make and we probably should spell out those areas where
 4 we think research is needed and important and will accrue
 5 to the benefit of the prisoners if we could identify them.

6 DR. LOUISELL: I think that the staff will avoid
 7 considerable necessity of revisions if it bears in mind that
 8 a number of us come to the present position of trying to set
 9 forth standards over the grave difficulty of our doubts about
 10 any research in prison and that we are doing this in, shall
 11 I say, a valiant effort to try to permit some necessary
 12 research, and in the discussion it is very important not to
 13 withhold strong statements about the evils of the present
 14 circumstances in respect to prison research.

15 We have all been startled by these revelations
 16 from the Washington Oregon experimentation, and I think your
 17 caution about the Congressional interest also must be borne
 18 in mind.

19 DR. TOULMIN: But, David, if there is any element
 20 of humanity in this country and other Western countries'
 21 approach to prisoners nowadays it is because there were
 22 people like John Howard and Elizabeth Fry who went into the
 23 prisons and did these things which were by the standards of
 24 all that ^{we are} calling them research, and if we are going to
 25 set up a system under which that kind of thing is pre ented we

1 are going to be perpetuating inhumanity not promoting
2 humanity.

3 DR. LOUISELL: That is exactly why we compromised
4 in a sense on the effort to set forth these standards.

5 DR. RYAN: Don Seldin? We will go around the
6 room. Everyone will get a final say.

7 DR. SELDIN: Even the notion of a moratorium has
8 consequences beyond the moratorium. Bob Cooke just raised
9 the problem of we don't want to discourage things that are
10 valuable. Well, it turns out that even though this
11 Commission has acted and the fetal research ban has now been
12 lifted, I think in the most legitimate arenas of fetal
13 research there is not a single grant been received by the
14 NIH in about how long, 18 months. It is interesting. You,
15 in a certain sense, assert a posture of fear and the
16 investigators whom you really want to encourage into very
17 tricky areas where people don't want to do research don't
18 ever think that everybody is clamoring to do the kind of
19 research in prisons or research on fetuses or research on the
20 insane. That is a terrifying kind of research to do, and
21 one of the major problems this Commission ought to consider
22 in considering other things is how to encourage it
23 legitimately, to be sure, but how to encourage it. We should
24 not lose sight on this. If we declare a moratorium on
25 prison research and then lift it you are apt to get no

1 prison research for a tremendous lag time. I am not saying
2 we should not have a moratorium but we ought to think very
3 carefully about how to phrase and formulate it in order not
4 to generate the same kind of fear amongst responsible
5 investigators that now I think will scar the reinstitution of
6 fetal research in legitimate areas and which is characterized
7 by such paucity of research amongst the insane.

8 DR. RYAN: Pat King?

9 MS. KING: I agree with what Bob and Don said, but
10 I am troubled by something that I guess we have not done.
11 I feel rather guilty about it myself because we are departing
12 so early, and that is that we have got to be far more
13 specific, not about the conditions. We have not begun to
14 address the variations in types of research that we are
15 talking about. We have used primarily drug research as our
16 model. There are other kinds of biomedical research that go
17 in prisons. That is number one.

18 There are all kinds of sociological and psychological
19 research that go on in prisons, and those have got to be
20 addressed. We have to come up and say yes, no or maybe, and
21 we cannot let it all fall without discussion on something
22 that we have broadly called biomedical model.

23 I think that that is going to be a far more
24 complicated task than a lot of us have thought about, and
25 before we have got to worry about is there a valid distinction

1 between therapeutic and non-therapeutic research in these
2 areas, and I guess I am really kind of pleading not to think
3 that we have accomplished so much because all I think we have
4 done is scratch the surface, and I don't expect the staff
5 to do this for us. I don't think that they have very much
6 guidance in those areas about what they could possibly do for
7 us because we have not talked about it.

8 You may try all you want. I am just saying that
9 we have --

10 DR. RYAN: We have all the reading material. If
11 you want more reading material, fine. If you want to be sent
12 to another prison --

13 MS. KING: It is not that, Ken. What I am suggesting
14 is we have not done -- it is not a lack of reading material
15 now and it is not a lack of information in some areas. It
16 is a question of the Commission together discussing certain
17 aspects of these things. If staff wants to take a first
18 crack at it, I am overjoyed to hear it, but it still means
19 that we have got to spend a whole bunch of time hitting
20 some very concrete areas, and I just --

21 DR. RYAN: I think one of the ways the Commission
22 can help and you particularly, Pat, if that is an issue is
23 to identify it as an agenda item so that we can discuss it
24 early, if that kind of discussion is needed for decision
25 making, and I think other Commission members if they could

1 identify that it would be helpful because we cannot imagine
2 all the things that people want to discuss before they
3 will reach a decision.

4 MS. KING: They have to do that, I think in terms
5 of if we are going to have a moratorium or if we are even
6 considering a moratorium. We have to be very clear about what
7 it is to go back to what Bob and Don were saying. We have
8 to be very clear about what it is that we are halting. Do
9 we want some things to continue? Maybe not. Do we want
10 some things to go on and some things not to go on? I think
11 that is very important. We really have not discussed the
12 distinction thoroughly for one thing between therapeutic
13 and non-therapeutic research, and that, to me, presents some
14 very difficult issues, not only in the behavioral area but
15 in the biomedical area.

16 DR. RYAN: All right.

17 DR. STELLAR: You know, to this end though it seems
18 to me we are going to need a better catalog than we have had
19 up to now of the ranges of biomedical research other than
20 Phase I drug testing which I agree we have concentrated on
21 too much and indeed the varieties of behavioral research
22 that can be identified either as research or on the borderline,
23 and I think that we have very poor information as to
24 frequencies and types, if you will, and we may be laboring
25 under a view that a great deal more behavioral research has

1 gone on in prisons than has actually occurred.

2 DR. RYAN: We found none. I mean we have asked for
3 it. One of the staff did this thing on the states. Is that
4 a valid document or isn't it? It tells us in most states
5 there is no research going on.

6 MR. TURTLE: They state that there is no research
7 going on or the state law does not allow for that research.
8 That does not mean that it is not going on.

9 DR. RYAN: How do we find that out?

10 DR. BRADY: How do we find that out. We are
11 laboring in the dark.

12 DR. ALEXANDER: We distributed sometime ago, and
13 it is summarized in the staff paper, a summary from NIMH of
14 all the behavior research that they are conducting or
15 supporting. It gives a pretty good idea what the range is
16 like.

17 DR. GRAY: What won't be included there is the
18 sort of observational research interview and research and
19 so forth that is done by social scientists and graduate
20 students for their dissertations and things like that which
21 having come just from the University of North Carolina I
22 know of one recent dissertation in the sociology department
23 that was based on interviews with prisoners, and it was
24 completed last year.

25 I know that kind of research is done. While I am

1 talking could I mention one other thing, please?

2 Dr. Tannenbaum just called me back. He was asked to pursue
3 a number of additional pieces of information yesterday, and
4 he was able to report back with some of them. My feeling is
5 that the most effective way to present that to you would not
6 be to do it orally right now, and since they were not able
7 to answer all of the additional questions that were raised,
8 what I proposed to him and what I propose to you right now
9 is that before the next Commission meeting that he send a
10 letter detailing the additional information that he was
11 able to answer from the data that they have. They are also
12 going to send a letter to wardens requesting overall data
13 on the prisons that was requested and to try to come back with
14 that before the next Commission meeting rather than taking
15 time describing what he has now. Is that okay?

16 DR. RYAN: I will entertain a motion to adjourn.
17 We are adjourned.

18 (Thereupon, at 3:10 p.m., the meeting was
19 concluded.)

END

1/20/1944