

1 other criminal justice law enforcement
2 professionals.

3 We have benefited by the work as corrections
4 administrators of ACA, ASCA and NIC. So too I
5 believe that the effective management of prison
6 sexual violence requires a full, a fuller set of
7 policy, procedure systems and programs that meet
8 the complex medical, mental health, social needs of
9 victims, because this issue intersects federal and
10 state laws, the courts, the prosecutors,
11 corrections, certainly the mental health system and
12 certainly the public health system, and not to
13 mention groups that we often leave from the table,
14 families and advocacy groups.

15 We need, I believe, a more coordinated
16 approach to address the larger picture if we want
17 successful prosecution and outcomes. As a state,
18 certainly in Massachusetts, we are moving towards
19 making sure that we are all on the same page.

20 Thank you.

21 THE CHAIRMAN: Thank you very much. Let
22 me ask Ms. Malm, what are the consequences of a

1 jail not receiving state certification?

2 MS. MALM: At this point, there is no
3 mandatory requirement that any jail meet those jail
4 standards; however, if you face a lawsuit or you're
5 brought into court, meeting those jail standards,
6 those item of jail standards are a very important
7 part of trying to defend yourself against a law
8 suit.

9 THE CHAIRMAN: Thank you. Starting on my
10 left, Mr. Kaneb?

11 COMMISSIONER KANEK: I have no questions.

12 COMMISSIONER AIKEN: I have questions,
13 one specifically and one general question.
14 Obviously, this morning we had an opportunity to
15 look through the facility and we saw very
16 professional staff and people that were in charge,
17 and I'm not just saying that. What are techniques
18 of BOP that you use to attract these people and
19 retain them?

20 MR. LAPPIN: Thank you, Commissioner. I
21 could probably spend a couple of hours talking
22 about this, but I'll do it briefly, I promise.

1 Looking at the other members this morning, I
2 think all of us agree that our staff are our
3 greatest resource, our most important resource.
4 And I benefit in most locations around this country
5 of being able to pay to hire people because we can
6 pay them more money. You heard this morning from
7 one end, but I think, for example, the benefits
8 that can be reaped when your pool of candidates is
9 larger and you have a traction. I agree with you.
10 I couldn't agree with you more. It's not just pay,
11 but pay is very important. Our officers are given
12 pay between \$30,000 and \$35,000 a year. So we
13 attract more people. In many places that are
14 educating folks, more mature folks, people are
15 looking for a career. And as a result, not
16 everywhere, but system wide we enjoy relatively low
17 turnover. Turnover is typically requirement where
18 people can occupy other assignments in the agency.

19 Now granted at a higher cost in living area,
20 it is more difficult, in New York, California and a
21 few other states that are as competitive as we are
22 pay wise. But for the most part, we have higher

1 paying correctional workers than most states. In
2 fact, on occasion my peers beat up on me a little
3 bit because I tend to take many of their employees
4 in the federal prison system given we pay more
5 money. But having that base, that experience,
6 lends itself to a culture.

7 And you all spoke today about culture, a
8 culture that can be carried on, can be mentored,
9 that can be nurtured, not only by the leadership,
10 which is critically important, but as well by the
11 employee who probably spends the majority of the
12 time with that new employee and who's going to
13 train and educate them on dealing with inmates on
14 policies and procedures. So it's a combination of
15 who be hired, the establishment of expectations
16 within the system, the commitment to standards, and
17 again we adhere to ACA standards, JACO standards.
18 But it's beyond just adhering when somebody is
19 coming in to visit.

20 It's an understanding you will meet those
21 standards every day. It becomes part of your
22 practice and part of your policy. And I think that

1 general sense of understanding amongst all of your
2 employees serves very well in that capacity. Not
3 to say that we're perfect because we're now. We
4 have our trials and tribulations just like
5 everybody else does and, unfortunately, we hire
6 some employees that I wish we had not hired.
7 Fortunately, it's a fraction, a very small fraction
8 of the overall workforce that we employ, which
9 today is about 36,000 employees.

10 So a number of things, I think, lend
11 themselves within our system to erasing those
12 characteristics. We benefit from that, although I
13 see the trials and tribulations many states have in
14 areas where it's not as well a sought after job or
15 assignment and we struggle just like they do given
16 a large enough pool of candidates, going through
17 the selection process, and maintaining an
18 experienced base of employees at a given
19 institution.

20 COMMISSIONER AIKEN: And this is a
21 general question. What are the techniques that you
22 use in order to get inmates to trust the system to

1 the level, acceptable level, that they are going to
2 be safe?

3 And I'll just use an analogy. I got on the
4 plane yesterday and we cruised at 30,000 feet. I
5 didn't check the pilot's credentials; I didn't
6 interview his family and I didn't get references,
7 but I trusted those individuals with my life.

8 Now, what can be done or what is being done to
9 build that level of trust in the confinement's
10 population and those people that have been confined
11 to the facilities? What are your techniques?

12 MR. LAPPIN: Since I have the microphone,
13 I'll start, if that's okay.

14 I would be remiss if I said that all of the
15 individuals we have confined in the federal prison
16 system trust the prison system. I'm hoping to some
17 degree, but I think it, again, goes back to staff.
18 And I think one of the most important things that
19 we adhere to in our training and our expectation is
20 communication with the inmates.

21 As you walked around today, those of you that
22 visited, our staff don't wear batons. Our staff

1 don't use gas. We have it available. All of those
2 things are available. But our expectations of our
3 employees is to communicate daily and effectively
4 each and every day with inmates. That's what runs
5 safe prisons, that we have a relationship as best
6 we can have with the inmate population.

7 And believe you me, the majority of the
8 inmates, if you open that door, will embrace that
9 or understand that they have and can approach and
10 talk with staff, not all of them. Clearly, there's
11 a portion of our population that continues to
12 resist, are fearful, are concerned, are resistant
13 because they don't believe they belong in prison,
14 but the vast majority of the inmate population at
15 least in my experience if that door is open will
16 take advantage of that. That, in turn, begins to
17 create that relationship, at least an understanding
18 that there is someone there that can support them,
19 provide them with advice and be of assistance to
20 them.

21 Beyond that, I think I go back to the
22 classification system in that we do a much better

1 job today than we did years ago by segregating
2 inmates based on prior history, incidents of
3 misconduct and a number of other factors I won't go
4 into great detail. But beyond that, it's an
5 understanding of who is running the prison.

6 It's as simple as what some of you commented
7 on today, the place is clean. That is the first
8 observation, in our opinion, that sends the message
9 of who is running the prison is when a prison is
10 clean. It doesn't have to be painted and look
11 fancy, but it's clean. And there's an expectation
12 on those inmates that they play a role in that
13 regard, a huge role. And so putting as much of
14 that responsibility back on those inmates is
15 critically important.

16 I heard this morning a discussion about
17 segregating inmates based on their race in some
18 cases or whether they were gay and so on and so
19 forth. We're opposed to that. We want those folks
20 to be in a living environment that they're going to
21 face when they walk out the door. Nobody is going
22 to be out there protecting on the outside. We've

1 got to have a system in place that allows us to
2 classify them and put them in a safe environment
3 and expect them to deal with those issues that may
4 be challenging to them even though they're in our
5 custody.

6 And so, again, I couldn't agree more. We
7 would be resistant, I think, to segregating people
8 by certain characteristics. We believe we could
9 run prisons safely within those general
10 populations. There are some cases we cannot,
11 typically because those inmates don't abide by the
12 rules, use good common sense and make good
13 decisions, which is like when they were on the
14 street, and in those cases we have to use unique
15 and, typically, more restrictive ways of managing
16 their incarceration.

17 MS. MALM: I'm probably luckier than most
18 because I run a very small jail facility, so
19 there's probably a lot less problems as far as
20 addressing some of the inmate concerns, addressing
21 some of the problems with staff. But one of the
22 things, I am very fortunate, I have fabulous staff.

1 They talk to the inmates. I have been with Madison
2 County Sheriffs Office for three and a half years.
3 I have not had a staff member who has used OC
4 spray. I've had very few physical altercations
5 between staff and inmates as staff use
6 communication to try to solve problems more than
7 they do physical, and we stress that.

8 We have a grievance policy in place which most
9 detention facilities and corrections facilities do,
10 where the inmate can breed officer treatment. And
11 whenever that happens, we are very quick not to
12 just believe what happened, but to actually
13 investigate to see if there's any truth to it. And
14 if there is truth in it, we do address it to staff.
15 We correct the problem. We don't let things slide
16 and say, uh, that's just such and such complaining
17 again, but we actually address the problem and
18 investigate.

19 And I think an example that I can show of how
20 this is worked in our facility, recently, about two
21 weeks ago, we actually had an inmate who grieved
22 another inmate because of the way the inmate was

1 talking to staff members and it was signed by about
2 five inmates, even though one had actually written
3 a grievance. They didn't like the way that he was
4 treating staff. To me that showed me that there is
5 some trust there as far as the staff when they'll
6 grieve each other to say that they're treating
7 staff poorly.

8 Thank you.

9 MS. DENNEHY: It's a very timely question
10 as it relates to the compound of Massachusetts. We
11 are still in the midst of reeling from a very high
12 profile in prison homicide of a former priest,
13 someone who had come into our custody for sex
14 crimes against children. The death resulted in a
15 top to bottom review by a govern's commission
16 panel, which issued 18 major recommendations for a
17 reform for our agency.

18 And I think the issue we're really getting at
19 here is around culture, however we speak about it.
20 But the question before us is how do you get
21 inmates to have faith and confidence in the system.

22 In our system, we had to really stand up and

1 acknowledge that other fundamental system had
2 broken down. The inmates and staff had no
3 confidence in our classification system. We
4 throughout, and with the assistance of NIC, were
5 implementing an objective point base classification
6 system. They had no confidence in our staff
7 investigation procedures.

8 We threw that out and hired professionals to
9 come in and established manuals and protocols. We
10 are supporting legislation through the creation of
11 an Inspector General, specifically corrections.
12 We're in the process. We've automated the entire
13 investigative process.

14 And if we weren't busy enough, the same
15 observations applied to our grievance process. All
16 you had to do was look at the data. It was really
17 no integrity to the grievance process. If you were
18 to look at the number of inmate appeals which were
19 sustained, it's about 1 to 2 percent, really should
20 be about 20 to 24 percent for it to be a whole
21 system. It has taken us two years, but we're at
22 21 percent.

1 Our disciplinary process. I looked at our
2 maximum security prison and asked one day, in one
3 year, in one year, how many disciplinary reports
4 have we issued? And my next questioning regarding
5 that facility was in that same year of those
6 tickets, how many inmates were found not guilty.
7 Take a guess. Zero. That's just not the real
8 world. That is a staff in a culture rubber
9 stamping other's decisions.

10 So we took the disciplinary hearing process.
11 We took the entire disciplinary regulations. We
12 set them aside. And I really applaud our
13 disciplinary hearing officers to run the system.
14 They invited in some of our biggest critics,
15 students from Harvard Law School, students from
16 North Eastern Law School that the students who
17 commit to provide assistance. And the hearings
18 officers and these inmate advocates, attorneys, sat
19 for months. They threw the regulations out and
20 they rewrote them. They came to a consensus and
21 rewrote them. We took them to public hearing and
22 they are now be re-implemented.

1 But we also restructured and took the
2 disciplinary officers out of their institutions.
3 They are now centralized under the auspices of the
4 deputy commissioner to try to get them out of that
5 culture that creates pressure to not challenge
6 another officer's ticket.

7 Each one of those system changes, inmates see
8 those differences. They don't see them in a day.
9 They don't see them in a week, but they see that
10 incremental commitment to fundamental fairness.
11 And as my boss is very fond of saying, it is one of
12 our obligations as correctional administrators that
13 when inmates come into our system, they sense a new
14 moral awareness, and they leave our custody with an
15 appreciation for that new moral order where we say
16 what we mean, we mean what we say and we deal with
17 everyone fairly. It takes time.

18 THE CHAIRMAN: Thank you.

19 COMMISSIONER KANEB: I'm a native from
20 the Commonwealth of Massachusetts and I just want
21 to say to whoever is in the room Commissioner
22 Dennehy has done a magnificent job. Her life is

1 not easy. People were not happy with a lot of
2 these reforms, but she's been pressing them. She
3 and her staff have been most effective. And as she
4 just said, you know, if you have a system that is
5 honest and will admit mistakes and transgressions
6 by staff, give inmates fair hearings.
7 Occasionally, we actually find out that they're
8 right. It sends them out with a message that, you
9 know, everybody is not corrupt. I mean it's just
10 an example, I think, to inmates that there is a way
11 of doing things that isn't wrong, corrupt, crooked
12 and so on. And that's the greatest example you
13 could ask in terms of rehabilitation of people who
14 have gone astray. So I just wanted to make that
15 statement to the group.

16 COMMISSIONER PURYEAR: I one question,
17 Commissioner. You mentioned using cameras and I
18 wanted to ask just two quick questions on that.
19 Obviously, it used to be very expensive to wire a
20 facility filled with cameras and then record it on
21 videotapes and the like. Now with digital
22 technology and wireless technology, it's a lot

1 easier to do. Can you speak to how you use
2 cameras, or if you use cameras particularly in
3 older facilities by means of supervision in areas
4 that couldn't be supervised effectively by staff.
5 And then I'm curious, just walking around here
6 today and looking at the bubbles overhead, Director
7 Lappin, if you could speak to how you augment your
8 direct supervision unit management approach with
9 the use of the cameras.

10 MS. DENNEHY: I am so nontechy (ph.). I
11 don't get to hole the clicker at home. Our chief
12 technology person happened to be here today because
13 he's very interested in the technical solutions to
14 this whole issue. But in one or two of our
15 facilities, and they are at not the older ones,
16 they're the newer ones, we have been able to use
17 rather low cost solutions so that the
18 superintendents have been able to sit in their
19 office and be able to see firsthand what is going
20 on in just about every area on their own PC.

21 Can I explain to the technology to you? No.
22 The fact that it was low cost was very appealing to

1 me.

2 Having been the superintendent at the female
3 facility of 15 years or so, in fact that facility
4 was built in 1876. It still has the original
5 heaters from the precivil war. There is no easy
6 quick solution for facilities like that. We were
7 able to acquire some burn money grant to put in
8 cameras, particularly around stairwells and
9 isolated areas.

10 I think it's very much driven by the
11 architecture. It's driven by the architecture and
12 the infrastructure that exists what can be wared on
13 to what already exists.

14 We had an incident, very high profile, two
15 years ago. We had five or six correctional
16 officers go into a room, go into a room, the door
17 was closed, a camera in the corridor clearly told
18 us who went into the room. We didn't have cameras
19 in the room, so obviously we don't know for certain
20 what happened in the room, but we know what people
21 looked like when they went in that room and we know
22 what the inmate looked like when he came out of

1 that room. And through some good investigative
2 work, we were able to corroborate the inmate's
3 statement as to one officer, as to one officer
4 having assaulted this individual while he was in
5 full restraints.

6 As Commissioner, I disciplined every single
7 officer in the room. I don't have any physical
8 evidence that they did anything other than my
9 position was responsibility as to your position.
10 You were in the room. We pay you to know what is
12 You're demoted.

13 For the first time in Massachusetts, we have
14 received a civil service arbitration decision that
15 acknowledges that code silence and acknowledges
16 that correctional administrators have the right to
17 take discipline, but they did say I lost my head
18 and I shouldn't have terminated them. They will be
19 able to come back with significantly lengthy
20 suspensions on their records.

21 But it's the use of technology even though
22 it's not directly in the room taking the time to

1 kind of piece together the camera shots that exist
2 throughout the rest of the facility to really
3 clearly pin down who is where when.

4 MR. LAPPIN: There's no doubt that we're
5 reaping the benefits of advanced technology and
6 augmenting what we do and I want to make sure you
7 understand that it does augment what we do because
8 we can't replace people with cameras, but it
9 certainly creates that impression on the presence.
10 The old philosophy of the community feeling as
11 though their safety net, the police who were
12 observing them constantly or more thoroughly than
13 what some would like.

14 More eyes always help and the record of what
15 was seen supports us in improving incidents that
16 may have been alleged or that occurred. Granted,
17 new facilities, new design, certainly assist us in
18 providing a safer environment maybe than some older
19 facilities, but I don't want you to get the
20 impression that we can't run safe facilities in
21 older physical designs. It's a different approach
22 because let's be -- you know, you have to

1 understand you can't just go out and bulldoze all
2 these facilities. We run like 112. We've got 35
3 facilities that are 50 years or older and up to a
4 central. And you've heard instances where they're
5 older than that. We can still run safe
6 institutions. It's a little challenge. The
7 technology might not work the same, but by a
8 different approach in those facilities than what
9 you might in a new facility.

10 Granted, newer facilities certainly offer
11 better designs and I think are safer, more secure,
12 being more visibility for observing inmates'
13 behavior. And we certainly utilize cameras
14 wherever we can in that regard in support of what
15 we do on a daily basis for our staff.

16 COMMISSIONER NOLAN: First of all, I want
17 to make sure, Commissioner Dennehy, I want to thank
18 you. You have a wonderful person on your staff,
19 Dr. Bob Demont, who has been a help to your
20 commission and even prior to the commission, just
21 taken in general professionally. He truly is a
22 blessing to work with, very dedicated.

1 At our hearing at Notre Dame, at least our
2 first public hearing, a former inmate, I think from
3 appearances would have been assessed by everybody
4 as a vulnerable inmate, spoke of two facilities he
5 had been in in which he was fearful about being
6 assaulted. The first facility, he went to the
7 lieutenant and said I'd like to be transferred and
8 the lieutenant, great, find somebody that will have
9 you as a cell mate and we'll move you. And he was
10 moved out of harms way. The second facility the
11 lieutenant said, well, why? Are you being
12 assaulted? Do you have anything you want to
13 report? And, of course, inside a high level
14 facility like he was in, that would be a death
15 sentence and so he said, no. And the lieutenant
16 said, we don't move you for your convenience, get
17 back to your cell and he was raped and beaten
18 repeatedly throughout his incarceration.

19 At that same hearing there was a commissioner
20 of corrections and I said, gee, having heard what
21 Steve said, what would you do in that situation?
22 And he said, well, if it isn't reported, there's

1 nothing we can do. And the dilemma is even if you
2 have very formal processes for dealing with
3 reports, that we need those. We need to follow up
4 on what's reported.

5 What Steve, that inmate, needed wasn't a
6 report filled out, he wanted protection. He wanted
7 the situation mitigated. He wanted to be moved out
8 of harms way. And to hide behind just saying,
9 well, no formal report was written, so what could
10 we do really left him to be savagely beaten and
11 raped.

12 So I'd like from all of you in a situation
13 like that, yes, there is the formal reporting
14 process which was, one, followed up on, what do you
15 do in informal situations when it's obvious what's
16 going on, but because of the inmate culture
17 reporting it would put him at risk? Would you give
18 him the option of finding a shelter or is it your
19 policy to say, no, if you don't report it, it isn't
20 happening?

21 MR. LAPPIN: Do you want me to start? My
22 only concern is how you made the impression there

1 was something going on. If an inmate came to me
2 and said I want to transfer, I would certainly
3 recognize there's an issue here. What is the
4 issue? Do you feel threatened? Is it because you
5 want to be closer to home? I mean you were so
6 broad there.

7 COMMISSIONER NOLAN: Transferred to
8 another cell, not another facility.

9 MR. LAPPIN: Well, again, I'd have to
10 question the need because if his concern is safety,
11 just transferring him necessarily to another cell
12 in an institution, given the way we run prisons,
13 may not be good enough. But I'm hopeful that most
14 staff, even through the informal process, would
15 look into it. I mean that inmate, at a minimum,
16 should be referred back to his minimum unit staff,
17 who should know them best. They make the housing
18 assignments. So, there is an avenue, an
19 expectation, that we look into those concerns.
20 Whether or not the inmate was moved to a different
21 cell would be based on his unit staff's or the
22 correctional services staff or the investigative

1 staff's determination of whether there was a need
2 to move him adversely from one cell to another.

3 COMMISSIONER NOLAN: But if he was
4 reluctant to report it -- in other words, the first
5 institution read between the lines, they knew what
6 was happening and moved him.

7 MR. LAPPIN: All right. If you know what
8 is happening, I mean if you know the basis of their
9 concerns, that he's being threatened by other
10 people or that he's been assaulted in the past,
11 that would be part of the investigation which might
12 lend ourselves to move him to a different cell or
13 put him in protective custody. It may require us
14 to move him to another facility, but there's going
15 to have to be some basis for that because as you
16 can imagine --

17 COMMISSIONER NOLAN: But a formal or
18 informal basis?

19 MR. LAPPIN: It could be either one. It
20 could be on a formal basis or an informal basis. I
21 probably gathered more information on inmates
22 during what we call main line. It's an expectation

1 in our system, and I know of many others, that when
2 the inmates are in a congregated area, food service,
3 rec center, we want staff, support staff.

4 It is my expectation as a warden that all of
5 my department heads stood main line. When you've
6 got a large group of inmates, you want to have
7 support folks, but it also gave direct access
8 before the inmates to the leadership. And,
9 typically, most of those allegations, many of them,
10 came through that informal process at which time we
11 would look into those concerns and issues and based
12 on what we concluded may or may not make a change
13 either cell wise, housing wise to a more
14 restrictive environment or move him to another
15 facility.

16 Many of those complaints, I'll be honest, the
17 majority of the inmates would walk up and say they
18 want to transfer and end up not getting
19 transferred. You can imagine many people wanting
20 to move to other facilities for a variety of
21 reasons and all that has to be sorted out to
22 determine what's in the best interest.

1 MS. MALM: I would agree with what
2 Director Lappin said.

3 I think that our staff is told whether it's an
4 informal or a formal reporting, that if they hear
5 of something or something requires the movement of
6 an inmate from a housing unit or from a cell, then
7 they need to investigate into that, they need to
8 talk to that person. And, obviously, they're not
9 going to just go up to the person and ask them
10 while they're in the housing unit.

11 We create instances where we say you're wanted
12 for visiting and we pull them and talk to them. If
13 there is a substantial reason that they need to be
14 moved, then staff would really go about moving
15 them. However, a lot of times we have inmates who
16 just they want to go into that housing unit because
17 they enjoy who is there or they have friends there
18 or whatever, so we have to be very careful with
19 that. But it doesn't necessarily have to be a
20 formal report for us to act on it.

21 Another thing that we have set up within our
22 facility is we have put on the inmate's phones a

1 free call to what we call our crime buster's
2 hotline. And the crime buster's hotline is simply
3 an answering machine at the end of the phone where
4 people can call in and report a crime. And the
5 inmates can call in. They can report a sexual
6 assault. They can call and they can report. I'm
7 having trouble with my roommate. I need to be
8 moved. And at that point, then we will investigate
9 from that point. The detectives picked it up and
10 they let us know and we start our investigation.

11 MS. DENNEHY: We have a similar system in
12 terms of a number that inmates can use to get some
13 anonymity to a circumstance. But I think so much
14 of this discussion really goes to how you manage
15 the facility.

16 In most major prison systems we have a lot of
17 teams. So within the confines of a housing unit,
18 should an offender step forward and ask to switch
19 cells, I think it's reasonable to expect that there
20 will be some discussion with the unit team manager
21 in terms of what are the other observations that
22 the other staff, because when staff -- it never

1 ceases to amaze me, when you get the right staff at
2 the table multi-disciplinary wise, the solution and
3 the input is far richer than what results from just
4 one individual making the decision of forming an
5 impression.

6 In this particular case, I think staff are
7 very skilled to know that the concept of inmates
8 faking PC, doing something to intentionally get
9 into a protective custody situation or of trying to
10 get into a segregated situation to the point where
11 some may start a fight just to get out of a unit,
12 start a fight with someone else just to physically
13 remove themselves. I think we sometimes see that
14 around attempted suicides. Is it really an
15 attempted suicide or is it the only tool in the
16 inmate's tool box to try to move him or herself out
17 of the situation that they're in. And I think that
18 that's where good unit team systems come to play,
19 but I didn't think it has to be formal. It can be
20 informal.

21 COMMISSIONER SMITH: I actually have a
22 question that is sort of a hold over from the first

1 panel, but again relates to some of these culture
2 issues. A big issue that you've all identified is
3 the issue around sanctions for staff who are found
4 to be involved in these incidents.

5 I've heard Director Ryan talk about the fact
6 that he had a founded complaint, the individual was
7 terminated, but was not prosecuted. Okay.

8 One of the big issues that I think we'll
9 probably have to look at is a way to keep up with
10 staff who are found to have been involved in these
11 incidents. In a place like Florida where there's a
12 certification process, you can sort of look and
13 figure out what's going on with someone who's been
14 certified, but in many places there's not that
15 process. And often we have had reports or had
16 situations where the person that Director Ryan
17 terminated might end up in your system, if not in
18 your adult system, might end up in a juvenile
19 system or might end up in a private system. And so
20 I guess I would be interested in any thoughts you
21 have about how we can close that loop.

22 MS. DENNEHY: I'll go back to my final

1 comment and my remarks about the need for a more
2 expansive systems approach. I think prosecutors
3 need to be at the table with commissioners and
4 directors. And I think as we have begun the
5 implementation and have begun the adjustments of
6 our protocols and policies within our correctional
7 facilities, I think as we get our house in order,
8 it's now time to look at those other partners in
9 criminal justice.

10 We had an instance in Massachusetts where this
11 involved staff and inmate. It involved a male
12 staff member and a female inmate. This woman had
13 been alleging that she had been raped by this
14 officer and, frankly, we believed her. We had no
15 physical evidence and, truly, you couldn't make
16 this up, but I know my colleagues say that a lot in
17 corrections. Some of the things we say we just
18 truly could not make up.

19 Out of the clear blue she presented us with a
20 blue dress. Does this sound familiar? She
21 presented us with a blue dress and said, if you
22 have it tested, it has his DNA on it. She had

1 saved this physical evidence. We went to the
2 district attorney who did not have the money to
3 pursue the DNA testing. So the department paid for
4 the DNA testing out of our budget and that
5 individual was successfully prosecuted and
6 incarcerated.

7 But I think you have to have that shared
8 understanding of what the impact is on both
9 agencies and work together to address each other's
10 needs.

11 THE CHAIRMAN: We'll focus on that
12 aspect, so we hope to have the prosecutors to come.

13 MR. LAPPIN: I think it is a twofold
14 response. It's the caliber of employees and I
15 think it's just what you heard this, morning about
16 having a method by which investigations are
17 conducted against -- based on allegations that are
18 made against staff, whether it's criminal in
19 nature, which would make it something that
20 typically all -- any allegation in the federal
21 prison system goes to the Office of Inspector
22 General first.

1 If it's obviously criminal, the FBI runs it.
2 And when, in fact, we can prove there's evidence
3 that they have broken the law, we hold them
4 accountable and we work closely with the
5 prosecutors. And you're right, there's sometimes a
6 breakdown between -- whether it's funding or
7 resource wise, but in many cases we're able to
8 pursue that when we have enough evidence. There
9 are some cases where we're not.

10 If we're able to do that, obviously
11 administrative procedures to remove that person are
12 critically important. So I think a system that is
13 thorough, that holds our staff accountable, that
14 people trust, both staff and inmates, is critically
15 important.

16 The issue of how we prevent those folks from
17 leaving us and going elsewhere is a bigger problem.
18 It goes back, I think this morning, to your
19 discussion on how we hire people. And I think it's
20 great that you look at some examples on how we
21 screen and how we pursue a person. We don't do
22 psychological evaluations. We do an integrity

1 interview. We'd be more than happy to share that
2 with you because we're looking at the background,
3 history, the integrity of the people we're trying
4 to hire. And we balance that with a thorough
5 background investigation.

6 So a breakdown is if the person was removed
7 administratively and it was not in the record or
8 because of some agreement between the agency and
9 the inmate or the union is that you can't
10 articulate to anyone else why that person has left
11 is a problem for all of us. Because the last thing
12 we want to have happen is have an offender leave
13 one system and be hired into another system without
14 knowing the true person and what their background
15 is. I think that's dilemma. It's an area that we
16 all struggle with.

17 I encourage our folks not to agree to those in
18 some settlement that, no, we're not going to have
19 this person leave here. Can I say it happens on
20 occasion? It probably does, unfortunately. But
21 certainly in cases where we have clear evidence,
22 maybe not enough to prosecute, but where an

1 administrator is removed that we don't make deals,
2 not to share them with other parties who may have
3 an interest in the future of hiring this person,
4 especially in something as serious as sexual
5 assault or physical abuse and so and so forth, but
6 it's a problem for us. I don't know, I have to.

7 COMMISSIONER SMITH: Would a registry if
8 something happened help?

9 MR. LAPPIN: I don't know. I have to
10 give it some thought. And I think it's an issue
11 that maybe we can look at as a group, no different
12 than -- I hate to be put on-the-spot right now to
13 suggest specific standards.

14 I was encouraged this morning when I hear you
15 saying the continued cooperation because you have
16 enormous authority in your final product. And what
17 I hate to see is we implement something that is
18 going to be somewhat detrimental to implement.
19 Because I think beyond recommendations, let's think
20 through the implementation, you know how we
21 operationalize it, whatever the standard might be
22 and the expectation is.

1 So I think those are some issues that would be
2 better served if we looked at as a group with
3 further review and investigation and we would be
4 more than happy. I'm sure ASCA, NIC, ACA, and the
6 that regard along with suggestions on standards
7 that would be implementable and would be able to be
8 operationalized throughout the systems.

9 COMMISSIONER SMITH: Would you say that
10 that's something that we should pursue?

11 MR. LAPPIN: Personally, I think it's an
12 area that's a weakness and needs to be pursued so
13 that it can be better served who we're considering
14 to hire, what their background is, and so on and so
15 forth.

16 MS. MALM: I agree that one of the
17 problems that we have are these deals that are made
18 with officers confidentiality, we won't tell and
19 you don't tell. Just go away. And it's very
20 difficult when you are trying to hire someone.

21 We have with certification in Idaho, I'm sure
22 many other states have it also, the decertification

1 process also to where when we terminate somebody
2 from the agency, we're required to send a report to
3 our state post academy and it's marked on there
4 certification, decertification requested.

5 Post also has the option after looking at the
6 reason for termination whether or not they want to
7 start a decertification process. That's been very
8 helpful to us in Idaho.

9 As a background investigator, I have tried to
10 do this. I also have different ways that I try to
11 find information on people such as asking. I ask
12 for reference of people they worked with. Some of
13 those people aren't under some of the same
14 requirements that administrators are and you pick
15 up other information.

16 And then finally in most of your jail systems,
17 at least in Idaho, we require a polygraph for them
18 to be able to be hired by the agency. And whether
19 it's confidential or not, something comes out in
20 the polygraph. And if there's any doubt in our
21 mind, we do not hire the person.

22 MR. LAPPIN: Let me just mention to you

1 one thing. We're pleased because I think because
2 of your mandate the federal system has moved
3 forward. We now have more stringent federal laws
4 applicable to staff who mistreat inmates. Sexual
5 abuse of a ward is now like up to five years where
6 before it was only one year. Abuse of sexual
7 contact is now up to two years where in the past it
8 was six months. They're now both misdemeanors.
9 Now they're both felonies. And those are both
10 something we're very pleased to see changed. We've
11 been pushing for that and is now in place as of
12 January 5th. So those types of laws will
13 certainly reinforce and send a message of how
14 serious we are about these issues.

15 COMMISSIONER SMITH: And are those
16 registrable offenses?

17 COMMISSIONER STRUCKMAN-JOHNSON: You mean
18 sex offenders?

19 COMMISSIONER SMITH: Sex offender
20 registry.

21 MR. LAPPIN: You know what, I don't have
22 it here, but we'll check and follow up with you --

1 COMMISSIONER SMITH: Great.

2 MR. LAPPIN: -- because it may be. I
3 know in some states it is, but we'll check and
4 follow up with you. I don't know for sure. I
5 wouldn't want to speak absolutely.

6 COMMISSIONER STRUCKMAN-JOHNSON: Just a
7 point of information. I just recently analyzed
8 survey responses of over 380 male victims and 50
9 female victim. This is a publication coming out
10 several months from now. But one the questions
11 was, where did your assault or incident take place.
12 And the hot spot, as expected, would be a single or
13 the cell area for both male and female. But
14 surprisingly the second hot spot, in particular for
15 female victims, is a laundry room. And the
16 kitchens are sort of a hot spot for both sexes in
17 that if you're going to look for molestations that
18 happened, the grabbing, the pushing back, the
19 feels, the hostile or the harassment level in
20 kitchen area is real easy to do.

21 I hear full blown assaults are more likely to
22 happen in the laundry room where you can actually

1 get a little privacy. So if you're looking for
2 some areas, those would be them.

3 Also I don't know if this is surprising or not
4 to you, but blind spots are -- sometimes they don't
5 matter. It's a chapel. It's the infirmary where
6 staff walk out of the room and the people in the
7 beds go for the people who are debilitated in
8 another bed, you name it. So it's a large number
9 of places that it can happen.

10 My question would be, and this is in a
11 different area, I am sure that I do -- I guess one
12 of my areas is sexual behavior and I'm pretty sure
13 that this happens. I've had some informal reports
14 of it. But I'm sure that we have a certain
15 percentage of inmates who sexually harass your
16 staff. And particularly I think it can happen with
17 your cross gender supervision. I know it can
18 happen even in same sex supervision. And my guess
19 is it should be acknowledged. And what do you do,
20 what do you think about this? It has to contribute
21 to the dynamics that go on here. Do you have any
22 informal or formal policies? Is this a real

1 problem or is this something that, I don't know, is

3 MS. MALM: Well, one of the things that
4 we do in the academy and also some refresher
5 training, we have the cross gender supervision
6 classes. They have con game classes where staff
7 learn to look for flirting from the inmates,
8 comments from the inmates, and how they address
9 those with the inmate. Normally, what we recommend
10 in our facility is the first time that an inmate
11 attempts to do any kind of sexual harassment,
12 sexual statement, dirty joke, any kind of an
13 approach that's sexual towards an officer, the
14 officer immediately tells them that's not
15 appropriate, and I do not want to hear that again,
16 and then documents it in the inmates logs so that
17 the other officers are aware that the inmate has
18 stated it and, basically, been warned.

19 The next step is going to be an actual verbal
20 reprimand or depending, if it includes touching or
21 something like that, it's going to be more than a
22 verbal reprimand. But the inmates are put through

1 almost a progressive disciplinary policy towards it
2 as it happens and staff are very good at making
3 other staff aware through the inmate logs what the
4 staff members have done. And that's what we train
5 them to do from the academy through.

6 We have refresher training on it yearly in our
7 agency so that they learn how to do that. Because
8 after a time, staff do start to feel more
9 comfortable around inmates. They start to feel a
10 little bit friendlier and especially in a direct
11 supervision type of atmosphere where they become a
12 part of the community. That does start to happen
13 with the officers. And they have to be reminded
14 not only can they not accept that from the inmates,
15 but they can't do that also. And I've seen staff
16 members who think it's okay if I talk like that,
17 because I'm the officer. It's okay if I swear
18 because I'm the officer. They can't do it. And we
19 tell them no, it's not okay for either you or the
20 inmate to talk like that or to engage in those kind
21 of conversations. And that's how we deal with it.

22 MS. DENNEHY: Well, I must admit it's an

1 area we really have not paid too much attention to
2 in Massachusetts, and that became clear to us the
3 last time we were asked to provide data and we had
4 a very difficult time around this whole issue of
5 sexual harassment as distinct from assault.

6 And we're very fortunate. We have a position
7 at the top level of the organization, Director of
8 Offender Services. So what we're doing is we're
9 starting with the female offenders. We're in the
10 process of putting together an inhouse video to
11 work with the female offenders so that they have a
12 full appreciation of what sexual harassment is.
13 But any ways, it's pretty similar training to what
14 we provided to our staff in hopes of getting the
15 female offender population to the point where they
16 know it when they see it and can articulate it and
17 relay it to staff and give them some sense as to
18 the process to follow up.

19 And I might add, it isn't simply limited to
20 just staff and volunteers. Many of these women are
21 at lower custody levels, so they're going out to
22 the community working for private companies and it

1 is not uncommon for them to come back to the
2 institution and say that, you know, a boss of the
3 community, while they were on work release,
4 sometime had sexually harassed them. So we're
5 starting with the female offenders in terms of
6 putting together a program.

7 MR. LAPPIN: First the recognition that
8 it's unacceptable, understood by our staff and
9 inmates as well. And our training reflects with
10 our staff and inmates that sexual harassment is
11 unacceptable.

12 And there are varying degrees, obviously. And
13 it's up to staff to determine at what point does
14 that behavior mandate a disciplinary record. And
15 that's left to the discretion of the officer,
16 particularly with some coaching from -- especially
17 the newer employees. One, that they understand
18 that that's unacceptable to be harassed by an
19 inmate or to have an inmate harassing another
20 inmate, but there are varying degrees.

21 When they reach out and touch an employee,
22 they've gone far beyond crossing the line. We've

1 now gone to removing some of those folks who
2 continue to do that or even in some cases on the
3 first occasion. And we do have a program for them.

4 The program involves a lot of isolation
5 initially. But there is treatment there. We have
6 a group of psychology staff and treatment
7 specialists that work with those folks on this
8 problem that they have, probably a problem that
9 they had before they came to prison. And so we are
10 experimenting with that.

11 I can't say what success it's having. I can
12 tell you this much, they're harassing our folks
13 less given the fact they're now removed because of
14 this behavior, but we're also trying to provide
15 some treatment in and seeing if we can make any
16 progress with them. But, again, it depends on the
17 level and the frequency and how serious the
18 harassment is.

19 COMMISSIONER FELLNER: We've been
20 actually talking quite a bit, this panel session,
21 about language and communication and listening,
22 which I think is very good and I also want to

1 commend Commissioner Dennehy for having the
2 courage. It might have been prompted by a tragedy,
3 but, nonetheless, it takes a huge amount of courage
4 to really open one's self up to scrutiny and hear
5 and respond.

6 In my years listening to inmates and reviewing
7 grievance systems, most grievance systems it has
8 seemed to me aren't worth the paper they're written
9 on. It's not worth it for the inmates that take
10 the time and I don't think it's used by the
11 correctional agencies as a window to inmate
12 concerns. It's just formalities.

13 I guess I have two questions. One, what
14 advice would you have for us as a commission for
15 standards to make sure that grievance systems are
16 communication systems that have to deal with sexual
17 abuse, well, frankly, I think any kind of abuse,
18 but anyway, sexual abuse and sexual violence are,
19 in fact, effective? How do you do quality control
20 on those?

21 And my second question is my experience,
22 although many people will say, oh, we know inmates

1 lie, you know that's why they're in prison. Because
2 that inmate is, in fact, on certain things, not
3 maybe their underlying criminal conduct, but that
4 they actually have a very good perspective and an
5 honest one about what's happening in their
6 facility. But their views are not often solicited.
7 In fact, they're usually not solicited. And the
8 only way they have is either informally or maybe in
9 a grievance system.

10 So I wondered if you think we as a commission
11 should consider recommending other methods for
12 obtaining the views of inmates, other kind of
13 communication loops so that you administrators who
14 are sitting at the top, which has its own
15 communication channel problems, are sure that you
16 are, in fact, learning what's going on, what are
17 the concerns of your inmates? You have many ways
18 to get the concerns of your staff, but are there
19 things we should think about to recommend to make
20 sure that inmate concerns are, in fact, being made
21 and being heard?

22 MS. DENNEHY: I'm not prepared to speak

1 at length about the process that we have in place,
2 but I would be happy to share with you the written
3 protocol.

4 We have a new position which is the Director
5 of Administrative Resolution. And she oversees,
6 among others, the grievance process as well as our
7 correspondence. What we're trying to do is link
8 what inmates complain about in correspondence and
9 what inmates complain about formally in a grievance
10 process because oftentimes what comes in in a
11 letter would have been quite appropriate to have
12 come in on a grievance and vice versa. Sometimes
13 they'll put in a grievance where they should have
14 just put it in a formal letter.

15 We've taken that to the next step of trying to
16 link that to investigations, because quite honestly
17 some of what comes in in a grievance format really
18 should be more appropriately directed over to a
19 staff for an inmate investigation. So, it starts
20 with trying to get a real good sense of what's the
21 data, what are the trends, what are the issues.

22 The woman who administers the program does an

1 enormous amount of quality assurance. She has
2 instituted certification training programs for
3 grievance coordinators. There is a concerted
4 effort to do spot checking, QA, and she has a list
5 of criteria that she uses. And she also personally
6 goes out and does audits, paying particular
7 attention to grievance decisions which suggest that
8 policies may be flawed and she keeps a running list
9 of agency policies that have to be revised by
10 virtue of the confusion that we see in the
11 grievance process.

12 I really couldn't walk you through, but I'd be
13 happy to give you the protocol.

14 COMMISSIONER FELLNER: Can I just ask you
15 other than the grievance and the letters,
16 consistent with security considerations, is there
17 any other method by which the views and concerns of
18 inmates are formally or informally solicited? Do
19 you still have counsels of any sort? Is there any
20 process by which they have to say this is what's on
21 our mind?

22 MS. DENNEHY: We do have one long

1 standing inmate counsel at MCI Norfolk, rather
2 unique facility built in the 1930s. It was an
3 independent counsel established by the governor
4 many governors ago. And it seems to work for that
5 facility. We have not expanded that throughout the
6 department. They work at the local level. They
7 don't necessarily rise to the level of the
8 director, but they can be counted upon to develop
9 program proposals or to give input around any
10 changes in policies and procedures. In that
11 facility, if anyone sensed that it is going to be a
12 problem, they'll speak directly to the
13 superintendent of that facility. It's a very
14 unique facility.

15 MR. LAPPIN: Let me ask that you not
16 conclude yet. The grievance process as you've seen
17 are not realistic, are not worth the paper they're
18 written on. I would tend to disagree with that.

19 Again, it goes back to the integrity of your
20 program and your staff who implement that program.

21 We do have a grievance process. We do think
22 it's a viable process that inmates use often. And

1 if you looked at the system, there is a three-tier
2 system. You'll find that we rule in favor of
3 inmates not the majority of the time, but there are
4 cases where we find that the inmate is correct.
5 And we struggle with wardens or others to change
6 the policy, change an approach, so on and so forth.

7 I think it has become so well accepted that
8 most federal courts will not accept a case on most
9 issues, with the exception of some, without the
10 inmate having completed our grievance process
11 first.

12 COMMISSIONER FELLNER: That's because
13 they're required by law, they have no choice.

14 MR. LAPPIN: I think that you'll find,
15 again, with some credibility in the system, one, we
16 expect our supervisors to write those responses.
17 The warden signs off on the first note, so there's
18 involvement in higher levels even from the first
19 process.

20 Your second question is, well, how do you make
21 sure, what gives the credibility, how do you check.
22 And not unlike many other policies we have, we have

1 a policy on this process. We also have a policy on
2 internal controls, and we have a review process.

3 An as program areas are reviewed every three
4 years or more often in some cases, they look at the
5 grievances that have been submitted in food service
6 and health services and correctional services,
7 whatever areas that we align those grievances, but
8 I think a system of checks and balances.

9 Much of what we do is critically important to
10 ensure, as I said early on, that it's just not on
11 the day that people come and check that you need to
12 be in compliance. You need to be in compliance
13 each and every day. And if that becomes a part of
14 your culture and part of your expectation, it's
15 more like that those things are going to be done
16 with integrity, with understanding, and be a reward
17 to the system.

18 Beyond that, though, I think it goes back. We
19 do not employ inmate counsels, nor inmate news
20 letters. We have found far too often that they
21 typically evolve to those inmates who manipulate
22 and become the leadership of those and use them for

1 the wrong purposes, and we've found that they're
2 not useful.

3 Again, at least in our system, the basic
4 denominator issue is communication daily. That is
5 the most frequent access to staff and the ability
6 to approach with leadership if, in fact, that's
7 necessary to address issues and concerns. But,
8 again, we think we have a grievance process that
9 works well, but, again, it goes back to having
10 integrity of staff and implementing it in that
11 fashion.

12 COMMISSIONER FELLNER: Do I have five
13 minutes or not?

14 THE CHAIRMAN: We're five minutes past.

15 COMMISSIONER FELLNER: Let me just say
16 that part of my skepticism about grievances, which
17 I had no knowledge of, came when I first saw, and I
18 won't mention the system, their grievance policy
19 had printed on it "Do Not." It was printed on the
20 form and then it could be over written, but it
21 started out with "Do Not."

22 THE CHAIRMAN: Mr. Puryear, you had a

1 question?

2 COMMISSIONER PURYEAR: Just real quickly.
3 I wanted to follow Commissioner Dennehy on when we
4 were talking about the cameras and the four or five
5 correctional officers going into the room with the
6 inmate and when there was cooperating physical
7 evidence.

8 I believe you indicated that you wanted to try
9 to terminate the other correctional officers who
10 were in that room at that time, but you were not
11 allowed to; is that a correct understanding?

12 MS. DENNEHY: I terminated them, but it
13 was overruled by an arbitrator that the punishment
14 -- the arbitrator had very good language around
15 correctional administrators having the right to be
16 suspicious about a code of silence. In this
17 particular case, one of the defendants had
18 literally shot himself in the butt, which helped
19 the arbitrator draw the conclusion that there was
20 some culpability there, but we could not clearly
21 prove that any of those other officers had done the
22 assaulting.

1 I was pointing to their code of silence and
2 their responsibility as supervisors to speak out
3 and the determination was it was excessive. Even
4 though they had been fired, they had to extend the
5 offer to come back and pay them back wages and
6 suspend them for no longer than 30 days.

7 THE CHAIRMAN: Well, again, thank you for
8 your presentation. You're an excellent panel. I
9 think it will be very helpful. Again, we hope we
10 can continue to communicate with you. And if you
11 ever have any information you want to disseminate
12 to us, please do so.

13 Two announcements: One, if you have a vehicle
14 that's parked in the official parking lot, if
15 you'll speak to somebody on staff, they will make
16 arrangements for you to move your car if you so
17 desire during the lunch hour.

18 Also, if you plan on attending this afternoon,
19 it's requested that you please remain in the
20 facility and eat here because of the difficulty it
21 creates for the staff if you go out and have to be
22 processed back in. I understand if you did not

1 complete a list of what you wanted to eat or fill
2 out a form, that there will, nonetheless, be food
3 accessible to you. Thank you.

4 (Luncheon recess)