

WITNESS PANEL: SYSTEM "INSIDERS"

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(Hearing resumed.)

MR. SESSIONS: Good afternoon. My name is Bill Sessions. I am sitting here with Gary Maynard and Stephen Bright on my right. We're very pleased to have before the Commission on Safety and Abuse in America's Prisons three exceptionally qualified witnesses: Glenn Fine, Mike Gennaco, and Jack Cowley. This distinguished group has been asked to help us

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21 understand two issues critical to this Commission's
22 work:

23 First, what is the nature and prevalence of
24 serious abuses of inmates and serious safety concerns
25 for staff in our nation's prisons and jails?

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1 And second, how do those who work within the
2 government structure get access to information they
3 need to answer these questions? How do they keep
4 abreast of what is going on behind the walls, and where
5 are the important gaps in our knowledge and how do we
6 begin to fill those gaps?

7 This is the first of two panels to answer these
8 questions. The following panel will address the same
9 issues from the perspective of those working outside of
10 government. From this panel we will hear from insiders
11 about various approaches to the oversight function both
12 within the prison management and from independent
13 bodies within government. By "oversight" we mean very
14 broadly aspects of record keeping, responding to
15 complaints and allegations and abuse, crafting
16 preventative mechanisms, disseminating information so
17 that managers and line staff are held accountable and
18 report to the public on the state of the facilities
19 operated in their name.

20 To begin to tell us about the nature and
21 prevalence of the problem and the ways of which we
22 respond to those problems, we have two people who are
23 charged with overseeing a correctional system:

24 One, the U.S. Inspector General Glenn Fine

25 oversees federal prisons, and the other, Attorney

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1 Mike Gennaco, overseas the largest jail system in the
2 United States. Additionally, we have as a witness a
3 man who has as a warden was responsible for the
4 operation of the state prison, and then as regional
5 director oversaw internal oversight of more than one
6 prison.

7 Let me thank each of our witnesses for taking the
8 time to come here to Tampa and to appear at our first
9 hearing. Our goal is to learn from your many years of
10 experience and many years of hard work. We have only
11 one year to learn as much as possible of what you and
12 many others have devoted your careers to. We are
13 grateful for your help in giving us a start in
14 understanding what goes on inside America's prisons and
15 jails and how that information can be used to make
16 these institutions more productive and humane for those
17 incarcerated and safer for the men and women who work
18 inside those prisons and jails.

19 Glenn Fine is the first person who will testify
20 for us. He was confirmed by the United States Senate
21 as the Inspector General of the Department of Justice
22 on December 15th, 2000. He served as Acting Inspector
23 General since 19 -- 2000 -- from August of 2000, and
24 has worked for the Office of the Inspector General
25 since January of 1995. Initially, he was Special

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1 Counsel to the Inspector General. In 1996, he became
2 the Director of the Office of the Inspector General's
3 Special Investigations and Review Unit.

4 Before joining the Office of Inspector General,
5 Mr. Fine was an attorney specializing in labor and
6 employment law at a law firm in Washington, D. C. Prior
7 to that, from 1986 to 1989, Mr. Fine served as an
8 Assistant United States Attorney in Washington, D. C.
9 In that office -- in that capacity he prosecuted more
10 than 35 criminal jury trials, handled numerous grand
11 jury investigations and argued cases in the District
12 Court and the United States Court of appeals.

13 Michael Gennaco served as the Chief Attorney for
14 the Office of Independent Review in Los Angeles County.
15 The Office of Independent Review's mission is to ensure
16 that allegations of misconduct by members of the
17 Los Angeles County Sheriff's Department are
18 investigated and reviewed in a fair, thorough, and
19 impartial manner.

20 In the three years of its existence, the OIR has
21 reviewed hundreds of internal investigations and has
22 made numerous policy recommendations and
23 implemented -- as implemented by the Sheriff's
24 Department. Mostly recently, Mr. Gennaco was appointed
25 by a federal Judge as an expert consultant for the

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1 court to assist in designing an oversight body for the
2 California Department of Corrections.

3 Mr. Gennaco served for over six years as an
4 Assistant United States Attorney for the Central
5 District of California. As Chief of the Civil Rights
6 Section, Mr. Gennaco was responsible for overseeing all
7 investigations and allegations for federal civil rights
8 violations and has prosecuted judges, police officers,
9 and white supremacists. Prior to that, Mr. Gennaco was
10 a prosecutor with the Civil Rights Division of the
11 United states Department of Justice.

12 Jack Cowley, the third witness who will testify,
13 has more than 20 years of experience in the Oklahoma
14 Department of Corrections as inmate counselor, deputy
15 warden, warden, and assistant regional director.

16 Mr. Cowley is currently the National Director of
17 Alpha for Prisons and Re-Entry, part of Alpha USA,
18 an interdenominational non-profit ministry. Alpha for
19 Prisons and Re-Entry trains, equips, and connects
20 volunteers to deliver a basic Christianity course to
21 prison inmates and to assist offenders into
22 successfully reintegrating into their communities after
23 release. From 1996 to 2003, Mr. Cowley worked as
24 Director of Operations at the local, state, and
25 national levels for Justice Fellowship and the

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1 InnerChange Freedom Initiative in -- pardon me, at
2 Fellowship Ministries.

3 The Commission will now be pleased to hear from
4 you, Mr. Fine, for the remarks you find to be
5 appropriate.

6 MR. FINE: Thank you, Judge Sessions and members

7 of the Commission.

8 I appreciate the opportunity to appear before the
9 Commission to discuss the work of my office, the
10 Department of Justice Office of the Inspector General
11 relating to safety and abuse issues involving federal
12 prisoners.

13 The OIG is an independent office within the
14 Department of Justice that has broad authority to
15 investigate violations of criminal and civil laws
16 within the entire Department of Justice and to review
17 department operations and programs. In furtherance
18 of our duties, the OIG receives many allegations of
19 misconduct both in the Federal Bureau of Prisons and
20 throughout the entire Department of Justice.

21 For example, the last two fiscal years the OIG
22 received about 16,000 allegations of misconduct
23 throughout the entire Department of Justice, and not
24 just the BOP. But of those total allegations,
25 approximately 10,000, or 60 percent, involved the BOP.

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1 During the same time, my office, the Office of
2 the Inspector General opened approximately 500
3 investigations of misconduct involving the Bureau of
4 Prisons.

5 The most common allegations investigated by the
6 OIG involving BOP employees related to sexual and
7 physical abuse of inmates, introduction of contraband,
8 use of unnecessary force, and other official
9 misconduct.

10 My written statement provides further statistics
11 regarding the numbers of allegations as well as
12 examples of substantiated cases of misconduct. But in
13 addition to individual investigations of misconduct,
14 the OIG reviews programs and systemic issues within the
15 Department of Justice. Examples of recent reviews
16 conducted by our office involving the BOP include a
17 review of the treatment of aliens held on immigration
18 charges in connection with the investigation of the
19 September 11th attacks.

20 Reports required by Section 1001 of the Patriot
21 Act concerning civil rights and civil liberties
22 violations in the Department of Justice.

23 An examination of the Bureau of Prisons
24 disciplinary system and a review of the Bureau of
25 Prisons efforts to prevent drugs from entering into

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1 federal prisons.

2 I would now like to provide a few brief
3 observations regarding the issues of safety and abuse
4 in federal institutions. I think it is important to
5 note first that the number of BOP employees who commit
6 such a misconduct represents a small percentage of all
7 BOP employees, and that most BOP employees perform
8 their duties in a professional manner.

9 While there have been problems of prison abuse in
10 BOP institutions, my perception is, that likely it is
11 a more serious problem in some state systems than in
12 the BOP.

13 However, that does not mean that abuse does not

14 occur in federal facilities or that it is an
15 unimportant issue. I believe it is a critical issue
16 that must be aggressively addressed.

17 First, I believe that one of the most effective
18 ways to detect and deter prison abuse is through an
19 independent, well-funded oversight entity, such as
20 an Inspector General's Office. In my view, an
21 independent office outside the prison system provides a
22 greater likelihood that objective investigations of
23 misconduct will be pursued. Every federal government
24 agency has an Inspector General's office, as do some
25 states and localities. I urge the Commission to

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1 consider the wider use of this model.

2 Second, discipline and prosecution for those who
3 commit misconduct is critical. If an employee who
4 abuses inmates is not criminally prosecuted or
5 disciplined administratively, the likelihood of abuse
6 escalating is stronger.

7 Third, the OIG has found that prison abuse often
8 occurs in facilities in which other forms of misconduct
9 are prevalent.

10 For example, we found that nearly half the
11 subjects in OIG sexual abuse cases also had
12 smuggled contraband into prisons for the inmates with
13 whom they had sexual relationships. The contraband
14 ranged from food, toiletries, cigarettes, cell phones,
15 and jewelry to drugs and weapons.

16 Fourth, the hiring and training of prison staff

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18 is critically important. A few corrupt employees
19 within an institution can result in incredible damage
20 to the safety and security of both inmates and staff.

21 We have found that when corrupt individuals
22 are prosecuted or removed from the institution, the
23 level of misconduct and allegations of abuse decline
24 dramatically.

25 Fifth, the laws criminalizing service prison
abuses must be sufficient. I make this comment with

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1 the federal laws regarding sexual abuse of inmates in
2 mind. The OIG has investigated hundreds of allegations
3 of sexual abuse of inmates by BOP staff.

4 However, I believe that the current federal laws
5 criminalizing staff sexual relations with prisoners are
6 deficient. The crime of sexual abuse of a federal
7 inmate is only a misdemeanor punishable by a maximum
8 sentence of one year unless the staff member uses force
9 or overt threats. Because prison employees control
10 many aspects of inmates' lives, they can obtain sex
11 from inmates without resorting to the use of force or
12 overt threats.

13 The OIG currently is seeking to have the federal
14 laws strengthened to provide greater penalties for
15 sexual abuse of inmates by federal prison employees and
16 to cover inmates housed in contract facilities. I
17 believe the Commission should support these
18 proposals.

19 In conclusion, abuse and safety within
20 prisons -- for both inmates and staff -- are critical

21 issues. I believe this Commission can have an
22 important impact by making recommendations to assist in
23 these areas, and in this testimony I've highlighted a
24 few of the issues I believe are worthy of further
25 explanation. I thank the Commission for inviting me to

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1 testify, and I will be glad to answer any questions
2 that you have.

3 MR. SESSIONS: Thank you, Mr. Fine.

4 The commissioners will have an opportunity to
5 question all three of the witnesses as a group, and so
6 we'll proceed directly now with the testimony of
7 Mr. Gennaco.

8 MR. GENNACO: Thank you, Judge Sessions.

9 It is a privilege to be offered the opportunity to
10 spend some time with this august and distinguished
11 panel of commissioners, and I am pleased to be able to
12 start a dialogue on issues of common interest with
13 regards to addressing the issues of safety and abuse in
14 our correctional facilities in the United States.

15 A year ago yesterday, an inmate by the name of
16 Raul Tinajero was murdered in his cell. While five
17 other cell mates watched, another inmate was able to
18 break the system down and get into that cell and kill
19 him. The reason that this inmate killed Mr. Tinajero
20 is because Mr. Tinajero had just prior, a week prior,
21 had testified against the killer in a criminal
22 proceeding.

23 When this allegation became known, media interest

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was directed at the jails. And unfortunately, this
25 murder was the fifth murder over the course of six

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1 months in the downtown Los Angeles jail complex.

2 The Sheriff, when alerted to the media interest,
3 held a press conference and instead of simple
4 lotted -- plotted about "we'll get to the bottom of
5 this, we'll make sure that the right thing is done,"
6 instead conducted a full debriefing of not only that
7 murder but what was known with regard to the other
8 inmate murders that occurred in the weeks previous.

9 In addition, this Sheriff opened his doors, opened
10 the jail doors to interested members of the media and
11 elected officials. This kind of response is unusual in
12 the correctional -- in the correctional organizations
13 -- in correctional organizations. But this kind of
14 response, in my view, was exactly what was needed so
15 that additional light could be focused on the issues
16 that were plaguing the jails during that six-month
17 period.

18 In addition, Sheriff Baca, because of the
19 oversight group that he had agreed to incorporate into
20 his disciplinary and oversight system and allow
21 independent observers to come into the system and work
22 and shape investigations, turned over the
23 investigations that ensued of each of those five inmate
24 murders to the Office of Independent Review, which I
25 have been entrusted to lead.

1 Independent legal advisers, six of us, get to work
2 on a daily basis as outside observers in shaping
3 internal investigations of misconduct by LA County
4 employees, including jailers, and also not only shape
5 those investigations but have a meaningful voice in the
6 disciplinary outcomes of those investigations.

7 On every case we are able to offer recommendations
8 as to how this case ought to come out, and we are able
9 to use the evidence that's collected during the
10 investigations to shape principal decisions in
11 discipline. As an outside voice, we are able to work
12 outside of the Sheriff's hierarchy in order to provide
13 some information and recommendations about these
14 outcomes.

15 Perhaps, though, the most important thing that we
16 have been empowered to do, in my view, is to be able to
17 provide a bridge of transparency from the shielded
18 shutter world of the jail system and the correctional
19 system and provide a bridge of information to the
20 outside world about what is going on in that jail
21 system. We have a continued presence there. We have
22 an office there. We're able to walk the rounds. We're
23 inside the perimeter. We get to talk to inmates. We
24 get to talk to guards. We get to talk to the
25 management staff. And we can drop in on them any time

1 we'd like.

2 More importantly, or as importantly in my view,

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3 we are able to report out to the world what is going on
4 in the disciplinary system. The jails and prisons
5 themselves are a cloistered shuttered world, but within
6 that shuttered world even more shut down is what's
7 going on with regard to discipline. What is happening
8 about accountability? And as a result of our efforts,
9 for example, in the five murders that we oversaw the
10 investigations of, over 25 employees received
11 discipline as a result of accountability failures that
12 allowed those inmates to kill other inmates during that
13 period of time.

14 We have been able, as a result of our involvement,
15 to offer systemic recommendations. In every case that
16 we are able to work on, or that we have worked on, we
17 will assess the adequacy of the department's
18 investigation, our recommendations on disciplinary
19 outcomes, and whether the department agrees to
20 us -- agreed with it. That information, over the
21 course of four years, has provided the
22 public with unprecedented access and information that
23 appears on our website on a quarterly basis about
24 what's going on in the jails and, more importantly,
25 what's going on with regard to accountability and

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1 systemic failures.

2 I think it's only through this transparency, only
3 through this ability to provide a bridge of information
4 from the shuttered world of the jails to the outside
5 world that confidence can be re-established among the

6 public about the way in which an important part of our
7 governmental functions; that is, the care and custody
8 of people who have been incarcerated can be restored.

9 I have to say that I'm pleased to report that on
10 the anniversary of the murder of Mr. Tinajero, which
11 will be tomorrow, God willing, that if we last another
12 day there will not have been another murder in that
13 downtown complex.

14 I appreciate the ability to spend time with you
15 and certainly welcome and entertain, as I said, a
16 continuation of dialogue with my colleagues up at the
17 table. Thank you.

18 MR. SESSIONS: Thank you, Mr. Gennaco.

19 It was very interesting testimony, and we'll
20 question you further concerning yours and others'
21 testimony.

22 Mr. Cowley, we'll be pleased to hear from you,
23 sir.

24 MR. COWLEY: Thank you.

25 I'd like to think that I'm here representing

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1 hundreds of thousands of correctional professionals
2 that are tired of "business as usual" and a system
3 that's failing nationally. I'd like to think that I'm
4 here representing future crime victims who are so
5 labeled because the system continues to fail more than
6 it succeeds.

7 I was a warden for many years, and I absolutely
8 loved what I did, but it becomes very tiresome to see
9 the revolving door of corrections; and yet, when we're

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10 not held accountable, corrections professionals, the
11 culture inside the prisons becomes a place that is so
12 foreign to the culture of the real world that we
13 develop our own way of doing things.

14 There are horrific abuses that have taken place.
15 We've heard about some of them. It happens every day.
16 But they're not "usual." I would like to think of the
17 system, however, as an abusive system. Tear it out by
18 correctional professionals who want to do the best job
19 they possibly can. But quite frankly, they're only
20 surviving every day themselves.

21 I recently spoke with the warden of the women's
22 facility at a state jail in Texas, who on Easter Sunday
23 had 48 critical posts to fill and only eight staff
24 showed up. In a condition like that, there is no way
25 possible that they can begin to deal with the delivered

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1 indifference that's taking place in our prisons. She's
2 only just trying to survive herself.

3 The system has become out of control, and yet,
4 it's the greatest job in the world because there's
5 really no expectations for you to succeed. Very few
6 wardens are held accountable for things that happen in
7 their prisons. Until that changes, there isn't any
8 outside influences that can be imparted strong enough
9 to change it. You could have a herd of lawyers
10 descending on prisons with oversight authority, and
11 it's not going to change it. It's not going to change
12 the result of incarceration.

13 Prisons can work. They can only -- and by that, I
14 mean that fewer people leave badder, worse than when
15 they came in. Prisons can produce citizens that will
16 not break the law again, and they can do it more than
17 they don't. But we have to begin to believe in
18 ourselves, that it's possible, and that can only happen
19 in a system from the governor to the Secretary of
20 Corrections, to the warden, to the deputy warden, to
21 the correctional officer on the shift.

22 When I came to the one prison, I decided to go eat
23 breakfast with the inmates, so I had my jeans on and I
24 walked out to the unit and we had satellite feeding so
25 we carted all the food to the unit. It was a pretty

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1 good breakfast, eggs and pancakes. And after they go
2 through the line, they would dump their trays in this
3 slop bucket and put their silverware -- obviously,
4 spoons -- in a bucket of what used to be hot, soapy
5 water. So as I'm going through the line to get my
6 breakfast, there's no more silverware. So watching
7 what the guy in front of me did, he goes over and puts
8 his hand into what used to be the warm, soapy water,
9 which is now a cold, murky substance, and put his hand
10 down in there and get his spoon and go eat his
11 breakfast. So I stuck my hand down in the water,
12 and amongst all the bits and pieces of eggs and
13 pancakes, I found me a spoon.

14 Now, is that abuse?

15 But if you live that way, thinking the people that
16 are there to help you get better don't care any more

17 than that about you, then to live that way every day
18 becomes abusive.

19 If you really want to change the system, you know,
20 where everybody's got an answer, if you really want to
21 change the system and produce ex-offenders who will
22 not re-offend, in prison, all you have to do is hold
23 wardens accountable for recidivism. That's all you
24 have to do is say, "We will arrange the system in which
25 we can tell how inmates re-offend, and for those

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1 wardens and directors of corrections who are operating
2 a system that fail more than they succeed, guess what,
3 you're not going to have a job any longer, and it will
4 change the entire system into one in which we can be
5 very proud. And prisons can become as positive as
6 colleges.

7 Thank you very much.

8 MR. SESSIONS: Gentlemen, we have sufficient time
9 for all the commissioners to ask questions. I'd like
10 to start off with one that relates to the reporting of
11 offenses that are observed by one officer where the
12 offender is another officer, and nothing in many
13 instances is done. And we heard testimony this morning
14 about gangs that operated not from the prisoners side
15 but actually from the officers' side.

16 Now, what do you do about reporting? What can you
17 recommend for us that might be an encouragement to
18 assure that those people who are the jailers and who
19 are the prison officials actually know about and can

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20 deal with officer abuse or abuse by officers?

21 MR. FINE: I think one of the most important ways
22 is to provide an outlet for those officers, to provide
23 an entity that they can have confidence in that will
24 not immediately turn over their names to management of
25 the facility, but will take their allegation seriously;

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1 will try to get to the bottom of the allegations; will
2 do it in a confidential and aggressive way, and then
3 hold people accountable. Both of the other witnesses
4 talked about accountability, and I agree with that
5 tremendously.

6 If they see that they report and nothing is going
7 to happen to them, if they're not going to be taken
8 seriously; if the investigations are not going to be
9 aggressive and thorough, there will be a breakdown of
10 reporting.

11 So I think that is one critical aspect that needs
12 to be, have happened before there is a culture of,
13 "We're not going to tolerate it. We're not going to
14 tolerate it by inmates. We're not going to tolerate it
15 by others." It's a significant problem that needs to
16 be addressed. And I don't think there are easy
17 answers, but I think that's one facet of the problem.

18 MR. SESSIONS: Mr. Gennaco--

19 MR. GENNACO: Yes, Judge. Thank you.

20 As a build off of Mr. Fine's comments, I would add
21 the following, which is:

22 One, one thing that I think is long not
23 acknowledged is that most of the complaints that -- or

24 investigations that are initiated that we see in the
25 Office of Independent Review are generated by employees

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1 within the organization. There are employees that do
2 have the courage to come forward and report misconduct,
3 but there continually needs to be encouragement of
4 that. And I'm not suggesting that there aren't times
5 when that kind of -- there's a significant pressure
6 placed on a deputy or any other correctional officer
7 not to report in order to remain within the group of
8 colleagues that are there backing them up every day
9 with regard to a very dangerous occupation.

10 Another thing that can be done, I think, and is
11 important to do to sort of ameliorate that pressure is
12 to have a timely and detailed response protocol when
13 there is an incident in which force is used. Very
14 detailed reporting and rollouts by Internal Affairs or
15 an outside organization such as ours, I think helps
16 capture that information in a timely fashion before the
17 blood can be cleaned up, before the physical evidence
18 can be removed, and before the inmates can be
19 discouraged from providing information, as well as the
20 deputies.

21 I think those kinds of standardized best practice
22 investigative techniques are important to the solution.

23 MR. SESSIONS: Mr. Cowley --

24 MR. COWLEY: Well, it's a cultural issue. And the
25 way I did it is that we promoted those staff persons

1 that we knew wasn't a part of that culture. We were on
2 the yard. I opened the prison up to tons of
3 volunteers. We had eyes and ears all over the
4 institution. They -- through our training -- we all
5 are trained, correctional officers are trained. They
6 are trained. But it isn't -- it's what happens later.
7 And in order for them to understand, we have to model
8 the kind of behaviors that we want them -- you see,
9 correctional officers really don't believe that inmates
10 can be good in prison or normal in prison, they're not
11 trained that way. So we have to model that behavior.
12 And when there is the use of force or when there is the
13 idea that there has been some type of abuse occurred,
14 not only would we probably know it before anybody else
15 did, but that it would be -- at the warden's level, at
16 the superintendent's level, at the jailer's level, it
17 would be dealt with in a very discriminating way. It's
18 just not acceptable.

19 The reporting -- we have reports. We have -- we
20 use cameras in use of force incidents, most states do
21 that now. Planned uses of force are videoed. We know
22 the officers generally that are problematic, so
23 it's -- it just comes down to the administration, the
24 director, in talking about corrections, we're just not
25 going to take it anymore.

1 MR. SESSIONS: Is there some times that an event

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involves multiple correctional officers?

3 MR. COWLEY: Sure.

4 MR. SESSIONS: And what uniqueness does that bring
5 to the discussion that you've had now?

6 MR. COWLEY: I think it's a -- correctional
7 officers generally will do what they think they can get
8 by with doing. You will have a rogue correctional
9 officer every now and then, but primarily if a
10 correctional -- if they do it in concert with one
11 another, they generally know -- regardless of what the
12 training is and what the warden says, they know it's
13 okay because it's the unwritten, "Do what you have to
14 do."

15 Now, they know they're doing things wrong.
16 They're not -- it's not a mistake that an offender is
17 beaten in his cell because he tried to tell something
18 or because of what they thought he might tell, that's
19 not a mistake, but they believe they can get by with
20 it.

21 MR. SESSIONS: So you're saying that if three
22 officers were involved, they would all rely upon the
23 fact that it would not be reported?

24 MR. COWLEY: That's correct.

25 MR. SESSIONS: Mr. Gennaco --

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1 MR. GENNACO: Well, I think that that's a problem
2 and that's certainly an initiative that continually
3 needs to be dealt with.

4 I would agree with Mr. Cowley, though, that -- and
5 I would just put a little more of a gloss on it with

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6 regards to the issues that we've seen at least in the
7 correctional system that we oversee; and that is, there
8 are a number of times in which bad intent or bad
9 deputies or bad jailers are certainly involved in force
10 and other integrity issues in the jails, there's no
11 question about it.

12 But another thing that we see that I think is just
13 as potentially dangerous to the inmates is neglect of
14 duty, inattention to one's duties, inability to address
15 the Title 15 monitoring requirements and to do your
16 work on a daily basis. That kind of inattention can be
17 just as destructive and potentially violent because you
18 are in a violent population and housed with people who
19 are violent.

20 The other thing that we think contributes to this
21 problem is neglect of supervision. If you don't have
22 supervisors that are willing to come up to the
23 forefront and actually supervise and make sure that the
24 job gets done and don't simply sit in their offices and
25 don't get out on the floors, you're going to have the

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1 environment that's going to lead to violence and abuse.

2 MR. SESSIONS: I'll have your answer, Mr. Fine,
3 and then we'll move on to our Commissioner Maynard.

4 MR. FINE: Just briefly in response to your issue
5 of -- when the incident or misconduct involves multiple
6 officers, it is true, as in any law enforcement
7 investigation, and that's in some sense what it is,
8 it's a -- basically, you do a thorough investigation,

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10 you try to separate the officers. You look for
11 corroborating evidence, and you will often find one who
12 is willing to expose wrongdoing.

13 There is tremendous pressure within an institution
14 to keep quiet, but if you are aggressive about it, if
15 you take these things seriously, if you apply law
16 enforcement investigative techniques to something that
17 is clearly a wrongdoing, you often can determine and
18 corroborate and prove the misconduct that occurred;
19 and that's, I think, the important factor, to have an
20 entity that's willing to do that and not willing to
21 simply accept the initial statements of "nothing
22 happened here. "

23 MR. SESSIONS: Thank you.

24 MR. MAYNARD: Yes, I have a question for
25 Mr. Fine and Mr. Gennaco.

The first question, I'm sure the bureau keeps a

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1 lot of records. What kinds of records do you find
2 helpful in investigating the abuse or safety issues
3 that currently the bureau has?

4 MR. FINE: The bureau does keep significant
5 records. They keep incident reports on every incident
6 that happens. They keep reports on complaints. Every
7 complaint that an inmate makes is supposed to be kept
8 by the Bureau of Prisons. We have unfettered access to
9 those records at the Inspector General's Office and the
10 Department of Justice. We have access to all records
11 within the Department of Justice, and the Bureau of
12 Prisons does turn that over to us.

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13 One of the things that's critically important is
14 technology. We heard a little about cameras. Video
15 cameras are very important within an institution, and
16 we find within the Bureau of Prisons, the newer
17 facilities have more video surveillance throughout the
18 facility. It doesn't mean there are not blind spots
19 here or there that are taken advantage of, but with
20 video surveillance you often can see what happened
21 before or after an incident, so that's very important,
22 and we have relied upon that kind of evidence very
23 strongly.

24 MR. MAYNARD: Mr. Gennaco --

25 MR GENNACO: Yes, Mr. Maynard.

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1 To answer your question -- and not to be
2 redundant -- we also have access to documentation,
3 force reports, incident reports and the like. But
4 one thing that is missing and has been missing, I
5 think, in the correctional setting that does exist in
6 some of the more progressive police departments is a
7 computer tracking system of employee behavior. The
8 City of Los Angeles is finally developing one, but some
9 of the other larger progressive law enforcement
10 departments have this computer tracking system that
11 captures every use of force the officer uses, every
12 lawsuit in which the officer is named, every citizen
13 complaint lodged against the officer, every time in
14 which the person's named actually engages in use of
15 force.

16 MR. SESSIONS: Does the testimony give an
17 indication of where those departments are that we might
18 look at?

19 MR. GENNACO: Yes, I can give you a list of them.
20 But certainly the County of Los Angeles has a very good
21 one, an early one. The City of Phoenix has a good one
22 in their police department. Tampa has one, the City of
23 Tampa Police Department has a good model. But there
24 are models that are there. Unfortunately, this kind of
25 model hasn't moved over to the correctional setting,

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1 and there's no reason why it can't. That kind of
2 information that's available to managers can be used in
3 a number of ways, not only for accountability but also
4 to early on detect some issues involving particularly
5 new employees or older employees that seem to have gone
6 away and all kinds of ways this information can be used
7 for the benefit of the correctional setting.

8 MR. MAYNARD: Thank you.

9 Mr. Fine, did you have any others that you --
10 recordkeeping that you might need that you don't have
11 that might be helpful?

12 MR. FINE: No. We -- as I say, we have access to
13 all records. We too keep track of all the complaints
14 that are made to us. We have an electric moni --
15 investigative case management system that is very
16 important to determine. When a case comes in, we don't
17 have the resources to do every complaint that comes in,
18 but we do see whether there's a pattern here or a
19 pattern of an individual being involved in certain

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20 types of behavior, and that is very important, it's
21 very helpful to us. I think that is a critical aspect
22 to it.

23 MR. GIBBONS: I have a question.

24 MR. SESSIONS: Oh, go right ahead, please.

25 MR. GIBBONS: In the cases where there is internal

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1 recordkeeping, are those records accessible to the
2 press?

3 MR. FINE: No. One can file a FOIA request for
4 them, but the detailed records would not probably be
5 released to the press. They are available to us and we
6 provide reports on trends and systemic issues. The
7 Bureau of Prisons also issues an annual report that
8 accumulates the information and provides overall
9 statistics about types of complaints and how they're
10 handled, but the individual complaint of an individual
11 inmate I would presume would not be available to the
12 present.

13 MR. GIBBONS: Even under FOIA?

14 MR. FINE: Even under FOIA. I -- and there would
15 have to be a balancing test there. But my guess would
16 be that a FOIA would probably be denied by the Bureau
17 of Prisons.

18 MR. GIBBONS: Mr. Gennaco, what about under the
19 state open record laws?

20 MR. GENNACO: The Public Records Act of California
21 does provide some relief to the media. Although, I
22 have to say that the information that is made available

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24 is rather minuscule and is certainly -- for example,
25 the identity of the deputies involved is redacted
 pursuant to other privacy statutes and exceptions to

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1 the Public Records Act in State of California. Even
2 so, my perspective is that there are ways to provide
3 access, if you wanted to provide access, if you were
4 a correctional facility or an institutional
5 organization in the State of California, but police
6 managers, correctional managers are not so inclined.
7 They read the interpretation of the statutes very
8 narrowly and protect that privacy of their people as
9 much as they can.

10 We have, on the other hand with a different
11 perspective, taken the interpretation of the statutes
12 that allow access to its ultimate limit, in our view.
13 We have a whole different interpretation of the same
14 wording of the statute.

15 MR. GIBBONS: Would you favor more press access to
16 the internal records of the correctional systems?

17 MR. GENNACO: I think that the public is entitled
18 to know about what's going on in the correctional
19 systems throughout the country, so therefore I'm always
20 going to be on the favor of more transparency. I do
21 understand and respect that there are certain privacy
22 issues with regard to the individual employees that
23 must be considered. All I'm suggesting is, you don't
24 necessarily, necessarily need to divulge the names of
25 the individual actors in order to give the public an

1 idea about what's going on. And for me, that's more
2 important.

3 MR. GIBBONS: Of course, CEOs of publicly-traded
4 corporations claim to have privacy interests, too, but
5 they yield. Why should privacy issues of correctional
6 individuals be treated more favorable?

7 MR. FINE: Well, I do think it's a balance to be
8 drawn and that there does need to be some recognition
9 of the privacy of correctional officers; some of whom
10 are accused unfairly or unjustly. By the same token, I
11 agree with Mr. Gennaco that there does need to be
12 transparency as well.

13 So getting the information out in a form
14 that's meaningful is important while respecting the
15 privacy interest of the correctional officers.

16 MR. BRIGHT: Could I follow up on that?

17 Which is, I gather that the way in which your
18 office goes about investigating is somewhat different
19 than what Mr. Gennaco described in terms of its
20 openness, and I know there are reports that are issued
21 with regard to things, but then there are other
22 investigations that don't lead to reports. If you
23 could describe that process a bit.

24 And then to the extent to which the inmates,
25 their families, and the public are able to find out

1 what's going on. I mean, I'm -- you know, I'm sure you
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2 know that in the penitentiary in Atlanta, the special
3 housing unit, for as long as I can remember,
4 allegations -- or not allegations, but it's been proven
5 of people put in four-point restraints improperly,
6 rapes, beat ups, stabbings, all that, and the FBI won't
7 even tell you whether they're investigating or not. So
8 what's your answer to that?

9 MR. FINE: My sense of it is, as there is an
10 ongoing investigation it would be unlikely that the FBI
11 would divulge that type of information, and as would
12 we. On the other hand, when the investigation is
13 complete, then that's a different matter and normally
14 we do both provide to the Bureau of Prisons and also to
15 the complainant, we have a routine use to be able to
16 let them know what has happened to their complaint.

17 There also is -- are FOIA statutes and there are
18 times when the balance will allow information to come
19 out without -- with some redactions, and I think that's
20 very important.

21 Then finally, I think in aggregate, there needs to
22 be reports on what is happening in institutions and
23 there needs to be that kind of transparency, and
24 we try to provide that as well in terms of systemic
25 reports about what has happened and what we've done.

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1 For example, with our review of the Metropolitan
2 Detection Center in Brooklyn, we provided a very
3 detailed report on what exactly happened there. We
4 didn't provide the names of the officers in the report,

5 but we did provide our conclusions about the misconduct
6 that occurred. I think that's critically important.

7 MR. BRIGHT: And I wanted to ask about that.
8 As I understand it, you provided your report in June of
9 2003 --

10 MR. FINE: Uh-huh.

11 MR. BRIGHT: -- a detailed report on it, and I
12 know what you said, the four or five things ought to be
13 done and there ought to be swift action when these
14 reports come out. Apparently, the Bureau of Prisons is
15 still determining what to do about that report for
16 almost two years now.

17 Am I -- do I read your statement right about that?

18 MR. FINE: Well, the timeline is not exactly
19 that. But you're absolutely right, there has not been
20 swift action on that report. We produced the report in
21 December of 2003. The Civil Rights Division of the
22 Department of Justice reviewed the report and declined
23 prosecution in the spring of 2004.

24 The BOP has had it since the spring of 2004. They
25 have not imposed discipline, they're still in the

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1 process of doing so. As we reported in one of our
2 reports, they recently found additional videotapes.

3 And what -- that report relied very heavily on
4 videotapes of what happened. And they found additional
5 videotapes and we and they are going to find out how
6 that happened. But in effect, you're absolutely right
7 that the discipline in this matter has been delayed and
8 too slow. And that's one of the failings of the

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9 system, when it is not swift and sure, that's an
10 example of it.

11 MR. BRIGHT: And when that report comes out, is it
12 public then or does it remain confidential or whatever
13 during the time the Bureau of Prisons is trying to
14 decide what to do?

15 MR. FINE: We issued that report publicly. We
16 issued the report publicly in December of 2003. We put
17 it on our website and provided it to the press and
18 to anybody who asked for it. We think that was
19 important to provide sunshine on that problem. So, no,
20 it's a public report.

21 MR. BRIGHT: There's great public interest in
22 that.

23 MR. FINE: Absolutely, and that's the problem.

24 MR. BRIGHT: But just a run-of-the-mill complaint
25 about a prison, would that be the same thing, that you

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1 found that there was some misconduct, abuse in prison
2 you refer that then to the Bureau of Prisons to take
3 some action on it, would that become public at that
4 time?

5 MR. FINE: Certain reports do. And we -- and
6 we provide information about certain of our reports.

7 For example, under the Patriot Act, section 1001,
8 we're required to receive and review civil rights and
9 civil liberties violation through the Department of
10 Justice. We are also required to report on that every
11 six months. So in each six-month report we provide

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12 information on the case, where it is, what the status
13 of it is, and when they're completed and either
14 substantiated or unsubstantiated, we provide that
15 information as well. That's not every case we do, but
16 in terms of civil rights or civil liberties cases
17 arising under Section 1001 of The Patriot Act, we try
18 and do that as well.

19 MR. BRIGHT: Those wouldn't be prison cases.

20 MR. FINE: They are prison cases, yes.

21 MR. BRIGHT: They are.

22 MR. BRIGHT: A significant majority of them are
23 prison cases.

24 MR. BRIGHT: Oh, they are.

25 MR. FINE: In fact, we had one where it was

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1 presumably described and was described failings of the
2 warden in that prison to adequately address complaints
3 of discrimination, and provided that report -- well,
4 provided the information about the report in our
5 Section 1001 report just recently.

6 MR. COWLEY: I don't think there's a -- I don't
7 think there a lack of reporting on those things that
8 are reported. But there's a lack of concern about
9 anybody reading the reports by those in central
10 office. Most states, every use of force, every
11 misconduct, the number of volunteer hours that's in the
12 prison in that month, most Departments of Corrections
13 receive tons of information from facilities.

14 MR. BRIGHT: Yeah. The problem is, somebody else
15 receives them.

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MR. COWLEY: Well, it's there.

MR. BRIGHT: And you've got to file a lawsuit and subpoena them to get them there.

MR. COWLEY: No, no, not those kinds of reports. I mean they're there. Then to get particulars then you would probably have to file some Freedom of Information, but the reports are there. You will not have trouble finding the reports on the issues that are reported, a lot of information.

MR. NOLAN: Yeah. I have an observation and then

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a question for you.

As a member of the State Assembly in California, I visited eight prisons. I was an inmate following that in two prisons, fed facilities, and since coming with Prison Fellowship I visited over 30 prisons.

In fact, just like the U.S. Prison at Leavenworth. My observation is that while we call it a prison system, it really isn't. They're individual death SHUs with the warden as Duke, and he rules everything within his domain. And my observation, too, is there are two types of wardens:

Those who view the inmates as human beings in need of correction, and those who view them as non-persons, people without hope.

I'd like to hear from the different perspectives of you both investigating and, Jack, you overseeing an institution, the difference in atmosphere of that attitude at the top. You know, they say vegetables

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19 take on the flavor of the stew pot, and there are two
20 different types of stew pots in the different prisons
21 I've been in. They fall very clearly within one of
22 those two categories, usually.

23 And so where there's that leadership from the
24 warden, that sets the tone. Do you have difficulty
25 getting the information and getting to it?

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1 And then secondly, Jack, I know you've been
2 involved with InnerChange Freedom Initiative and the
3 fascinating thing for me watching that is, the life of
4 the COs is so different because the atmosphere is
5 different. But I'd like your observations. Am I
6 correct in that, and do you find it depending on the
7 leadership of the warden whether there's access that
8 you have in cooperation or resistance and do you find
9 that they tend to -- the incidents tend to cluster
10 reports and then what the different atmosphere makes
11 the life of the CO different?

12 MR. GENNACO: Very interesting observations. I
13 would agree with you that the institutions and the
14 individual facilities do take on a culture in and of
15 themselves and a large part of that culture derives
16 from the leadership at the institution itself. It's
17 interesting, even in a hierarchical organization like
18 the Sheriff's Department and in my more limited
19 experience with the California Department of
20 Corrections, you see that phenomenon happening in the
21 prison environments where essentially the leader of
22 that facility essentially can close him or herself off

23 from the rest of the hierarchical structure and sort of
24 on his or her own develop the culture within that
25 institution because of the way in which prisons sort of

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1 exist and the fact that they are closed down and
2 insular. So as a result of that, I think that it's
3 important to again open up to some degree those
4 facilities; not only to outside groups, but also to
5 members within the hierarchy to make sure that the
6 management philosophy comes from the very top of the
7 organization and not allowed to have it depends on the
8 character of the individual at each institution.

9 I think oversight groups can help with that as far
10 as develop some consistency on systems and also develop
11 some consistency on accountability.

12 MR. FINE: I agree. I think it matters very much.
13 And that there are differences in wardens and the
14 attitudes of wardens towards outside oversight and
15 rooting out misconduct that exists within the
16 institution, and that has a dramatic impact on the
17 institution. It has a dramatic impact on us and our
18 ability to do it. Some wardens will delay reports,
19 they won't report everything and try to keep things
20 in-house. That's not a good thing, and it hurts us.

21 Some wardens will not cooperate to the extent they
22 should with us. Other wardens want us in there and
23 want us to find out any problem and want to cooperate
24 and get rid of the few bad apples that put a tarnish on
25 the institution and on the entity. Some wardens will

1 allow us and cooperate with our proactive
2 investigations when we'll do a proactive operation to
3 put a wire on someone or put a video surveillance on a
4 certain entity. We have to go through hoops to do
5 that. Some of them make those hoops so high and so
6 long that by the time we're through them the
7 opportunity to catch the wrongdoing is over.

8 So the warden does matter. And it matters how the
9 institution, in our case the Bureau of Prisons, deals
10 with each of the wardens, if they enforce
11 accountability; if they hold them accountable for the
12 problems in their institutions; if they move a warden
13 out when there are significant problems, that will set
14 a tone. If they don't, then I do think that the
15 problems is in fostering an institution, and they we
16 see more problems in that institution.

17 MR. NOLAN: Actually, could I just ask you about
18 InnerChange and the COs because -- I mean, it's so
19 dramatic they're seeing -- their relationship with the
20 inmates versus other prisons.

21 MR. COWLEY: We do now have models.
22 Unfortunately, when I was -- when I was a warden for
23 eight years at a particular prison we went for almost
24 three and a half years without a use of force or a
25 serious incident. I became known as the "hug-a-thug"

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1 warden.

2 Now, we didn't have any uses of force or any
3 serious incidents, and the overtime of our staff went
4 to zero. But because that wasn't the typical thing,
5 then we began -- in fact, I was investigated because we
6 didn't have any overtime and they thought perhaps I was
7 keeping books under the table. So even if you do the
8 right thing, in some systems it's, "Oh, my goodness,
9 it's working so something must be wrong. "

10 But we do have models. InnerChange Freedom
11 Initiative is a faith-based Christ entered program that
12 was started in Texas under then Governor Bush. The
13 program is now -- actually, every inmate at the just --
14 or what is now the Carol Vance Unit outside of
15 Houston is in the program, 390 inmates, a very
16 intensive program from sun up to sun down; lots of
17 volunteers going in, open to the media. Correction
18 officers from all over that area are wanting to come to
19 work there. As we now are seeing in Iowa, with the
20 establishment of that program there, and the union I
21 understand -- I've been gone now several years -- but I
22 understand now that officers are bidding to get on that
23 unit because it's a wonderful place to work.

24 So again, you have to start with the end in mind
25 and understand. In some state systems, the training

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1 for correctional officers is they use this book called
2 "The Games Convicts Play. " They're trained, don't
3 touch, don't even shake hands, don't call them by their
4 name, call them by their number. We've written books

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5 on how inmates -- or how people become convicts, but we
6 have -- there's not been a book written yet on how
7 inmates can be people, normal people and still be
8 confined in prison. It's not the paradigm that we have
9 in corrections.

10 So -- but now I'm very encouraged. The director
11 of corrections in California, Jeannie Woodford, has
12 asked me to come out and speak with all of her wardens
13 in May to talk about how -- what's possible in
14 institutional environment. Because we know the culture
15 dictates the outcome, finally, and to say that we
16 expect inmates to leave better than when they came in,
17 I think it's starting to resonate across the country.
18 I hope.

19 MR. KRONE: I have a question.

20 Mr. Fine, just to get a scope of this bureaucracy
21 -- (Inaudible) -- this resistance, I understand here it
22 says here to detect and deter ways involved in abuse
23 in our systems. It sounds like you go and you do your
24 reports, you write it up. Well, now it's up to
25 somebody else to implement that.

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1 So my question is, what percentage do you think of
2 your work product is actually being used and
3 implemented within our systems and for a change of the
4 better?

5 MR. FINE: That's a good question. There are many
6 ways that our work gets -- results of our work get
7 implemented:

8 One, we work with prosecutors to prosecute
9 wrongdoing and we have a significant number of our
10 cases which we work with U. S. Attorneys, we work with
11 the Civil Rights Division, and the offender gets
12 criminally prosecuted and removed from the institution.

13 In other cases, we provide the report for
14 discipline to the Bureau of Prisons and we follow up to
15 determine what kind of discipline has been imposed.
16 Now, we don't -- we don't have the ability to impose
17 the discipline, we provide that to them. But we do
18 monitor and follow and there is a significant number of
19 them who get removed or resign in lieu of removal or
20 get suspended for periods of time.

21 We also do, as I said, systemic reports. We look
22 at the BOP disciplinary system. We find problems in it
23 and make we recommendations for improvement. And the
24 Bureau of Prisons is -- and we publish that. We
25 publish that on our website. If you look on our Web

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1 site, you'll be able to see. And we publish the BOP's
2 response to that. They have to -- each one of our
3 recommendations they have to say whether they concur,
4 or they agree or disagree, and we follow up with that.
5 For the ones that disagree, we go back to them and ask
6 them why. On the ones that say they agreed, we ask
7 them, "Well, what are you going to do about it? What
8 is your corrective action plan?" And then We follow
9 through to determine whether they've implemented that.

10 In some cases, we'll go back and do a follow-up
11 review several years later to see, "Well, did you

12 actually implement the recommendations that we
13 imposed?" We impose some pretty significant
14 recommendations, for example, attempting to prevent
15 drugs from entering the federal prisons, including
16 random drug test of officers, including searches,
17 random searches sometimes of officers, but sometimes
18 correctional officers are the ones who bring the drugs
19 into the institution. There is some resistance to
20 that, but we push and we try to follow through to see
21 whether they've implemented it and continue to apply
22 the sunshine and pressure to it.

23 Again, we can't implement it, we can't do it, but
24 we can provide transparency to the process, and we try
25 and do that.

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1 MR. SESSIONS: We have about 20 minutes left. I'm
2 going to start right in with Ms. Schlanger,
3 Commissioner Schlanger, and we'll go down the line on
4 questions that each of us may have, and then we'll
5 start over again with whatever time we have left.

6 As I've instructed to the witnesses, if there are
7 things that you want to talk about that we don't ask,
8 please respond on your own.

9 Ms. Schlanger --

10 MS. SCHLANGER: Thank you.

11 This talk about internal or quasi internal
12 watchdogs, it sounds -- it sounds very attractive, but
13 it -- I guess what I'm thinking about is it's obviously
14 not entirely successful. So I'm thinking about the

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15 situations that I remember reading about with criminal
16 prosecutions of the whole squad of folks in Florence,
17 for example, I think it was, in the Bureau of Prisons
18 or the five murders that you just mentioned.

19 So if these are the results in the systems that
20 have your kinds of offices at play, I guess I'm
21 wondering for us who are thinking about whether or not
22 that's a recommendation to make to other people, is
23 that -- I mean, is it that they're not entirely
24 successful because they're not implemented as deeply as
25 they need to be or because there's some things that are

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1 beyond the scope of what you can do or -- I guess I'm
2 wondering, how do we come up with a system where you
3 don't have five murders in six months before you have
4 the solutions to that, you know?

5 MR. GENNACO: That's a tough question. I would
6 suggest that something is better than nothing. And
7 prisons and jails are certainly by nature potentially a
8 powder keg of violence.

9 That said, I do think that the jail is in a better
10 place April 20th, 2005, than they were April 20th of
11 2004, because of a number of things:

12 One, is because of the kind of way in which those
13 murders were assessed and systemic issues and
14 accountability issues were addressed.

15 Two, the simple fact of continuing to shine the
16 light through public reporting, through explaining to
17 the public what happened and what went wrong certainly
18 in and of itself provides, I think, a benefit because

19 it causes the jail and the jail managers to really
20 think about ways to prevent future murders from
21 happening.

22 I didn't have a lot of time, but Title 15 is now
23 actually being enforced. There are actually people
24 dedicated to roaming the jails and ensuring that
25 suicides don't become successful; that homicides don't

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1 become successful; that weapons are found before they
2 are used, and all of this kind of activity didn't exist
3 prior to a year ago and now do exist. And I have to
4 say that it's not just us, but it's us in concert with
5 the ACLU and other watchdogs and media attention and
6 focus and progressive management at the top that has
7 all worked in a concerted way to make the jail a safer
8 place than it was a year ago.

9 Will a murder happen tomorrow? Maybe. But I
10 think the likelihood of it occurring is certainly
11 significantly less as a result of the year of work that
12 we and others have put in that have directed to the
13 problem.

14 MR. FINE: I agree with Mr. Gennaco. I also
15 think that there will be incidents in prison, and you
16 do need an entity to aggressively investigate it and
17 hold people accountable for that. But you're
18 absolutely right, through the prevention of those
19 incidents and those problems are also critically
20 important. And the Bureau of Prisons does and it
21 should do many things within the institutions to

22 try and prevent that from happening, ranging from drug
23 treatment for those who need it, making it available;
24 prevention of drugs from entering the prison; work
25 programs so that people are productively engaged while

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1 they're in prison. And The Bureau of Prisons does do
2 that, they try and make sure that there's work
3 available for people who are able to do it.

4 Intelligence within the prison. There are gangs
5 within prisons. There needs to be a sort of knowledge
6 of what is going on and the intelligence to prevent it
7 from escalating into violence.

8 So there's a whole series of things that the
9 prisons need to do to prevent it from happening, but
10 when it does happen, and it will inevitably happen no
11 matter how good the management is, there needs to be
12 aggressive oversight and investigation to hold people
13 accountable for that.

14 MR. COWLEY: There's nothing better than to bring
15 inmates and correctional officers together than a good
16 court monitor. Most states who are under federal court
17 order from one time to the other from 1970 to the
18 middle of the late eighties, most had court monitors,
19 oversight, well meaning, and we came up with all kinds
20 of good documentation and it all went away.

21 You can't -- there's nothing wrong with
22 monitoring, but if you think -- if we have a piece
23 that, oh, now things are well because we're monitored,
24 believe me, it will not help a lot. It might give us
25 confidence for a while, but we know how to get around

1 the monitors, believe me. If we're so inclined to run
2 institutions that way, we're going to get around them.

3 MR. GENNACO: And they can wait the monitors
4 out. And that's my concern is monitors is a finite
5 period of time that the monitors are in existence, the
6 three, five, even ten years, that's a blink of an eye
7 in the length of any law enforcement organization or
8 correctional institution or organization, and they will
9 wait them out.

10 The sad thing is that the transparency that the
11 monitor provides and that the public is then used to
12 also disappears when the monitors go home. I think
13 there needs to be permanent, meaningful oversight in
14 every institution, and that can't go away because you
15 need -- if we went away tomorrow, I would suggest that
16 the Sheriff's Department would go back to where they
17 were in the blink of an eye.

18 MR. SESSIONS: Okay. Questions.

19 MR. RIPPE: Mr. Cowley, you talked about
20 leadership, accountability, vis-a-vis the recidivism
21 rate. Could you expand a little bit on your comments
22 about faith-based re-entry programming? I'm assuming
23 that you consider that one of the important tools that
24 would help a warden.

25 MR. COWLEY: Yes. We've done amazing things in

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1 prisons. Let's just say that we offer VoTech, we offer
2 GED, we've got psychologists, we've got counselors.
3 But because the prison environment is so different than
4 the real world, we develop a culture inside the prison,
5 our own language, our own way of doing things; that
6 even if you get your GED, even if you get your
7 VoTech -- now, the one thing that does make a
8 difference is college hours, and we repealed to Pell
9 grants so now very few inmates have access to that.
10 But then once they get out, it's almost like they were
11 never in because they go from one culture to the next.

12 What Faith Based opportunities provides the warden
13 and the inmates is that they bring the outside culture
14 in prior to them going home, and they begin to create a
15 culture that's as much like the streets as possible and
16 they make this relationship.

17 One of the things -- if you really wanted to do
18 something, most states have a policy which prevent a
19 volunteer from having access to the inmates' families
20 while they're a volunteer on the inside; as well as,
21 they cannot volunteer and mentor that inmate once he's
22 out. Now, that policy came about, I'm sure, because
23 some volunteer was abused by some inmate that got out
24 of prison, I'm sure. But the reality of it is, Faith
25 Based Programs provide the opportunity for all of these

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1 staff, unpaid staff, to come in and -- as if we've
2 heard today -- open up the prison and then provide
3 access to jobs to support, have their families

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4 already involved with the community before they get
5 out. It works wonders. I mean any -- well, I say
6 that.

7 A lot of volunteers are just sort of tolerated,
8 too, by wardens, and they just come in and they
9 do -- they -- don't misunderstand it, just because
10 you're a Faith-Based volunteer coming into prison that
11 that has anything at all to do with release because a
12 lot of these wonderful people, they don't deal with
13 inmates after they're released.

14 So I'm talking about Faith-Based Programs that
15 connect from inside to out. A world of difference.

16 MR. SESSIONS: Thank you.

17 SENATOR ROMERO: In fact, especially for Mr. Fine
18 and Mr. Gennaco. And let me just acknowledge that the
19 legislation I carried last year as part of the reform
20 of the California Department of Corrections to create
21 a Bureau of Independent Review was based on the very
22 successful work of Mr. Gennaco in Los Angeles County,
23 and I'd like to publicly thank him.

24 But Mr. Fine and Mr. Gennaco, you do talk about
25 oversight and you talk about independence and yet it is

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1 certain -- at a certain point independence meets and
2 sometimes clashes with the political will, whether
3 they're supervisors or they're senators holding your
4 purse in terms of how much money you get to be
5 independent. So given that, and especially in a state
6 like California or Los Angeles County where we're
7 facing an \$8 billion deficit, there is push to maintain

8 educational services, health care, hospitals, you name
9 it. What do you -- what do you find yourselves arguing
10 to the supervisors or to your chieftains who ultimately
11 control that purse to argue for the integrity of
12 independence for the funding? Because you can be as
13 independent as you want on paper, but it takes money to
14 give you the teeth in order to truly have the
15 independence.

16 I'd be interested in having you share your views
17 with the Commission as to the resource question and
18 its role with your independence.

19 MR. FINE: The resource question is a critical
20 question and we have a fair number of people, we have
21 415 employees of the Office of the Department of
22 Justice -- the Office of the Inspector General. Now,
23 that sounds like a lot, but you have to realize that we
24 have oversight over the Bureau of Prisons but we also
25 have oversight of the FBI, the DEA, United States

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1 Marshall Service, the ATF, the U.S. Attorneys' Offices.
2 It is a daunting and wide-ranging task, and we could
3 use more resources.

4 Having said that, at no time in my tenure has
5 anyone in Congress, the appropriators or the
6 authorizers, made any indication that they were going
7 to take action or reduce our budget because they didn't
8 like one of our reports. And I think you have got to
9 have the attitude of independence and to make clear
10 you're going to do what you believe is right. We've

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11 been set up to do that and to continue to do that
12 regardless of the consequences; and to make the calls
13 objectively and as fairly and aggressively as you can
14 and as transparently as you can. And that has worked
15 for us, that really has. We have increased our
16 resources. We've gone from 330 to about 415 over my
17 tenure, and I've been very gratified by that.

18 So I think it's very important to maintain your
19 independence, and it's been successful for us. That
20 doesn't mean, you know, there aren't others who have
21 had problems with that. But the resource question is a
22 critical question. And it's not the first priority
23 when you sort of think about it. When there needs to
24 be resources infused with the Department of
25 Justice, they won't think -- initially the Office of

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1 the Inspector General, the FBI, the DEA, and the
2 counter-terrorism, but we have a good return on any
3 resources that are given to us because we help improve
4 the efficiency and effectiveness for the rest of the
5 Department of Justice, and that's why -- that's our
6 argument and it's been successful.

7 MR. GENNACO: To follow up, in California or at
8 least in Los Angeles County it's an interesting dynamic
9 and one that concerns me all the time. Survival is, I
10 think, critical to ensuring that the department
11 continues to stay on the straight and narrow and for
12 budgetary resources who rely on the County Board of
13 Supervisors, they're elected officials the Sheriff
14 is an elected official. That dynamic in some ways

15 helps because, quite frankly, before we came into
16 existence the County Board of Supervisors had really no
17 real way of knowing what was going on at the Sheriff's
18 Department. And so we provide a bridge to our clients,
19 the County Board with regards to letting them know
20 earlier about before the LA Times learns that there's a
21 significant event, that there's something that probably
22 will show up in the paper in a couple days, or could
23 likely. That's one resource that we provide. I think
24 it's one reason that I think that we will continue to
25 be maintained.

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1 Another thing that is important is to educate
2 county officials, elected officials about the value of
3 oversight, and sometimes you can talk about the
4 intangible values of a good government and
5 accountability and issues like that, but sometimes they
6 want to see bottom lines and sometimes if we can find
7 bottom lines that help suggest that we're on the right
8 track that also is going to be helpful in order to
9 maintain the resource dedication.

10 Last year, for example, in our annual report we
11 reported that lawsuits alleging civil rights violations
12 and violations of people's constitutional rights and
13 payouts from those lawsuits had gone down from 13
14 million to five and a half million. And if we -- and
15 I'm not suggesting that our group should take total or
16 even the majority of the credit, but we'll take a
17 little bit of the credit for that kind of turnaround in

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19 payouts. And suggesting that, in fact, it's
20 advantageous if you're just looking at the bottom
dollars and cents to continue to fund our organization.

21 But there are -- you're right, Senator, there
22 are -- it's important to continue to sell, if you will,
23 to elected officials the value of this kind of
24 oversight.

25 MR. SESSIONS: We've got ten people and 15

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1 minutes. Let's go.

2 MR. GREEN: This question is also directed to
3 Mike Gennaco. I wanted to make sure I understand the
4 Office of Independent Review in terms of why you exist
5 and what your structure is. We keep talking about LA
6 County, but are there the equivalent of your offices
7 for the other Sheriff's Departments in California, and
8 also, how much are you really in an aberration when you
9 look around the country for oversight in relationship
10 to state and county jails and prisons?

11 MR. GENNACO: The answer to your question, saul,
12 is that -- I can call Saul by his first name because
13 we're friends.

14 MR. SESSIONS: You're not friends with the rest of
15 us.

16 MR. GENNACO: Judge Sessions.

17 It is an anomaly. There are no other Sheriffs'
18 organizations that have any kind of meaningful acts,
19 meaningful oversight in the state of California. And
20 unfortunately Sheriffs' organizations, as a general
21 rule, have almost no oversight throughout the country.

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22 As opposed to police departments which have different
23 forms of oversight, as you are well aware. That's even
24 more so if you look at correctional state-wide systems.
25 There is again almost no real meaningful oversight to

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1 correctional state-wide systems, or what there has
2 been -- has not really -- at least in the eyes of
3 legislatures in the public work very effectively. So
4 it is an anomaly. At least the way in which we do our
5 work is unique. But as Senator Romero has said, one of
6 our functions under the guise and ownership of the
7 legislature and also a federal Judge who's overseeing
8 some litigation is to develop an office like ours for a
9 40,000 employee organization, the California Department
10 of Corrections.

11 MS. ROBINSON: I'd like to put my former colleague
12 from the Justice Department, Glenn Fine, somewhat on
13 the hot seat here.

14 Mr. Fine, I am thinking of the broad leadership of
15 the Justice Department, not just the Office of
16 Inspector General, and as we look at the broad mandates
17 of the Commission, what are other ways that the
18 Department of Justice can and should be exercising
19 leadership in addressing this very broad problem of
20 safety and abuse in American's prisons? And I don't
21 mean this Justice Department at this time, but in a
22 very broad sense.

23 MR. FINE: I think through the range of support
24 for the Bureau of Prisons initiatives that we attempt

1 funding for the Bureau of Prisons, one of the issues
2 that we see is when there's reduced staff and
3 overcrowding abuse can increase and flourish more than
4 when there's a full complement of staff, so I think
5 that's important to make sure that the resources are
6 provided so that there can be safe and secure
7 facilities. So I think it is important despite the
8 enormous tasks that the Department of Justice has in
9 many, many areas, in many respects, to continue to
10 provide sufficient resources and attention to this
11 issue; to continue, as I mentioned previously, to
12 provide for initiatives in the Bureau of Prisons that
13 can help ameliorate conditions that can led to abuse,
14 whether that is drug treatment, whether that is inmate
15 release preparation programs, whether that is adequate
16 work for the inmates.

17 I think the leadership of the department and the
18 Bureau of Prisons in particular needs to keep attention
19 focused on those very important issues.

20 MS. ROBINSON: What about the bully pulpit of the
21 Attorney General?

22 MR. FINE: The Attorney General does have an
23 enormous influence, and I think it's important to make
24 sure that this is a priority of the Department of
25 Justice, and I think it is. I think it's important for

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1 it to continue and that not to lose focus on this issue
2 amongst a myriad of other duties that the Attorney
3 General has.

4 MS. ROBINSON: Thank you.

5 MR. KATZENBACH: You have to understand that you
6 have 415 more people than when I was in the Department
7 of Justice a century ago.

8 My question is somewhat philosophical. Ideally,
9 you would wish every agency in the Department of
10 Justice, every corrections agency to be doing the job
11 correctly themselves without any oversight. I'm not
12 opposed to oversight.

13 What steps do you take in your oversight function
14 to be sure that you are encouraging every piece that in
15 this case the department runs, the Civil Rights
16 Division, I guess to some extent, that you're
17 encouraging them to do the job they should have done in
18 the first place?

19 MR. FINE: That's a good point. Sometimes we say
20 we're here from the Office of the Inspector General and
21 we're here to help, and people laugh, but it is not
22 humorous. We are trying to help improve the Department
23 of Justice and help them ensure that their programs are
24 running as efficiently and as effectively as they can.

25 I think it's important that they measure what they

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1 do and oversee what they do and not simply rely upon,
2 oh, the OIG is going to be coming in here, we have to
3 do something, but to have it internally as part of

4 their culture, as part of their DNA to do things the
5 right way.

6 But having said that, it is never going to be
7 perfect. There is never going to be --

8 MR. KATZENBACH: Well, it used to be.

9 MR. FINE: For a few shining years, I'm sure it
10 was. But other than those several years, it wasn't
11 perfect. And so there needs to be an oversight entity
12 to provide impetus to hold people accountable, to
13 provide recommendations for improvement. We don't
14 always try to come in after the fact. We try and
15 sometimes come in and look at programs on the
16 inception, as they're developing programs, to see
17 whether they have adequate processes in place. So
18 I think that's very important as well.

19 MR. GENNACO: And I would just very briefly add to
20 that by saying the philosophy of oversight and the way
21 that you conduct oversight can really be consistent
22 with your suggest that the departments need to continue
23 to take ownership to doing a good job. And so instead
24 of having independent or parallel or subsequent
25 investigations, we work with the investigative

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1 resources the department has to ensure that they do the
2 best they can to do. And we also don't take away their
3 disciplinary determinations from them because they
4 should retain ownership of those decisions. Good
5 managers should continue to hold their people
6 accountable. And as a result, what we do is an outside

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voice suggesting what the principal result might be.

8 MR. GIBBONS: Senator raised the question of
9 fiscal restraints that limit the ability of the
10 institutions to protect their inmates. Would general
11 reduction in the length of sentences solve a lot of the
12 problems that you have observed in the corrections
13 system?

14 I'll address that to all three of you.

15 MR. COWLEY: There is a point in time when -- when
16 a person is -- 93 percent of the people in prison are
17 going to go home anyway. So there is a length of time
18 that I think that it's appropriate, sort of the
19 punishment matches the crime, and I think the victims,
20 those that have worked through their issues, would say
21 that it's time that a person left.

22 Quite frankly, that's where our increasing
23 incarceration is coming from, that we're just keeping
24 people a lot longer. I really don't -- it's not a
25 matter of fairness on the part of -- on the part of the

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1 system to supply wardens with the resources that's
2 necessary, and wardens march to the drummer, so to
3 speak. The warden that had eight staff people there
4 when she should have had 48 without working the post.
5 If nothing else, I think that we should say, "If we're
6 going to incarcerate for the length and the extent that
7 we do, that there really does have to be resources that
8 match that program of incarceration."

9 We are seeing correctional officers at greater
10 risk in this country. There is absolutely no question

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11 of that. And as well as inmates. But it's all -- it's
12 almost like, here's the thought, and I think that not
13 only the taxpayers but also perhaps the politicians.

14 An inmate made a choice himself to go to prison,
15 so whatever happens, he chose it. A correctional
16 officer chooses to work there, so whatever the
17 condition, he chose it. And that's how we get out of
18 really being held accountable for what we're
19 doing in our nation's prisons and jails.

20 MR. GENNACO: One part of the system impacts on
21 others. And let me give you an example of what I'm
22 talking about, Judge Gibbons. But I think it's
23 something that has been -- not enough attention is paid
24 to it. In the county jails -- jails traditionally
25 were supposed to serve two functions:

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1 One is, they're a wait station for people that are
2 awaiting trial, going to prison, coming back from
3 prison, and also they are there to serve as the
4 custodial situation for rather minor offenders for
5 short-term. Because of some of the ways in which the
6 system has been bogged down, perhaps because of its own
7 weight, inmates spend months, sometimes years in those
8 jails, those inns that are supposed to be hotel/motels,
9 are there awaiting trial, awaiting sentencing, awaiting
10 to be picked up by the prison authorities, state
11 authorities to go to the prisons. And as a result of
12 that lodging, the jails are no longer available for a
13 lot of the minor offenders who should be serving their

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14 time and then getting out. So it's an example of how
15 again the system impacts on the system.

16 MR. FINE: Judge Gibbons, I don't really know the
17 answer to that question, but I do believe that
18 regardless of the length of a sentence, the institution
19 should be safe, secure, and humane, and that's the
20 critical issue.

21 MR. SESSIONS: Are there more questions down the
22 line? Put your hand up if there are.

23 Yes, go ahead.

24 MR. DUDLEY: It's been suggested that part of the
25 problem is the ease with which inmates can be viewed

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1 less than human and, therefore, not necessarily
2 deserving of humane treatment. To the extent that any
3 of you think that that's at least a factor, what can
4 we do about that?

5 MR. COWLEY: I think it is the factor. When I was
6 in Texas, at least inmates were thought of as
7 something. Then I went north and was there in that
8 prison system for nine months, and the inmates were
9 non-entities. So it -- the roots of that even is
10 different.

11 But yes, when we were at the gate going into the
12 prison in Texas, and this was a well-cared -- the
13 warden was well-caring, but we were strip searching
14 inmates and they were pulling down their boxers and
15 then pulling them up, but they were out in view of
16 anybody that came into the prison. And as the director
17 of the Faith Based Program, I said, "No, no, no, you're

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18 not going to do that to my guys." And I explained to
19 them, "Those are people. You can't" -- so they put up
20 a screen. So when brought to the -- when it manifests
21 itself, when somebody says, generally, "You can't feed
22 bloody chicken to inmates. Would you eat that?" Then
23 sometimes they will say, "Oh, you're right," but that's
24 just the culture that's developed inside prisons, and
25 it -- I think a lot of everything that happens stems

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1 from that because if the -- the more you are around
2 inmates that do the things they do to one another, and
3 have to grapple with the blood and the yuk, in order to
4 survive you have to begin to see that -- we don't call
5 them by name, or that you have the convict names,
6 Goose Lips and Killer and Home Boy or their number, but
7 once you start calling them Johnny -- in fact a lot of
8 systems won't let you -- then it brings them a
9 little -- starts bringing them up to at least a basis
10 of humanity. But that's where it all comes from, I
11 think. I don't know which one came first, but that's
12 where it comes from, the whole prison culture comes
13 from that very thing.

14 MR. SESSIONS: Okay. Have we run out of hands?
15 Go right ahead, please.

16 MR. RYAN: I'm deeply troubled by the events that
17 go down, and obviously they were first line
18 supervisors, second line supervisors, sergeant,
19 lieutenant-type concepts there. And the supervision
20 level apparently failed to do what it was supposed to

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do.

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What are your recommendations regarding that group of folks and what expectations are, what proactive things can we do to ensure that preventive measures are taken so that these events do not happen?

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MR. COWLEY: Wardens -- in my opinion, wardens and supervisors have to be involved and held accountable for everything that goes on in that prison. I had a correction officer that was -- and I knew he was a correctional officer II and he wanted to be promoted to lieutenant, and I began to look at all the misconduct reports, or I looked at all the misconduct reports and I noticed that he was writing reports every day. So I called him in, I said, "What in the world are you doing?" And he said, "I want to be promoted to a lieutenant."

And I said, "What's that got to do with anything?" And he said, "Because I know that if I write up convicts that means I'm doing my job."

So again, I think the message -- what I've been told in California -- I mean it may be political rhetoric, I'm not sure, but Schwarzenegger said, "We're going to deal with the recidivism rate. I cannot handle a 70 percent recidivism rate in the state." And the director of corrections has got that word, and she is going to make some changes. She's determined.

And I think that -- I think as a profession we've kind of given up. Nobody really cares. We just thought, how can we make money off the system, you

25 know, with these, you know, private prison management

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1 funds.

2 So to answer your question, somebody higher up,
3 and if that comes down I hope to the taxpayers,
4 eventually have to say enough's enough, and corrections
5 can work. And now we've got the models to prove it,
6 where before perhaps we didn't. We do now. They can
7 work.

8 MR. SESSIONS: I'm not sure we've run out of
9 hands, but I think we've run out of time.

10 Mr. Cowley, Mr. Fine, Mr. Gennaco, you should have
11 no question about the significance of your testimony
12 and the help you've given to the Commission. I would
13 encourage you -- and I think co-chairman would
14 suggest -- that if there are additional thoughts that
15 you have and want to add to your testimony that you not
16 hesitate to do that in a format that's acceptable to
17 the chairman. E-mail is a wonderful thing, but reports
18 are maybe more appropriate.

19 The second thing is, I would say that if you have
20 websites that you want this Commission to take note of
21 and use that would allow communications with your
22 institutions, fine. But the Commission thanks you very
23 much for your testimony.

24 MR. GENNACO: Thank you.

25 MR. FINE: Thank you.

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1 MR. COWLEY: Thank you.
2 (There was a recess.)
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