

1 And AFSCME believes by implementing the above
2 recommendations public employers can create an
3 environment in which the offense of prison rape is
4 less frequently committed.

5 I thank you.

6 THE CHAIRMAN: Thank you very much.

7 Questions?

8 COMMISSIONER FELLNER: I actually have
9 two questions, one mine and one for Commissioner
10 Struckman-Johnson, who had to leave.

11 In your ten-point plans or your safe prison
12 plan and the work you have done, it wasn't entirely
13 clear to me whether they were focussed just on
14 inmate on inmate sexual assault, staff sexual
15 assault or violence in general. And the question I
16 had for you is, are facilities or systems that have
17 high rates of violence systems that probably will
18 have high rates of sexual violence as well?

19 I know in years past, this was certainly true
20 in Texas long before you were where you are now,
21 but I wonder if that is generally true. And if it
22 is generally true, what recommendations do you have

1 then for us, the commissioners? We are charged
2 with trying to come up with standards and effective
3 methods for dealing with sexual assault, but can we
4 do that if we're not looking at the broader
5 problems of overcrowding and the factors that cause
6 violence in general?

7 MR. WILKINSON: I'll, maybe, start out.
8 First of all, our system does not have a high rate
9 of violence, so I wouldn't know about that
10 correlation because I think the relative rate of
11 violence is reasonably low.

12 And the first part of your question about what
13 our ten-point plan in our case focuses on is
14 primarily on staff and prisoner sexual misconduct
15 and not on violence in general. We have other
16 systems in place to deal with violence in general.
17 In any case, we have reduced all of that to monthly
18 analyses of how that happens.

19 You heard some testimony this morning about
20 ASCA's Performance Base Measure System, what we
21 hope to do, and because the information is so
22 scattered around the country is to be able to

1 correlate levels of violence, levels of escape, and
2 other kinds of important statistical data between
3 jurisdictions, but not necessarily just between
4 states, but between institutions in one state. And
5 so these are all the kind of information that we're
6 trying to compile, collate and make sense of, and
7 then make some policy decisions regarding that
8 information that we get.

9 So, it's not a perfect system yet, but it's
10 well underway with a lot of help from the U.S.
11 Department of Justice.

12 MR. DRETKE: I would, I think, echo a
13 loft of that focus. It is important to pay
14 attention to the different types of facilities you
15 have, the types of offenders that are housed there,
16 their sizes and all of those things do seem to have
17 dynamics.

18 If you look at all 94 of our facilities,
19 there are different groupings that we can do. We
21 identical facilities, has the same custody and
22 classification of offenders. At our very large

1 facilities that house our maximum custody
2 offenders, those are where our highest rates come
3 from. Those are where we house offenders who are
4 maximum security offenders, offenders who have had
5 disciplinary problems within the system and so
6 forth. Plus, they're our biggest numbers. We have
7 well over 15 facilities that house well in excess
8 of 2,000, 3,000 offenders. And certainly that's
9 where some of our highest rates come from.

10 We too spend a lot of time with all of our
11 data to cross compare against like facilities to
12 see what's happening in different facilities, if
13 one indicator in a similar facility is at one point
14 of the scale versus where the average is, we spend
15 time finding out what's happening there, what's the
16 different dynamic.

17 And part of our safe prison program has been
18 to collect all of that data and to learn about it.
19 What's it telling us, what's it teaching us, and
20 then, subsequently, what are strategies both
21 focussed on our staff, focused on the facility,
22 focused on the leadership, focused on our offender

1 population, what are the things that we could do.
2 And so I think we can learn a tremendous amount of
3 things like that. I, though, agree too we counting
4 across jurisdictions and then comparing those
5 numbers is a very, very complex slope as you've
6 heard a number of us talk about.

7 All of you know the BGAS report. We, in
8 Texas, have had a very aggressive and open counting
9 system. We had mandatory reporting, and we've had
10 mandatory reporting for a number of years prior to
11 PREA, in fact, on sexual assaults. We report
12 front-end allegations, zero investigation, based on
13 allegation alone, and then kicks in all of our
14 investigative processes. So, and then when you get
15 into definitional terms it continues to be very
16 complex. So as we use our data, as we look at our
17 system, and as we try to make what are the
18 decisions that we can truly impact and create an
19 environment where an offender can live where sexual
20 assault is not a reality.

21 THE CHAIRMAN: Mr. Maupin, let me just
22 ask you a question, and I preference it by saying

1 I'm not antiunionized. I'm the son of a
2 Pennsylvania steel worker, so I know how unions
3 have done a lot of good in improving the work
4 environment for workers. But I've heard from some
5 directors, and I've heard, not in your state, from
6 some executive officers that unions have been an
7 impediment to the ability of correction officials
8 to improve the correctional system. I don't know
9 if that's true or not, but I've heard it, that in
10 reference to disciplinary actions, other aspects of
11 the prison environment, that unions have at least
12 to some degree in certain jurisdictions been an
13 impediment.

14 MR. MAUPIN: Well, we have differences of
15 opinion from time to time. And I remember in 1996
16 when the Department of Corrections in Illinois
17 allowed inmates in maximum security prisons to put
18 blankets inside their cells so that officers
19 walking down the unit could not see inside. They
20 would hang them inside their cell doors so we
21 couldn't see the inmates inside the cells. And we
22 said this is a health and safety violation. They

1 do not have an expectation of privacy. We think
2 you should take them down. They refused. We had a
3 dispute over that. We had to go to the legislature
4 and get legislation passed to force the department
5 to take down what they call the cell curtains
6 because actually a horrible rape and homicide
7 occurred in our correctional center behind those
8 very curtains while we were fighting this fight in
9 a cell. So we do have disputes on occasion with
10 employers about best practices. We think we were
11 right on that. And I think history has born us out
12 as an example. And I don't think that that is an
13 example of the union being impediment to best
14 practices. We advocate for best practices because
15 it's our members whose health and safety is on the
16 line when an employer engages in less than best
17 practices.

18 I just had a dietary worker at Jacksonville
19 Correctional Center three weeks ago in dietary
20 raped, beaten, strangled with an electrical cord
21 and left for dead by an inmate in a minimum
22 security prison because we had a dispute with

1 management that they should have had a kitchen
2 officer post man as a mandatory post. They think
3 we're an impediment for fighting for that post
4 because they have other priorities. I think
5 history will prove that that fight was right.
6 Those are two examples I think of.

7 With respect to employee discipline, most
8 union contracts say an employer can discipline for
9 just cause. There are cultural practices which
10 occur in some correctional environments where
11 things roll downhill to the little guy and he takes
12 the blame for things where he may have some
13 culpability, but there are others above him who are
14 heaping more on him than he deserves and are
15 escaping culpability themselves.

16 Through grievance procedures, we can make sure
17 that people get the commensurate and appropriate
18 level of discipline for misconduct and, at the same
19 time, innocent people don't get scapegoated. So I
20 have no apologies for ensuring that if people get
21 fired, it's because they should be fired. And there
22 are some people that should be fired and we do not

1 oppose that. And I think in my earlier remarks I
2 was pretty clear about some of that.

3 But, by the same token, having due process for
4 employees in the employment relationship is part of
5 building credibility with your employees that the
6 system is fair to them too.

7 COMMISSIONER SMITH: First, I want say
8 that there were things in the testimony of each of
9 you that I sort of marked and said that I really
10 wanted to go and follow up with you on, Director
11 Wilkinson, your information management system;
12 Professor Frasier, sort of this dialogue about
13 gender specific issues with regard to both
14 offenders and with regard to what's going on with
15 staff, the institutional character profile, and,
16 Director Maupin, your statement that as a union you
17 had a zero tolerance for staff sexual misconduct
18 with offenders. But what I want to do is I want to
19 sort of follow up the judge's comment some about
20 not necessarily just with unions, but I would like
21 you to respond from a union perspective, but across
22 the board.

1 I asked this question on the earlier panel and
2 Professor Frasier mentioned it, which is, okay, you
3 admit that these folk have no place in your union,
4 right?

5 MS. FRASIER: Um-hum.

6 COMMISSIONER SMITH: They don't have any
7 place being a correctional officer, but why is it
8 that we don't have policies in place where we can
9 keep up with that, where we can keep those folk
10 from going from Illinois to -- is Ohio next to
11 Illinois?

12 MS. FRASIER: No, one state in between.

13 COMMISSIONER SMITH: Okay. But you know
14 what I'm saying. I'm geographically challenged.
15 But what I'm saying is, you know, why don't we have
16 policies in place so that we can do that and I'm
17 going to, you know, follow this up. Give me some
18 suggestions.

19 I mean, for example, why shouldn't these be
20 registrable offenses because they aren't in every
21 state? Why shouldn't there be a data base where
22 they are founded complaints that's kept by a

1 neutral entity so that states from around the
2 country can call in and check in and find out if
3 somebody has this kind of stuff on their record
4 because then it would, you know, create at least a
5 flag.

6 MR. MAUPIN: I can't speak to any other
7 state, but in Illinois if someone engages in that
8 type of sexual misconduct and, if you check, the
9 frequency is very, very low with staff, very low,
10 the Department of Corrections will tell you it's a
11 highly uncommon experience. But when that happens,
12 they do not allow the employee to resign. They
13 discharge the employee and that discharge goes on
14 their record.

15 They will not accept the resignation just to
16 be done with the employee. That discharge is part
17 of their record. They can't get rehired and they
18 have a discharge on their record. It's not a clean
19 resignation where they agree to keep quiet about it
20 like I heard some of the prior testimony. They do
21 not permit that in those circumstances.

22 MR. WILKINSON: That's the same case in

1 Ohio. You know, we don't allow you to quit. You
2 know, we fire you, we prosecute you, we even flag
3 our personnel file that says you can no longer be
4 hired in the state government. And if anybody
5 does, you know, any kind of a decent background
6 check, that information is easily determined. So I
7 fault the agency who hires those people if they
8 can't find that information out.

9 MR. MAUPIN: Especially if they have a
10 conviction.

11 COMMISSIONER SMITH: But we've already
12 established that very few of these cases get
13 prosecuted.

14 MR. MAUPIN: Not in Illinois.

15 MR. WILKINSON: If they're prosecuted or
16 not, it's the same thing. We fired them. They
17 were separated unwillingly. And that information
18 is on their personnel file. If you call us, if you
19 email us, whatever it is, we'll get you that
20 information.

21 COMMISSIONER FELLNER: Can I jump in with
22 a question?

1 COMMISSIONER SMITH: I want to hear.

2 Margo?

3 MS. FRASIER: That's not the case
4 nationwide. I mean I commend them for the fact of
5 that sort of approach. And my approach as sheriff
6 was, no, you don't get to quit because I'm firing
7 you and, oh, by the way I am going to make sure.

8 And I remember one time an employee saying to
9 me, I'll never be able to get another job in
10 criminal justice. And I said, that will be the
11 whole idea. I really do want to put a big, you
12 know, whatever scar color letter you want on them,
13 but that's not the case certainly around the
14 nation, and particularly when you're talking about
15 it at the county level.

16 Often people do resign. In many states there
17 is no procedure. Like in Texas we have a reporting
18 process if someone is fired, but that's if they're
19 fired, not if you allow them to resign. You know,
20 not to start that management/union argument here,
21 but I often would have the folks from AFSCME come
22 in and say or the state equivalent, which is called

1 cleat (ph.) in Texas, come in and argue and say,
2 well, let them resign, don't send in that letter.
3 We want that part of the agreement. And I would
4 refuse to do it, but I know there were plenty of
5 agencies that did acquiesce to that kind of
6 pressure and they would not send anything into the
7 State Licensing Board and if they checked with the
8 State Licensing Board, it just showed that they
9 left that employment, and if they checked with the
10 agency, they were told that the person had
11 resigned, like I said in some cases, and they gave
12 them a favorable recommendation even though they,
13 in one case I know of, where the person had
14 admitted to actually having had sexual intercourse
15 with an inmate.

16 COMMISSIONER FELLNER: I wanted to follow
17 up because there has been a lot of discussion both
18 here and in prior hearings about how can you
19 balance the rights of the worker to be treated
20 fairly, the correctional officer, let's say, but
21 the necessity of management to be able to act
22 effectively and quickly to protect inmates,

1 particularly when maybe there are only allegations
2 where there's smoke, you can't necessarily prove
3 it, but you have concerns and yet maybe you have
4 contracts that somebody gets a post and you can't
5 move them. You have a situation like Commissioner
6 Dennehy mentioned where you have five people were
7 where they shouldn't have been, something happened
8 in that room, there was some kind of misconduct, if
9 only because of the code of silence, and yet
10 certainly in states like I think the govern's
11 report in Massachusetts, and certainly in
12 California, have talked about how the code of
13 silence impedes the ability of senior correctional
14 officers to take effective action.

15 So I know you are sympathetic to their need to
16 be able to get rid of bad apples and you also, of
17 course, want to protect the due process rights of
18 your members, but what do you see as the proper way
19 of handling the code of silence and the refusal of
20 some people to talk about what their fellows have
21 done and the difficulty it can be to have them
22 terminated for maintaining the code of silence and

1 should they be terminable if they keep the code of
2 silence?

3 MR. MAUPIN: I guess it's my perspective
4 that the issue of prison rape is not something that
5 even on a small iota of a percent has anything to
6 do with employee misconduct with respect to
7 frequency of sexual assaults and sexual misconduct
8 in prison. However, it seems to be the topic of a
9 lot of discussion here today. But, I think that
10 with respect to employee rights, I don't know of
11 any department that can't move somebody off a post
12 while they're being investigated. Happens all the
13 time.

14 There are instances where people are put on
15 administrative leave while they're being
16 investigated to get them out of a situation that
17 might not be good for them to be in, much less
18 might not be good for an inmate or a fellow
19 employee to be in. So I can't imagine any
20 circumstance where during an investigation that
21 management wouldn't have the right to assign
22 somebody to someplace to get them out of the way of

1 what management needs to find out with respect to
2 the investigation.

3 With respect to the discharge, I was in the
4 room and I heard Commissioner Dennehy. So it
5 sounds like the videotape showed people going
6 somewhere where they didn't belong, nobody knows
7 what happened and nobody knows who did what. And
8 is that dischargeable under due process? Probably
9 not as evidence by what an arbitrator suggested
10 when they heard the case. But, it was certainly
11 disciplinable.

12 But under the just cause standards of
13 discipline, you have to find a punishment that fits
14 the crime for the misconduct. I don't know how
15 senior these employees were. An arbitrator takes

17 record? If they've got 20 years with no prior
18 discipline, they're likely to be given more
19 consideration for reinstatement than if they're a
20 two-year employee that has some prior discipline.
21 So there are remaining questions that were not
22 brought before the commission here today on that

1 specific example that would have been relevant to
2 flesh out the rest of the details as to how the
3 decision was made by an independent third party who
4 didn't work for the union or the state, sat in
5 judgment on the facts and made a decision.

6 COMMISSIONER FELLNER: I'll let my fellow
7 commissioners proceed, but staff sexual abuse may
8 not have been measured as much or the efforts to
9 measure it have been not as much as inmate on
10 inmate rape, but it is a key and central part of
11 our mission and is, of course, a key and central
12 part of the mission of correctional administrators
13 and I just wanted to clarify that for you.

14 MR. MAUPIN: No question.

15 COMMISSIONER NOLAN: First of all, an
16 amusing, but frustrating anecdote about training.
17 I got a call from John Thompson who heads up Kairos
18 ministries, which I think most of you are familiar
19 with, just tremendous work trying to heal the
20 families of the incarcerated. And he was in a
21 panic because the Alabama Department of Corrections
22 had said because of the Prison Rape Elimination

1 Act, none of their volunteers were certified any
2 more until they went through new training as
3 required by the Prison Rape Elimination Act, also
4 even after they went through that training, so they
5 had to cancel all the Kairos activities.

6 Even after they went through that, the Prison
7 Rape Elimination Act prohibited them from starting
8 and ending their sessions with their traditional
9 hug. And just so you know, you guys are the good
10 guys. You're trying to implement it, but there are
11 some folks out there that are severely
12 misinterpreting it. And part of, I think, our job
13 and yours is to spread the word that if a warden
14 doesn't want Kairos to come in, say it, but don't
15 use PREA as the excuse for it. And if he doesn't
16 want them hugging the inmates, then have a policy
17 that says that, but don't blame that on PREA
18 either.

19 But more question is for you, Director Maupin.
20 You said you have zero tolerance of this. Have
21 there ever been any officers in the Illinois
22 Department of Corrections that you represented that

1 were accused of staff sexual misconduct where you
2 have declined to defend them as they tried to keep
3 their job?

4 MR. MAUPIN: Yes.

5 COMMISSIONER NOLAN: Good. I compliment
6 you for that. And given the situation that
7 Commissioner Dennehy said, given that they were
8 where they weren't supposed to be, you know, that's
9 clear, how would you have handled that defense?

11 concern about folks bouncing from department to
12 department, trying to protect the due process
13 rights of correctional officers, what would be
14 appropriate to alert other departments that there
15 is a problem?

16 MR. MAUPIN: The problem with respect to
17 someone who is terminated for inappropriate sexual
18 conduct with an inmate?

19 COMMISSIONER NOLAN: Um-hum.

20 MR. MAUPIN: Well, first of all, in
21 Illinois, you'd be prosecuted for that if that's
22 what you were terminated for. The department would

1 not permit you to resign. And any due diligence
2 from a perspective employer would find out that you
3 were fired and you would be prosecuted and there
4 would be a record of the prosecution, whether there
5 was a conviction or not.

6 COMMISSIONER NOLAN: But our evidence at
7 other hearings have been a lot of times prosecutors
8 won't prosecute even if the system wants to.

9 MR. MAUPIN: No. Well, yeah, I mean that
10 is true. The biggest problem we have with
11 prosecutors is not that. It's that they won't
12 prosecute staff assaulters. You know, when an
13 inmate wales the tar (ph.) out of one of my
14 officers, and the prosecutor says, well, he's
15 already in prison, no sense prosecuting him for
16 that assault, and it just makes our life dangerous.

17 But, no, we don't run into much reticence to
18 pursue cases like that because they're not that
19 common. You know, we don't have that in common.

20 I think with respect to the circumstance you
21 raise in Massachusetts, there's just too many
22 unanswered questions with respect to the facts. I

1 think an arbitrator agreed discipline was
2 appropriate by sustaining a level of discipline,
3 but that the measure of discipline was
4 inappropriately harsh. Could be because they were
5 long-term employees with no prior discipline, could
6 be because there were unanswered questions with
7 respect to what actually happened. It's
8 speculative to guess. In fact, you ought to ask
9 for the provision of that arbitration decision to
10 read the entire decision and elucidate the rest of
11 the facts. That might be more helpful than my
12 speculation.

13 COMMISSIONER NOLAN: That's a good point.
14 Thank you.

15 COMMISSIONER SMITH: I just want to be
16 clear. Did anybody sort of respond in terms of
17 what specific strategies we could have to deal with
18 the bouncing of people, anything that would be
19 acceptable? I'm still looking for that because
20 I've asked it in two panels.

21 MS. FRASIER: I think there needs to be a
22 requirement of reporting that that is the basis for

1 the termination or even that the person resign
2 during the pendency of an investigation. I think
3 that you'll have some difficulty, particularly if
4 there was not a full due process sort of hearing to
5 make a rule or get anybody to say that people
6 absolutely cannot be hired again. Because even
7 though somebody was fired, that doesn't necessarily
8 mean that their certificate becomes voided, but
9 some sort of mandatory reporting. Almost every
10 state now has some sort of state licensing agency
11 post. In ours, it's Texas Commission on Law
12 Enforcement Officers Standards and Education,
13 although I don't believe covers Director Dretke's
14 folks, but someplace where people can actually be
15 able to look to one central place to be able to
16 find out whether or not this person has left their
17 prior employment under less than favorable
18 conditions.

19 Now, sometimes I will tell you that there are
20 people who say, well, I want to be able to make my
21 own choices to whether or not I give that person a
22 chance. My feeling is well, that's kind of

1 obviously a judgment call, but at least then you'll
2 have knowingly walked into that lion's den. If you
3 choose to do so, so be it.

4 MR. DRETKE: Also a follow-up comment as
5 we try to deal with that is we do backgrounds. One
6 of the questions we ask is irregardless of how this
7 employee left is, because often a reporting agency
8 will only say this person worked from this date to
9 this date, we ask the question to get fairly good
10 compliance, is this person eligible for rehire.
11 And that's a yes or a no. If there's a no, then we
12 know there's a problem.

13 Those cases where an employee resigns prior to
14 a termination or some of those in between, we don't
15 have enough, we know there's something, an
16 investigation is happening, we very much in our
17 record have that this person resigned with a
18 pending investigation or disciplinary. And so that
19 even though there might not be a termination, we
20 have not lost fact of the issue and that person
21 would not be eligible for rehire. And so, I mean
22 those are some techniques.

1 And, you know, with our state it's less than
2 an issue. Someone coming from out of the state, I
3 think the professor is right, it's more of an issue
4 of one of our people leaving and we being able to
5 accurately relay to the county if questioned. And
6 we do have a big issue with people from out of
7 state coming in, but we have a big issue of
8 tracking our own employees who leave us around the
9 state. And so we've developed some pretty strong
10 systems that irregardless of how an employee
11 leaves, there's enough flags that we know to dig
12 further.

13 THE CHAIRMAN: Questions from this side
14 of the table?

15 COMMISSIONER KANEB: Director Dretke, to
16 get away from the subjects that we seem to have
17 fastened on here, as I understand it your state has
18 undertaken a bold and very public examination of
19 the problem that this commission has been created
20 to try to help solve. And, first of all, you have
21 our commendation for doing that.

22 MR. DRETKE: Thank you.

1 COMMISSIONER KANEB: In looking at things
2 with a new light or more light on what's actually
3 been happening, are you finding that you're turning
4 up statistics that indicate things are worse than
5 they were last year or three years ago or five
6 years ago and the reason is probably that you're
7 actually getting more accurate numbers out rather
8 than what you were putting out before, but you're
9 getting blamed for doing a bad job? I've been
10 wondering about that.

11 MR. DRETKE: I appreciate your
12 recognition of all of those issues that surround
13 our dynamics. I first begin and hesitate to say
14 that we still yet know what all the issues are.
15 And we've been aggressively counting sexual
16 assaults. We have a central reporting system where
17 a whole number of incidents that may occur on a
18 unit. We have mandatory reporting within three
19 hours. Every single incident reported is required
20 to have a follow-up report from the unit.

21 Depending on the issue, everything, especially
22 our sexual assaults, every single one is referred

1 to the office of the Inspector General, who is our
2 law enforcement wing. We have sane nurses. We
3 have a sane nurse program. We have victim
4 representatives, chaplaincy or correctional
5 counselors, case managers, psychologists, that are
6 all trained as victim representatives. So we have
7 a strong program in place.

8 But the other thing we do is we have posters.
9 And, again, I'm going to thank Director Wilkinson.
10 We have posters all over our prison. You can show
11 up at any single prison unannounced, go into
12 housing areas. You will see big posters, report
13 sexual assault. We talk about it. It's in our
14 inmate newspaper. And so we get a lot of
15 allegations, a lot of reports. It's a buzz word.
16 Offenders know they get a lot of attention. So,
17 you have dynamic of the potential manipulation for
18 cell moves, for unit transfers, all the way to
19 those things that are true and real and we can't
20 tolerate.

21 Now, on the other side of that, though, when
22 we report into a BIAS system, that's a number of

1 allegations and every state counts those
2 differently, we stand by ourself and we don't back
3 up from that. We've had a lot of discussions and
4 we're going to continue to stay where we are and do
5 what we do so that we can learn the things that we
6 need to to make a difference.

7 And to follow up a little bit on the question
8 with our numbers, and as we performance indicators,
9 you know, on this I know Commissioner Horn was in
10 here earlier. I actually listened to a
11 presentation by his deputy some years ago where
12 they have a system in New York City where they have
13 their wardens meet with the commissioner and go
14 through all of their performance indicators.
15 That's something that we do. We want our wardens
16 to understand what their numbers are, what they can
17 do to impact those numbers, what's good that we can
18 share, what's bad, where do our focuses need to be.

19 The other thing is because of the way we
20 count, we count allegations, but we learn things
21 from that. We can statistically break those apart.
22 Very quickly we learn cell blocks and inside cells.

1 That's where our greater number of allegations
2 occur without yet making a determination how many
3 were real, how many were manipulative, how many
4 were sustained.

5 But when we break them all down, in our
6 classification plan for a number of years we have a
7 process that we house offenders within their
8 classification in custody in the next available
9 cell. That was our policy and process that we set
10 up to fully integrate our system some years ago.
11 So, it's a next available cell based on
12 classification custody.

13 We found that size made a difference. Over
14 30-pound difference in weight, the data seemed to
15 be suggesting that there could be a victim predator
16 issue there. We saw age issues start to immerge in
17 our allegation. So now we use the word "not next
18 available cell," we use the word "next available
19 appropriate sell." Still race is never an
20 indicator, but age, height. And I think I used
21 age. Height was the other indicator that popped up
22 that was kind of interesting, height and weight

1 indicators, as we use our celling process. And so
2 we're learning things about that.

3 Now, every time we print an article in our
4 Offender Newspaper, guess what goes up that month?
5 Allegations do. When we put new posters out,
6 allegations go up. And so we can look at our
7 allegation numbers and we can tell you exactly,
8 based on some of those number movements, what we
9 did that month to better educate our population.

10 I'm anticipating later this year when our peer
11 education program really gets active, we'll see
12 some more dynamics like that. We've set up systems
13 with patrol recognizing that when an offender is
14 inside, there may be a fear of reporting. So when
15 he goes outside, now our parole officers are part
16 of this. They report back into us so we can still
17 capture that information and, more importantly,
18 appropriately respond.

19 And so we're continuing to move forward and
20 continuing to learn. And rather than spend a lot
21 of time debating the number issues, what we're
22 doing is using PREA and our Safe Prison Program as

1 an opportunity to focus on our environment and
2 culture.

3 And you've heard several commissioners and
4 directors and jail administrators say that even one
5 is too many. And that's our approach. Let's use
6 this as a positive opportunity to impact our
7 environment.

8 COMMISSIONER KANEB: Well, thank you.
9 You seem to be, or at least I conclude from
10 listening to you, that you seem to be overcoming
11 what we have understood to be a huge impediment to
12 making progress, which is, A, the fear of
13 retaliation preventing inmates from reporting force
14 sex or attempted force sex, or a system that really
15 doesn't take reports seriously and everybody knows
16 it, so they don't bother. You seem to have
17 overcome both of those. Am I assuming too much?

18 MR. DRETKE: I never like to be
19 presumptuous, but I feel like we are making some
20 important inroads into some those specific
21 dynamics.

22 COMMISSIONER KANEB: Well, this is very,

1 very interesting to me. I hope I won't get in
2 trouble by saying that we are very seriously
3 considering having a hearing in the future in the
4 great state of Texas and we'd like to talk to you
5 in the meantime, perhaps.

6 MR. DRETKE: Yes. And we would welcome
7 you.

8 COMMISSIONER NOLAN: Thank you.

9 COMMISSIONER AIKEN: This is a general
10 question. I've heard many times before today, as
11 well as today, the issue of zero tolerance. One
12 incident is one incident too many. What's the
13 impact of sexual intimidation, sexual violence,
14 within a correctional environment? What is that
15 impact upon recruiting, retaining, and what is the
16 impact upon the culture of institution or system or
17 maybe should I add not just a validated incident,
18 but the perception of an incident? What is that
19 impact? I mean what is the issue? When you say
20 "one is too many," what is that impact as a person
21 or persons running systems and institutions, as
22 well as those individuals that represent the

1 employees that work within those environments?

2 MR. WILKINSON: I'm not totally sure what
3 you mean by "impact." I will say that it's not
4 just sexual assault where we'll say zero tolerance.
5 We'll say that about substance abuse inside of
6 their institutions. We'll say it about, you know,
7 the introduction of any type of contraband inside
8 our institutions. So even though we say it, it's a
9 phraseology any more.

10 Our institutions aren't going to be devastated
11 if there is an incident such as a prison assault,
12 because we have to continue our business. But we
13 do, you know, have debriefings on that. We do
14 analyze what's happening. We do postmortems,
15 so-to-speak, on what happened so that we can
16 determine whether or not there is a more systemic
17 problem than just that one particular incident.

18 If we looked at it as one isolated incident
19 without doing a proper analyses, then we're going
20 to be doing ourselves an injustice, and we're going
21 to look pretty stupid, quite frankly, if a similar
22 type of situation happened in the near future. So

1 we try to understand not just what happened at that
2 particular point in time. We want to know why it
3 happened. We want to know if there is a problem
4 bigger than just the one that we're attempting to
5 investigate and/or prosecute.

6 While I have the microphone, let me make one
7 editorial comment. I mentioned earlier that I
8 thought a lot of this is a social justice problem.
9 And let me tell you a little bit more about what I
10 mean about that.

11 Many of our prisons are overcrowded. It has
12 nothing to do with anything that we can control.
13 To me it's a travesty when I have 7,000 people in
14 our prison system who are in prison for truly
15 nonviolent offenses. It makes my job more
16 difficult when these people could be punished in
17 the community with other kinds of nonprison
18
19 correctional officers, and we're represented by
20 AFSCME as well when we can concentrate on those
21 people who truly need to be behind bars and truly
22 need to be supervised with some level of intensity.

1 It also makes it more difficult for us to
2 detect and supervise prisoners when our
3 institutions or crowded. So if all we're talking
4 about is a prison rape sexual assault incident, and
5 not looking at the bigger picture of what's
6 creating that environment for sexual assaults to
7 take place, I think we're not doing all that we
8 can.

9 COMMISSIONER AIKEN: Maybe I didn't ask
10 the question correctly. I am saying or asking what
11 is the impact upon the inmate, what is the impact
12 upon the employee, what is the impact upon the
13 prison system, what's the impact upon the potential
14 employee in relationship to sexual intimidation,
15 perception of sexual rape even if it hasn't
16 occurred or even one incident? And I certainly
17 agree with you about the predator behaviors or
18 contraband as well as the other issues that are
19 involved. And I'm not just talking about inmate on
20 inmate sexual misconduct, but staff on staff, staff
21 on inmate, and all of the above combinations.
22 That's the question. What is the descriptive

1 impact of those incidents or even the perceptions
2 of those incidents occurring within a correctional
3 environment?

4 MR. WILKINSON: Jim, I think it depends
5 on all the various and sundry circumstances that
6 surround that issue. There can be some that are
7 highly publicized, you know, the Speck incident in
8 Illinois, you know, the Gagan incident in
9 Massachusetts. But, you know, some incidents don't
10 get the kind of scrutiny that other incidents might
11 be, so; therefore, the impact is going to be
12 different.

13 Included, for example, in our 10-point plan is
14 a victim's assistance. You know, if we think that
15 a person has been assaulted, we'll do a victim
16 impact assessment of that person. We'll determine
17 whether that person needs to still be at that
18 institution or somewhere else. We will immediately
19 do like Mark said, oftentimes if we suspect a staff
20 person involved, put that person on administrative
21 leave so that person does not have any additional
22 contact until we understand exactly what has taken

1 place. So, there are a lot of different impacts
2 based upon the circumstances and the facts of that
3 particular investigation, and they can be
4 different.

5 A high profile one can be devastating to the
6 leadership of an institution, for example. But if
7 it's not a high profile one, then we go about our
8 business and just do the normal assessment.

9 COMMISSIONER AIKEN: And, Reggie, I
10 understand what you're saying, and I'll just try
11 one more time. I'm an inmate that has a violent
12 history that had nothing to do with it, in an
13 institution. What is the impact upon me? What
14 behavior patterns do I demonstrate or not
15 demonstrate as a result of these type of incidents?

16 MR. WILKINSON: I will let my General
17 Counsel answer that.

18 COMMISSIONER AIKEN: Well, you've been a
19 good secretary. I used to say the same thing.

20 MS. FRASIER: I think he does a couple of
21 things, Commissioner. One is the fact that
22 whenever, particularly -- and there are different

1 issues. I mean contraband and all those sort of
2 things are very serious, but sexual assault is
3 something that if someone is able to be violated
4 behind the walls, then what that says to me as an
5 inmate, no matter how big a mean son of a gun I
6 might be, is that I'm not safe and that there is a
7 lack of feeling of safety in the institution. And
8 so I think often that there's a link between sexual
9 assault and other violence in the institution that
10 I best do some things to protect myself and that I
11 best not associate too closely with the corrections
12 staff and believe that they're there to try to help
13 me in all these sorts of things.

14 And also I think one of the other things that
15 is self-perpetuating is what happens is, and you
16 see it, I mean the jokes on television about, oh,
17 you're going to go to prison and say hello to Big
18 Bubba on me, and these sorts of things. What that
19 says to an inmate is as soon as I hit that door,
20 before I even actually have any experience that
21 should lead me to believe this, just by what I see
22 in the media, tells me I better go find me the

1 biggest sun of a gun and do something that I don't
2 want to do, but, you know, you know protective
3 pairing. You know, I better go find me somebody to
4 be my protector.

5 When you're talking about staff sexual
6 misconduct, the only thing that probably undermines
7 professionalism more is when a staff member is
8 probably involved in an escape, you know,
9 facilitated escape. That's the only thing I can
10 think of in my years of experience that undermines
11 professionalism more, the fact that somebody is
12 actually misusing their position of power and trust
13 to sexually assault whether, you know, it's a
14 romantic liaison or outright, you know, aggravated
15 sexual assault, whatever you may want to call it.
16 I think it undermines professionalism and it makes
17 it more difficult to be able to recruit people to
18 come to work in an institution because I don't want
19 to work next to the person that instead of watching
20 my back is looking at the inmate's backside and
21 having thoughts. I mean I want to work with other
22 professionals. So I do think it undermines the

1 efforts.

2 COMMISSIONER AIKEN: Thanks.

3 MR. MAUPIN: And if I may, sir, also,
4 when we had the rape I spoke of earlier, three
5 weeks ago, of the dietary employee, we learned a
6 few things, the department learned a few things
7 from. One is that they should rotate inmate job
8 assignments more frequently so that an inmate
9 doesn't get to track exactly what happens for a
11 Watch everyone's patterns made it safer. And also
12 we learned that the inmate that was the assaulter
13 in this instance was doing time for home invasion,
14 which is not a sex offense, but it turns out he was
15 pled down from a sex offense to home invasion,
16 which was unaware to us, and unaware to the
17 Department of Corrections when they classified him
18 and made their cell assignments.

19 So, resolution of that with the local
20 prosecutors is something that we're going to have
21 to figure out because the department is now working
22 on reviewing all the job assignments, looking at

1 anyone that has a marginal sex offense to make sure
2 they don't have a job assignment in like an office
3 area or outside the security fence and things like
4 that. But these are things that were not
5 communicated from the County of Prosecution to the
6 Department of Corrections when they made the
7 classification of the inmate.

8 And I have to echo what Sheriff Frasier said
9 about undermining security of a facility. I will
10 give you one example that I know intimately of a
11 staff who became involved with an inmate where she
12 was a relatively new hire and the inmate just kept
13 moving closer by degree to break down the
14 familiarity, you know, just a little at a time.
15 That old joke, you eat an elephant one bite at a
16 time. They don't try to go overboard all at once.
17 They just one day, accidentally, call you by your
18 first name. And if you don't stop them, then they
19 start calling you by your first name all the time.
20 And then pretty soon you look sad, what's happening
21 at home, and you're doing things you shouldn't be
22 doing with that inmate when you start having that

1 conversation.

2 Now, why this was a threat to security
3 independent of professional practice was she was
4 using another inmate to run notes to him. And then
5 that other inmate starting blackmailing her about
6 wanting her to assist in trafficking into the
7 facility. They needed to fire her. She put
8 everybody in that facility at risk by that
9 inappropriate conduct, and she was blackmailable by
10 the inmate she was using to run the notes. We
11 didn't defend her. We said that she needed to go
12 because there's 400 other people at that prison
13 that could end up with a shank in their back if she
14 collaborated in this enterprise that they were
15 seeking.

16 So, those are some of the impacts on the
17 workforce and some of the lessons learned from the
18 sexual assault we just are dealing with from three
19 weeks ago.

20 THE CHAIRMAN: From the example you gave
21 where you said information about the actual charge
22 that the person was charged with, not being

1 disseminated, was there a presentence investigation
2 report done in that case?

3 MR. MAUPIN: This person has been in the
4 custody of the Department of Corrections for ten
5 years, so it is not a new inmate. They were doing
6 a 15-year stretch for home invasion. It wasn't the
7 first offense for the inmate. So this is still
8 unfolding right now, and all of the faction are not
9 before us, but, preliminarily, the department has
10 said they were unaware that this was part of his
11 background.

12 COMMISSIONER PURYEAR: My fellow
13 commissioners will be delighted to know that we
14 won't engage in debate over privatization today,
15 but we'll save that for another forum.

16 MR. MAUPIN: I hope I'm invited.

17 COMMISSIONER PURYEAR: I did have a
18 question, though, following up on Brenda's question
19 with the first panel about reporting staff sexual
20 misconduct. I applaud you for saying that AFSCME's
21 position is that if you engage in staff sexual
22 misconduct, you should be terminated, that ought to

1 be the end of the discussion. Of course, the devil
2 is sometimes in the details about what actually
3 happens in the Sheriff's office or the
4 Commissioner's office when the termination is being
5 discussed.

6 MR. MAUPIN: And whether the accusation
7 is true.

8 COMMISSIONER PURYEAR: Absolutely. But
9 given the seriousness of that sort of conduct which
10 we just discussed, if a correctional officer is
11 aware of staff sexual misconduct, I think
12 Commissioner Horn said there ought to be a law, not
13 a regulation or a standard, that says, if you are
14 aware of that, you have a duty to report it. If a
15 correctional officer or any employee fails to
16 report staff sexual misconduct, should that be just
17 cause for termination of that employee?

18 MR. MAUPIN: Well, in Illinois it is.

19 THE CHAIRMAN: Do you agree with that?

20 MR. MAUPIN: Well, arbitrators have
21 upheld it and that's the law of the state, that if
22 you have knowledge that somebody is engaging in an

1 activity like that, that puts everyone at risk,
2 personally, I do agree with it, but it's irrelevant
3 whether I agree with it, that the arbitrators have
4 determined that that's just cause for termination
5 because you're concealing information that puts the
6 entire facility and hundreds of other people at
7 risk.

8 COMMISSIONER FELLNER: We'd like to know
9 --

10 MR. MAUPIN: I agree, but I don't think
11 it's relevant. It's irrelevant that it's
12 established case law through arbitration, that that
13 is appropriate punishment.

14 COMMISSIONER FELLNER: We are going to be
15 trying to come up with standards and
16 recommendations, so I think what the judge would
17 like to know, what we'd like to know is do you
18 think that would be a good recommendation that we
19 should be making, that there should be a valid law
20 and I think Marty Horn is passing the buck to the
21 legislature, which is harder to get the right
22 decisions than maybe other groups. But should

1 there be some kind of known sanction for failure to
2 come forward when you have knowledge of staff
3 sexual misconduct? Do you think that's a
4 recommendation?

5 MR. MAUPIN: Well, here's what I think
6 you should recommend. I think you should recommend
7 and pay close attention to my earlier
8 recommendations. You extend full collective
9 bargaining rights to security employees. You have
10 a just cause language in the contract that allows
11 an employee to terminate for just cause. And it's
12 well-settled case law that that's a dischargeable
13 offense for just cause.

14 You should also pay more attention to driving
15 up the wages in this industry that collective
16 bargaining will do to reduce the turnover so you
17 retain and retain more quality staff. Almost
18 everyone we have walking in the door now has got a
19 law enforcement degree because it's a profession
20 because of our success in doing that. And while we
21 are focused on that side of staff issues, the other
22 side of staff issues extensively here today, I

1 don't want to lose focus of the fact that if you
2 pay somebody \$48,000 a year to be a correctional
3 officer, you're going to get a skilled professional
4 committed to the profession that's not going to
5 engage in the kind of things that somebody making
6 \$7 an hour is going to engage in because they're
7 going to want to keep that job. They're going to
8 want to make a career out of it, and they're going
9 to want to engage in best practices in the
10 profession.

11 In the instances we've discussed here today,
12 we have no dispute that people like that don't
13 belong working in the field, but you won't fix that
14 until you raise up to wages and benefits to recruit
15 and retain the kind of people we've been successful
16 at recruiting and retaining in Illinois.

17 MR. WILKINSON: And the issue shouldn't
18 be just failure to report a sexual assault, it's a
19 felony. You know, I don't care what kind of a
20 felony it is, it ought to be reported. Now if you
21 want to say including sexual assault, that's fine.
22 But I wouldn't stop at the fact that a felony was

1 not reported to the proper authorities.

2 COMMISSIONER SMITH: Judge, can I ask
3 just one question?

4 THE CHAIRMAN: Yes.

5 COMMISSIONER SMITH: One of the things
6 that I've heard, and, Director Maupin, when we have
7 that conversation about union issues, we can talk
8 about sort of where the 48,000 or 7,000 makes a
9 difference and sort of the other stuff, but one of
10 the things that I really want to follow up on
11 because I think that I'm seeing opportunity here.
12 I've heard across the board that one of the things
13 that would really make a difference on this issue
14 is overcrowding, right? And I wondered whether the
15 professional organizations that are represented
16 here had taken that pitch on the road to the Hill,
17 okay, whether they had said that in their state
18 legislatures, whether you've said that in
19 Washington, because I really do believe that your
20 visibly coming out and saying that would make a
21 true difference in some of these sentencing
22 policies, which you seem to think -- not what you

1 seem to think, but which tie your hands and which
2 have an impact on those environmental factors. And
3 so I would really encourage you to take that on the
4 road and let that be known in places where it can
5 truly make a difference. I mean we can certainly

7 but it's very different to have Gwenn Shun (ph,) who is the head of ACA saying that, you know, in
8 congressional bodies when we're looking at our
9 sentencing policies.
10

11 MR. MAUPIN: If I may, we have a piece of
12 legislation that's moved through the senate, it's
13 going to the house and the Illinois General
14 Assembly, that fixes staff to inmate ratios and
15 says that when it gets to a certain level, you
16 either have to hire more staff or you have to
17 release inmates to get it down to that level. So,

19 sufficient staff to provide security in the
20 facilities. And if you're not willing to fund it,
21 then you have to start moving some people out to
22 get the population down to what is an acceptably

1 manageable level. And it passed our senate 54 to
2 2, very bipartisan support, and that's in the House
3 now.

4 THE CHAIRMAN: I don't disagree with the
5 population that overcrowding obviously contributes
6 to a lot of the problems that exist in prison life.
7 It's a delicate political issue that we have to
8 deal with, obviously, because politicians don't
9 want to be perceived as being soft on crime. And
10 if we make a recommendation where we are perceived
11 as following in that camp, it may shoot down
12 everything else that we seek to try and do. And I
13 don't disagree with what we say, but it's going to
14 be a delicate issue that we're going to have to
15 deal with.

16 MS. FRASIER: Well, I think overcrowding
17 is an issue. The other part of it, I think, that
18 often is an issue is the age of the facilities and
19 the design of the facilities.

20 In Texas we haven't been a state as long as
21 the great Commonwealth of Massachusetts, so we
22 can't, you know, boast to being back to the 1600s,

1 but we've got, you know, institutions that are 150
2 years old that he is forced to still use when, you
3 know, more inmates come. But, in the same way it
4 is a very difficult issue.

5 I mean I think it is appropriate to say that
6 overcrowding is an issue, understaff is an issue,
7 the design of the facilities are issues. Then the
8 question is left to the state legislatures or
9 county commissioners as to how do you deal with
10 that? You know, they get to make that tough
11 choice, but I do think from a public policy
12 standpoint it's their choice to make.

13 MR. WILKINSON: And, Judge, I appreciate
14 your comment, and I absolutely agree with you, but
15 I think we're at a point in time in Congress where
16 they're listening to us about that. You have the
17 Second Chance Act that's dealing with reentry. And
18 one of the purposes of that act is to prevent
19 people from coming back to prison. That's managing
20 overcrowding or population control in my state.

21 We're talking about now, for the first time,
22 on the Hill, issues like Mentally Ill Offender Act

1 where we're trying to prevent, you know, persons
2 from reoffending because of their mental illness by
3 seeking treatment for those persons. So think we
4 have a venue, you know, now that is different than
5 what we've had in Washington for many, many years.
6 And, you know, I think it needs to be a
7 multi-frontal attack, not just from Gwenn Shun, but
8 from the commission, from your Dues Commission and
9 whatever other commission you want to think about.
10 We need to start saying some things that we haven't
11 said in the past.

12 THE CHAIRMAN: I hope you're right, but I
13 know there's also some proposals that they would
14 make the sentencing guideline bottom number
15 mandatory.

16 MR. WILKINSON: Sure.

17 THE CHAIRMAN: Thank you. Excellent
18 panel. What you've said, again, will be very
19 helpful to us, and if you ever have any other
20 input, please let us hear from you. Thank you.

21 We'll take a recess until 3:30.

22 (Brief Recess.)