

1 employee misconduct. This will enable our
2 administrators to analyze incidents and develop
3 more effective strategies to prevent it, post
4 analysis, increased use of video surveillance and
5 procedural changes.

6 The Massachusetts Department of Corrections'
7 commitment to PREA and to improving investigative
8 processes is firm. As the PREA manager and
9 Steering Committee lead the effort to implement the
10 plan and the investigations work group continues to
11 improve the quality of the department's internal
12 processes, we're well on our way to achieving the
13 goal set out by this extremely important
14 legislation. Thank you.

15 THE CHAIRMAN: Thank you, and thank all
16 of you for your testimony. I'm sure all of us will
17 have some questions for you and I'm sure that after
18 we leave here, we'll think about additional
19 questions and we would hope that you would be
20 responsive to those questions when we submit them
21 to you, so I hope you will respond.

22 One of the things that we heard, which I

1 thought was profound, and we've heard this before
2 from the first two witnesses on the first panel,
3 was the concern about reporting incidents of sexual
4 assault internally. In both of them, and I've
5 heard this from others, feel that there should be
6 some external way in which those reports can be
7 made. Do any of you have such a system and what do
8 you think about that?

9 MR. SPRENKLE: I would just like to
10 mention in Pennsylvania we have a relationship with
11 our local rape crisis centers and, in fact, we
12 provide literature to all of our inmates in terms
13 of how to contact them for a confidential
14 consultation.

15 MS. BISSONETTE: In the Massachusetts
16 system we do have a sexual assault hotline, which
17 would ring to our central office Internal Affairs
18 unit. However, it's my understanding, and in my
19 institution specifically, that the women generally
20 come forward to a number of the clinical staff,
21 that the line, although it's posted in every
22 housing unit provided in the inmate orientation

1 manual, that the inmates feel compelled and safe to
2 report it to their clinician.

3 MS. CARUSO: We require all allegations
4 of sexual misconduct to be reported to our Internal
5 Affairs unit, which is in central office not
6 affiliated with any facility. And, in fact, the
7 people who work in that unit do not come from
8 within our system. They are primarily people who
9 are former law enforcement, so they do not have
10 relationships with existing staff. Some cases are
11 actually referred to outside agencies like the
12 state police for investigation.

13 I will share with you, though, the biggest
14 frustration I have in dealing with these issues of
15 report. It's not the issue of not reporting, but
16 it's the issue of not cooperating. When we have
17 cases where we believe a staff is involved in
18 sexual misconduct with a prisoner, we have, on a
19 number of occasions, had the prisoner deny the
20 behavior, refuse to cooperate, obstruct the
21 investigation. We've proceeded. We've even
22 discharged employees for this. We are rarely

1 successful in upholding those when they go through
2 the administrative process because of the
3 statements that the prisoner has made and this
4 adamant denial that it happened. We can't,
5 obviously, get prosecution. And it's very
6 frustrating when the end result of this is to see
7 that prisoner's name at the top of a lawsuit
8 alleging they were the victim of sexual assault in
9 prison. That is a problem that we would love to
10 find a way to adequately address.

11 MR. WALL: We, like others, have multiple
12 channels of reporting within the agency outside the
13 institutions, but beyond that we have, as do many
14 departments, a telephone calling system which is
15 monitored, but there are exceptions. One exception
16 is that any phone call made to our investigative
17 units is not monitored, not recorded, and can be
18 anonymous. Any phone call to the Rhode Island
19 State Police is not monitored, not recorded. And
20 similarly, we treat mail to the American Civil
21 Liberties Union as privileged mail, meaning that it
22 cannot be read or examined. Those channels do

1 provide offenders with opportunities to get in
2 touch with individuals not connected to our system.

3 Finally, many of the reports we receive, be
4 it inmate on inmate rape or staff on inmate sexual
5 assault, come not from within the prison, not from
6 the victim, not even from other inmates, they come
7 from the outside. Family members are often the
8 people to whom inmates confide at visits, for
9 example. They will come forward and tell us.

10 MR. REES: We have a similar telephone
11 system and then the normal investigatory process,
12 but even when the allegations are initially made
13 that come from outside, and they do, ultimately the
14 incident and the allegation is going to have to be
15 investigated within the institution, within the
16 agency. There's no way to overcome that. And
17 while I, you know, realize there is a reluctance
18 and a concern about how we are going to protect or,
19 you know, is there going to be retaliation.

20 The way in which we can protect is either
21 through transfer or segregation. And a lot of
22 times, folk don't want to be transferred and they

1 sure don't want to go into a segregated status, yet
2 those are the two options that we have to protect.
3 So the issue of retaliation, I think everyone has a
4 zero tolerance position for that and we deal with
5 it if it comes forward. But there has to be the
6 communication and there has to be follow through
7 from the point of accusation and then the changing
8 of the accusation as to whether it was consensual
9 or whether it was nonconsensual.

10 MR. DIGNAM: As I said in my testimony,
11 all allegations of sexual abuse are referred first
12 to the Department of Justice Office of the
13 Inspector General, well outside our agency,
14 obviously. They're our oversight agency. But in
15 addition, all inmates, in fact any complainant has
16 the capacity to send allegations directly to the
17 Department of Justice Office of the Inspector
18 General. And from my experience of the sheer
19 volume of allegations that they receive, I know
20 that capacity is in place. And the OIG also has a
21 policy whereby if the complainant, no matter who it
22 is, an inmate or someone from the community, or

1 even one of our staff members request anonymity,
2 they preserve that confidentiality. Even to my
3 office, they are required not to release that
4 information to my office.

5 In addition, there are some cases when we do
6 have ongoing investigations when we have credible
7 allegations where my agency will make sure, if in a
8 particular case this is helpful, the OIG agent who
9 is investigating that case is put on the inmate's
10 telephone list so that that inmate has ready access
11 to that agent. That doesn't happen a lot, but it
12 has happened.

13 COMMISSIONER KANEB: Ladies and
14 gentlemen, I can only characterize all of your
15 testimony as being very impressive and confidence
16 inspiring. And if this were the only testimony or
17 the only type of testimony we ever received, we
18 would come to the conclusion that we are really
19 trying to fix something that doesn't need fixing,
20 that the National Prison Rape Elimination Act was,
21 in fact, a noble piece of legislation that simply
22 is going to confirm that there's no need of some of

1 the things that some of the sponsors thought were
2 needed.

3 I'm not saying this in a way to be sarcastic
4 or any way to denigrate you, your intentions or
5 your veracity, but we heard testimony and some of
6 you may have been in the room just earlier this
7 morning, from two young women, one of whom is still
8 in the room as far as I can see, that if you had
9 heard only that testimony and you were let's say a
10 civilian, you would conclude that the reporting
11 systems for -- in this case, and we're focusing on
12 staff abuse of prisoners in this particular
13 hearing, the systems were nonexistent, broken, not
14 enforced and nothing but paper tigers as far as any
15 perpetrator might have to be concerned about. So,
16 obviously, there is something of a reality and
17 probably a big spectrum of reality in between the
18 ideal that you portray, which would be achieved
19 were your regulations, procedures and the obvious
20 sincere dedication you have to your jobs and the
21 other extreme of systems where reporting mechanisms
22 are fruitless. Besides people's noble motivations,

1 and we have to count on noble motivations in any
2 organization, our own society. If we don't count
3 on that, we might as well give up.

4 But besides that, one of the things that we
5 are certainly pondering is are there some aids that
6 would aid and abet people really trying to get at
7 what happened when it's he said, she said or nobody
8 said, because one person won't talk because they're
9 afraid or whatever. Obviously cameras have been in
10 effect, have been used and are being used.

11 We also hear about what sounded like pretty
12 impressive tracking systems from a couple of
13 companies that are seeking in the good old American
14 way to make money by selling systems and products
15 that might ameliorate the situations you're trying
16 to manage.

17 Do any of you have any thoughts about that?
18 Yes, Ms. Caruso?

19 MS. CARUSO: We actually use cameras
20 extensively in our system. And one of the things
21 that I was shocked to learn when I became director
22 three years ago is we do not use them as

1 extensively in the women's prisons as the male
2 prisons because of concerns of issues of privacy on
3 the part of the female prisoners. And so that was
4 a shock to me and that's something that we are
5 continuing to deal with. But we have spent a lot
6 of time exploring current technology for GPS
7 systems inside our prisons that will actually
8 resolve the location of staff and prisoners right
9 down to virtually an exact location, which I think
10 would really assist in an investigation. If
11 someone says such and such happened and you
12 absolutely know that either those two people were
13 not even on the same floor of the building or were
14 in the same area, you're way ahead in your
15 investigation.

16 It's very expensive technology. It's
17 something that we continue to explore. We've
18 talked to a number of vendors on that and we have
19 done it specifically since the emphasis and the
20 formation of the PREA Commission.

21 COMMISSIONER KANEB: Well, thank you.
22 That's interesting and I will just react to that

1 quickly by saying as I was listening to the
2 testimony of the two young women who preceded you
3 all, I was thinking that, you know, if one of these
4 tracking systems actually worked and had been in
5 place in the facilities that they were talking
6 about, there's one particular woman who was hounded
7 and pursued by a particular corrections officer for
8 years, it would have been obvious that this guy was
9 in places he never should have been and nobody
10 would have been able to ignore it or protect him.
11 So thank you. Did somebody else have something
12 they wanted to say?

13 MR. REES: Well, I guess a couple of
14 things. One, I think the technology is there. I
15 think that in the testimony of the lady that was
16 from Michigan acknowledged that it was clear that
17 there was probably some staff supervision issues,
18 clearly. There was some lack of interest on the
19 part of prosecutorial agencies once she did make
20 the situation known. But I guess with regard to
21 the first woman's testimony, you and I have a
22 different view of that incident. It's a horrible

1 incident, a horrible situation, probably took too
2 long to be addressed, but it was, in fact,
3 addressed, and an individual was terminated and was
4 prosecuted.

5 I thought that the young woman's testimony
6 about the inappropriateness of the sentencing was
7 right on target. I agree with her, four months is
8 absurd. It's not a deterrent. That's outside the
9 realm of corrections. And I think what I was
10 trying to say in my testimony is that a lot of the
11 rhetoric and a lot of the publicity that has been
12 put forth is aimed at corrections staff and
13 corrections administrators. And when, in fact, we
14 do attempt to prosecute, attempt to terminate, it
15 is extremely difficult and extremely complicated
16 and those employees or those offenders, and I'll
17 say offenders, clearly should be not only
18 terminated, they should be prosecuted, but they
19 also have rights and they also have attorneys. And
20 when you began to deal with the termination within
21 a civil service environment or with criminal
22 prosecution where that's possible, these keeps of

1 situations are extremely complicated. And the
2 weight that the -- unfortunately, but the weight of
3 the testimony of a convicted felon is held in the
4 balance when put up against an individual who has
5 not been convicted of a felony.

6 COMMISSIONER KANEB: Well, it's precisely
7 this sort of ambiguity and complication that, at
8 least it struck me as a layman, a tracking system
9 could help resolve in many cases. It's been said.
10 I mean I'm not going to repeat it. And, by the
11 way, I have great sympathy, Mr. Rees, for your
12 obvious unhappiness with the portrayal of life in
13 prisons. I know that isn't true. I know it's the
14 exception. We're talking about the health figure
15 as a typical prison inmate. We're talking about
16 this guy who wrote this, in my view, off the wall
17 point that Ken Lay again got lucky because he died
18 of a heart attack when he should have, in fact,
19 been sentenced to being punished for the rest of
20 his natural life in our animal like prison system.
21 That isn't the case.

22 But, it's just my view as a layman that maybe

1 some of the complication and ambiguity of proving
2 or disproving these charges could be nipped in the
3 bud if you had some of the evidence that the
4 systems at least purport to provide. And with
5 that, I'll give the mike -- yes, Mr. Wall?

6 MR. WALL: Thank you, Commissioner Kaneb.
7 With respect to your first point which is the
8 quality and the thoroughness of the investigation,
9 the PREA legislation has certainly accomplished
10 this. It has gotten the attention of correctional
11 leadership because Congress has made it very clear
12 that there is going to be, through these standards,
13 accountability for the prevention, investigation,
14 elimination sanction of sexual violence in prison.
15 And what that means is that if an investigation is
16 not thorough or is botched in some fashion, then
17 our job as leaders is to impose consequence. The
18 fact of the matter is that we investigate the
19 investigation. And if it wasn't properly done,
20 someone is going to be held responsible for that.
21 And if we are satisfied that the investigation was
22 plausible and credible, then we explain why we

1 support it and then we allow others to examine our
2 judgment.

3 But the fact is that corrections directors can
4 and have lost their jobs, not for engaging in this
5 kind of misconduct themselves, but for not properly
6 making sure that investigations were handled well.
7 So, again, that's about leadership.

8 With regard to investigations themselves, I
9 think that you'll hear from the panel of
10 investigators that there are ways to conduct
11 investigations that are very thorough that when
12 there are certain questions that can be asked,
13 especially in the staff/offender context, that will
14 get to the bottom of what happened and those will
15 be described in that panel. I think it has to do
16 with the training of the investigators, what kind
17 of sensitivity they have to the victim, their
18 attitude or how passionate and zealous are they,
19 how well equipped are they with certain
20 techniques.

21 Let me say that I think the challenge for
22 investigators is far more difficult in the context

1 of inmate on inmate sexual abuse because staff
2 sexual abuse of inmates is a strict liability
3 offense. It doesn't matter whether it was
4 dominance. It doesn't matter whether it was love
5 it doesn't matter whether it was loneliness on the
6 part of the staff member. The fact of it is
7 enough. Consent is not an issue and, therefore,
8 you look at other forms of evidence.

9 But in the inmate on inmate context, the
10 question of consent goes to the heart of the matter
11 because investigators are going to have to find
12 ways to interpret and understand the relationship
13 that took place. And that's going to be a
14 particular challenge for the profession.

15 THE CHAIRMAN: Does somebody else want to
16 respond?

17 MR. DIGNAM: If I can quickly, Mr. Kaneb,
18 I appreciate the fact that you're scratching your
19 head over the first group of testimony and the
20 second. However, what I would add quickly is that
21 there are -- well, let me say this first. I
22 listened very intently and it troubled me greatly

1 to hear Ms. Ragsdale talk about what her experience
2 was as when she was a complainant in an
3 investigation in our system and I fully intend to
4 go back and look at that to see whether any kind of
5 complacency or other inappropriate behavior
6 resulted in that being so lengthy. In fact, I
7 spoke to Ms. Ragsdale during the break and asked
8 for the name of the local investigator at FPC
9 Alderson. Fortunately, her knowledge was that he's
10 since retired, so maybe one complacent staff member
11 is no longer with us.

12 But I would add, however, that every case is
13 unique and sometimes, especially when you're
14 looking at a criminal prosecution which in that
15 case was successful, sometimes there are logical,
16 reasonable and perhaps even unavoidable reasons for
17 delays in investigations. Now I don't know the
18 specifics of that case, but I fully intend, as I
19 said, go back and review that case.

20 COMMISSIONER FELLNER: I want to thank
21 all of you for coming today and also reiterate the
22 judge's request. There's too many of you and too

1 many questions to be able to deal with all today,
2 so I hope you will respond to follow-up. I wanted
3 to focus on a question in the staff/inmate context.
4 And that goes to the standard of proof in
5 administrative efforts and also what your ability
6 is to get evidence.

7 It is my understanding, for example, in some
8 states, including I think Michigan, I'm not sure,
9 and you can correct me if I'm wrong, that whatever
10 the policy says, the reality is when an
11 investigation happens that the investigator applies
12 a, basically -- it's the equivalent of the criminal
13 standard. You have to basically prove beyond a
14 reasonable doubt before there will be proceeding on
15 further administrative.

16 I'm not interested at the moment on criminal
17 prosecutions. And if there is no -- if there isn't
18 a good investigation which often there isn't, or
19 there's no physical evidence which often is the
20 case especially if time has passed, then if it's a
21 he said she said or she said he said, then
22 automatically the inmate loses. Even in an

1 administrative context, again, so we're not talking
2 about the public at large, who may never believe a
3 felon, you all know that people in prison can and
4 do tell the truth many times. So how do you
5 handle -- what are your standards with regard to
6 standard of proof in an administrative context?
7 How do you handle -- do you have administrative
8 sanctions when it's a he said she said? Can you
9 tell us if that happens in your facilities? And
10 then finally, Mr. Rees, I was curious in your
11 testimony. You said if the officers had refused to
12 take the polygraph, the case would have ended. And
13 I wondered if also you could explain that. And
14 more generally if others can explain, do you have
15 as a condition of employment that officers must
16 take polygraph and if you don't can you get that or
17 does the union make it impossible?

18 MR. REES: From Kentucky's perspective,
19 we do not have it as a condition of employment and
20 I doubt that I could get it through the State
21 Personnel Merit System.

22 With regard to the situation, had the officer

1 refused to take the polygraph, I have the same
2 situation being investigated within a probation and
3 parole situation currently. Had the officer
4 refused to take the polygraph, I would have only
5 had the polygraph of the inmate and the fact that
6 the employee was at work in prison on that day, the
7 inmate was in the prison on that day and they both
8 had access to the area where the event allegedly
9 took place, the case would have been closed. I
10 would not have been able to convince my legal staff
11 that we would have had any chance whatsoever in
12 terminating that individual and winning.

13 I was prepared once he took it and failed it
14 to terminate him and lose. And I clearly believed
15 that I would have probably lost.

16 COMMISSIONER FELLNER: What can be done
17 to change that? I mean that strikes me in the
18 criminal context you have a he said she said.
19 There's an assessment of credibility and, you know,
20 some people are more credible than others. Why is
21 it automatically, even within the agency, that
22 you're going to lose?

1 MR. REES: Well, it wouldn't have been
2 within my agency. I was convinced that the DMA was
3 telling the truth. Where we would have lost is we
4 would have lost within the State Merit System
5 hearing process. That's where we would have lost
6 because clearly they would not have supported the
7 statement of the inmate.

8 COMMISSIONER FELLNER: Well, I want to
9 have one of my other questions answered by others,
10 but maybe we should talk about, and the Commission
11 might consider, how we can effect State Merit
12 Systems or Civil Service Boards, or whatever,
13 because this isn't the first time we've heard of
14 this problem, obviously.

15 MR. REES: And I might point out, I'm
16 currently having to go through the process to
17 change the regulations dealing with polygraph.
18 About a year and a half ago in the interim, the
19 state polygraph regulations were changed to
20 prohibit the polygraphing of sexual abuse or sexual
21 assault victims. Understandably, a lot of police
22 agencies before in the civilian world were

1 requiring a rape victim to take a polygraph to give
2 them some confidence in her testimony or his
3 testimony.

4 I truly believe that there's a different set
5 of rules from within a situation of confinement
6 dealing with convicted felons and supervised
7 felons, but, you know, we're working through that,
8 but that's what we're up against.

9 COMMISSIONER FELLNER: Thank you.

10 MR. DIGNAM: To clarify, for
11 investigations, at least in our agency, and I
12 believe it's probably the case in state agencies,
13 that a reasonable doubt is not required, it's a
14 preponderance of evidence standard. However, even
15 if it's a mere preponderance standard, there are
16 the obstacles like Merit Systems Protection Boards
17 and that kind of thing.

18 Very quick example, we had a case very recently
19 where we had a he said -- well, actually a he said
20 officer, two double she saids with two inmates and
21 we knew that would not go forward. So we requested
22 the assistance of the F.B.I., got positive

1 polygraph evidence from the two inmates, so my
2 office established that as a preponderance of
3 evidence that this abusive sexual contact occurred.
4 However, that just points up the immense complexity
5 of these issues and the competing interest that our
6 labor management relations folks looked at that
7 further, noticed that one inmate had been convicted
8 of perjury in the past, another inmate had other
9 problems about credibility, and their
10 recommendation was not to pursue any kind of action
11 in that case. We are asking for a rereview of that
12 and, perhaps, as Mr. Rees says, to go forward
13 anyway even if we lose. However, there are two
14 problems with that as well, again competing
15 interest.

16 The Department of Justice in our case
17 significantly monitors the cares that are brought
18 by our LMR people and they are effectively
19 punished, performance wise, for bringing too many
20 cases that they do lose on appeal. And then,
21 secondly, there's the added problem, less tangible,
22 but still a problem, of the tremendous impact on

1 morale when a corrupt staff member goes through the
2 process and then comes back vindicated with full
3 back pay. I mean it can be argued that that is
4 more corrosive than even not taking any action. So
5 you can see it's a very complex issue with many
6 competing interests.

7 MR. WALL: First, as to law and
8 regulation on polygraphs, Rhode Island law favors
9 employees in many situations. And in Rhode Island
10 it is a violation of the criminal law for a
11 Government agent to require or even induce an
12 employee to take a polygraph examination as a
13 condition of employment. So, that's not an option
14 for us.

15 But, certainly in a he said she said or he
16 said he said or she said she said context, then
17 what that means is that the investigators simply
18 need to be more passionate and more aggressive and
19 you don't stop there.

20 I mean there are ultimately very few secrets
21 is prison. It's not unlike those reality TV shows
22 in which everybody's living under the same roof.

1 confirm that in Michigan it is neither policy or
2 practice that we require a beyond a reasonable
3 doubt standard. And I can tell you that I know it
4 isn't because I have proceeded and fired staff. I
5 mentioned previously my frustration at cases where
6 the prisoner denied that inappropriate behavior
7 took place. So, I had a staff denying it and a
8 prisoner denying it. I had an investigation where
9 I felt it was our responsibility to weigh
10 everyone's credibility, no physical evidence. We
11 proceeded with the administrative process and fired
12 that individual, did not stay fired primarily
13 because the prisoner denied that. But we have to
14 make that decision based on that. And when you get
15 into he said she said and you read lots of
16 investigations, which we all do, you can often tell
17 whose credibility outweighs whose.

18 I have testified in front of legislative
19 subcommittees that I clearly understand there are
20 liars on both sides of the bars. And it's
21 important that we not remember that. And sometimes
22 you do have to go the extra step as A.T. mentioned.

1 We have, on occasion, taken the step of having
2 hidden cameras in locations.

3 When I was a warden, I participated in that
4 investigation. I have also, in an administrative
5 proceeding in front of a union, brought a prisoner
6 in to testify based on behavior that was occurring.
7 That was not a sexual misconduct related case, but
8 it's still the same situation. You've got to
9 balance all of that out and set that standard for
10 people to understand that you will do that. That
11 is your job.

12 COMMISSIONER SMITH: I guess I want to go
13 back to where John was a couple of minutes ago and
14 I guess I'm generally a very active questioner,
15 okay? But today I've been somewhat silent because
16 I guess there's, in my perspective, such a gap
17 between the testimony and also between what I think
18 I perceive as reality. And when I talk about what
19 I perceive as reality, I am going to take out what
20 I think.

21 What I want to talk about is what Courts have
22 found as, say, a reality. And the reality is that

1 in institutional settings, many of whom are
2 represented at the table right now, Courts have
3 found that there's a code of silence that exist in
4 your agencies that prevented grievances from being
5 processed or even those grievances did not emerge
6 up the chain of authority.

7 I think that everyone would agree that if a
8 grievance came to your desk, based on your
9 testimony, you would do something about it. But
10 the problem is from what A.T. talked about -- I'm
11 sorry, I don't want to call you by your first name,
12 but Commissioner Wall talked about -- this stuff
13 doesn't move up. It doesn't move up because staff
14 don't elevate it and it doesn't move up because
15 inmates don't elevate it. I think that there are
16 complex reasons for why. We talk about fear on the
17 behalf of inmates, but there's also significant
18 fear on behalf of staff as well, okay, about
19 reporting these incidents.

20 And so in taking my notes here, it seems to me
21 based on both sets of testimony that we've heard
22 that there are significant problems in the

1 grievance process. Commissioner Caruso, some of
2 people not reporting or inmates denying or staff
3 denying is totally about, and I see this in case
4 after case, didn't think I would be believed,
5 feared retaliation, did not want to be segregated,
6 did not want to lose good time. And it seems to me
7 that in working backwards and trying to figure out
8 solutions, we have to do something about that if
9 these cases are going to emerge and have the kind
10 of cultural effect that you want them to have.

11 I think that, in having said that, one of the
12 other things that I am also hearing from you, sort
13 of implicitly, is that you have staff who are, you
14 know, for lack of a better word, frequent fliers,
15 okay, who have been here before and you have not
16 been able to close the deal on them. And a lot of
17 it is because of the things that I mentioned. And
18 so I guess what I would ask is from your
19 perspective what are you doing about that to get
20 those frequent fliers because I will agree that
21 these are people, not the majority of your staff is
22 involved in this conduct, but those people have an

1 incredibly corrosive effect on the culture. And
2 with those people continuing to either no action
3 being taken against them or investigations failing,
4 it emboldens others and keeps other people from
5 reporting because they don't think anything will
6 happen.

7 So, what are you doing about that? What can
8 you do about that and what can we do in order to
9 strengthen your hand?

10 MR. SPRENKLE: Commissioner, I would like
11 to speak on the issue of the dichotomy between the
12 presentations today.

13 This is the second PREA public hearing that
14 I've attended and, quite frankly, I agree with you
15 that if you just heard one set of the testimonies,
16 it seems as if there is sort of an extreme picture
17 painted here in terms of the survivors and then
18 from the administrators' perspective.

19 I would just like to mention that I didn't
20 hear any agency today say we didn't have a problem.
21 I did hear that every one of us are committed to
22 addressing the problem the best that we possibly

1 can given the resource issue that we all have.

2 You know, Director Wall mentioned, and he
3 mentioned it so well, you know, this is really a
4 marathon, not a sprint. In my view, the low
5 hanging apples or the policy, the procedures, the
6 training, all the great technology that we have
7 that work really, really well, but the real issue
8 that you're speaking of is really an issue of
9 culture. And that's going to take us time. And I
10 think there's a lot of things that we're doing,
11 along with other correctional agencies, to address
12 the issue.

13 You mentioned specifically the frequent flier
14 issue. About a year ago, we got together and we
15 were talking about the issue of we really don't
16 have the cases substantiated, but we know, we know
17 in our heart that it happened. What do we do?
18 Okay. Well, again, as Director Wall mentioned,
19 it's a matter of how energetic you are.

20 You know, for instance, we recently had a case
21 where an inmate alleged that he was having sexual
22 contact with his counselor. So we did an

1 investigation. And during the interview, the
2 counselor, obviously, denied the activities. Well,
3 we certainly weren't going to give up, so we used
4 surveillance cameras and guess what? The following
5 counseling session it was verified, the allegation
6 was true. So it's really a matter of what your
7 intent is. If your intent is to fully investigate
8 the allegations, you can't stop with a he said she
9 said issue.

10 Another issue related to the frequent flier
11 thing is that we got to make certain that these
12 cases that might not be fully substantiated just
13 don't move, not only within the agency, but between
14 agencies.

15 It wasn't all that long ago that we hired a
16 corrections officer from another agency and after
17 that officer had sexual contact with an inmate, we
18 learned that he had prior history of such conduct.
19 So we immediately revised our policy. We no longer
20 permit any resignations in lieu of termination. If
21 they did it, they're going to be terminated. We
22 want to make certain that it, in fact, is on

1 record. Thank you.

2 COMMISSIONER AIKEN: We under some real
3 time constraints and this is an open question to
4 whomever would like to respond. We talk about
5 investigations and investigations in relationship
6 to prison related operational matters. And the
7 question that I pose, of course understanding that
8 we have a quality issue here also, is the length of
9 the investigations, the length that it takes and
10 the impact upon the culture, the impact upon the
11 inmate, the impact upon the person that's under
12 investigation and the length of time. What is that
13 impact in an operational context?

14 MS. CARUSO: Sir, I will tell you I agree
15 with you, with your concerns on the length of
16 investigations. And one of the things that our
17 investigators are probably getting a little tired
18 of are the notes coming back from me when I read
19 all of the investigations when I say, why did it
20 take, and I count out the length of time.
21 Sometimes there are legitimate reasons for that.
22 In my opinion, quite frankly, many times there are

1 not.

2 Our policy requires investigations to be
3 conducted timely. We have various time frames.
4 There are also opportunities to get extensions and
5 whatever. I do, I agree with you. I personally
6 think that is a problem. And either way, whether
7 it's a substantiated or unsubstantiated complaint,
8 everybody on all sides of the complaint deserves
9 for it to be resolved and whatever needs to happen
10 as a result has to happen quicker. And it is a
11 problem we own, quite frankly, that we need to fix.

12 COMMISSIONER AIKEN: And wouldn't it be
13 more advantageous if we had other mechanisms that
14 could find facts quicker that would facilitate a
15 rendering of a decision to go forward or not?
16 Wouldn't that be.

17 MS. CARUSO: Whatever it takes. I think
18 sometimes it's a matter -- I mean it is a matter of
19 making it a priority and allocating the right
20 resources. I mean that is part of it.

21 COMMISSIONER AIKEN: Thank you.

22 MR. REES: I can tell you that that is a

1 problem. It becomes even a much bigger problem
2 once you go outside the agency. If you're having
3 to rely on a state police polygrapher or if you've
4 having -- once you're outside your agency, I can
5 tell you that that case is not a priority. It is
6 not a priority. It is not going to be the
7 attention that it needs.

8 COMMISSIONER AIKEN: What impact does it
9 have upon the inmates, upon the staff, as well as
10 the culture?

11 MR. REES: Well, it reinforces the
12 cultural issues of, you know, they're not
13 interested, they're not doing anything. The
14 inmate, obviously, it's negative there. And then
15 if the employee is not guilty, it puts he or she
16 through unmitigated hell. Professor, did you have
17 a question?

18 COMMISSIONER STRUCKMAN-JOHNSON: Just
19 asking for your opinion. Given that the
20 investigations can take a long time and are
21 difficult and complicated, we still have the issue
22 that if it's a credible charge and what in the

1 I heard.

2 COMMISSIONER FELLNER: Me either.

3 COMMISSIONER STRUCKMAN-JOHNSON: Right.

4 COMMISSIONER FELLNER: No.

5 MR. REES: The allegation wasn't made.

6 COMMISSIONER STRUCKMAN-JOHNSON: Okay.

7 COMMISSIONER FELLNER: So they're
8 physically transferred or just separated? Okay.

9 MR. REES: They may be suspended. They
10 may be suspended with pay, depending on the nature
11 of the situation, but, no, there's a separation.
12 There's no attempt for retaliation.

13 MS. BISSONETTE: I think I would like to
14 also add that the difficulty in that situation is
15 it's a case by case assessment that you made. And
16 in the case of female offenders, because they're a
17 limited placement operation, opportunities for
18 women, especially in the state of Massachusetts,
19 Framingham is the only state committing institution
20 for women. We very much struggle with that issue
21 around separation.

22 And listening to the testimony this morning

1 really does ring true in the sense that women know
2 if they come forward their placement in isolation
3 and/or in our health services unit where we also
4 have inmates detox and upon admission and/or with
5 serious medical problems, there is a reluctance to
6 want to do that.

7 We do detach employees with pay pending an
8 investigation if we have evidence at hand that
9 would indicate that it is true. We put staff on no
10 inmate contact status or in the bubble as one of
11 the women referred to this morning. So that is a
12 struggle for us.

13 COMMISSIONER FELLNER: Can I just follow
14 up briefly on the notion of the vigorous
15 investigations? I don't remember the exact data in
16 the most recent BJS report or the last one, but
17 there's a very high number of investigations that
18 end up unsubstantiated, which means that they don't
19 figure out what happened one way or the other. How
20 do you explain the inability to make that high
21 number of investigations in which they can't figure
22 out what was going on?

1 MR. WALL: I think in order for me to
2 assess the significance of that data, I would need
3 to look at those investigations and ask my own
4 investigators to offer a second opinion to see
5 whether there are other avenues that could have
6 been pursued that haven't been pursued. It may be
7 that opinions would differ as to whether in all of
8 those cases they should be logged in as
9 unsubstantiated.

10 COMMISSIONER FELLNER: Well, I wonder,
11 for example, if the representatives here could say
12 what percentage of the investigations in their
13 agencies of staff sexual abuse end up
14 unsubstantiated?

15 MR. SPRENKLE: Well, the report states
16 that, I believe, 15 percent of the cases are
17 substantiated.

18 COMMISSIONER FELLNER: In Pennsylvania?

19 MR. SPRENKLE: No, nationally.

20 COMMISSIONER FELLNER: But in your
21 agency?

22 MR. SPRENKLE: In Pennsylvania for year

1 2005, the percentage was 26 percent.

2 COMMISSIONER FELLNER: And in Michigan?

3 MS. CARUSO: I actually am not sure what
4 the percentage is. I mean I think it's fairly
5 close to the national average, but I do agree with
6 you that that is the group of collusions we
7 probably need to be most concerned about. If we've
8 substantiated it, we can do something. If it's
9 unfounded, we can do something. I mean that
10 clearly is what we need to focus on. I think
11 that's what causes us the most problems.

12 MR. WALL: And I think that relates back
13 to Commissioner Smith's question, what happens with
14 these cases in which somebody appears on the radar
15 screen relatively frequently as involved in a case
16 that isn't substantiated. I think in those
17 instances sometimes the department has to take a
18 risk, a responsible risk, but a risk. In other
19 words, if you have a series of unsubstantiated
20 cases involving the same employee, perhaps that
21 fact alone, as John Dignam suggested, might
22 indicate that you've got a preponderance of the

1 evidence needed for administrative staff. If you
2 can correlate that to the fact that other staff in
3 the facility who don't have the same track record
4 and if the employee says, well, it's because I
5 enforce the rules and so the inmates want to bring
6 me down, well, you can point out cases where other
7 staff issue more disciplinary infractions and these
8 allegations aren't made. You aggregate that kind
9 of information to make your case that there's too
10 much smoke here now. This is more than just he
11 said she said. There is, we believe, a
12 preponderance of the evidence and then you proceed.

13 If you are confident that you've got a
14 predator in your midst, then sometimes it is better
15 to try and fail than never to try at all.
16 Ultimately, you bring that forward. There is due
17 process available to employees in virtually every
18 system with which I'm aware. Ultimately, it goes
19 to a personnel commission, an arbitrator, a Court.
20 An independent fact finder reviews your decision.
21 And if you believe it happened, and they find the
22 other way, well that's on them. You did everything

1 you could.

2 THE CHAIRMAN: I would like to go on, but
3 we are past time, so we are going to have to stop.
4 I again want to thank all of you for your
5 willingness to appear and testify.

6 And as was previously indicated by my fellow
7 commissioners, at least several of them, you
8 confirmed my belief that in today's corrections
9 world, individuals who occupy your positions are by
10 and large highly professional individuals who are
11 concerned about these issues and are doing the best
12 you can to address it. And I am convinced that if
13 we had all administrators like you, that would go a
14 long way in addressing the problems that we're
15 talking about. And one of the questions I wanted
16 to ask, and I don't have time to address it, but I
17 hope that you will respond to it in some way, it's
18 my belief that if you have top flight leadership
19 and if you have good employees that that goes a
20 long way in addressing these problems. And my
21 question is, are you able to attract a pool of
22 employees that qualify for what you want as

1 correctional officers? We don't have time for you
2 to respond to it now, but are there impediments?

3 I mean a lot of our institutions are put in
4 rural areas. It may be difficult under those
5 circumstances to attract good people. And if we
6 can't attract good people as correctional officers,
7 obviously some of the problems we're talking about
8 are going to be perpetuated. So, if you have any
9 ideas or comments in reference to that, we'd like
10 to hear from you. So thank all of you very much.

11 12:05 p.m..

12 (Whereupon, at 12:05 p.m., a
13 Luncheon recess was taken.)

14 * * * * *

15

16

17

18

19

20

21

22