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

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

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

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

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

MS. BISSONETTE: In the Massachusetts system we do have a sexual assault hotline, which would ring to our central office Internal Affairs unit. However, it's my understanding, and in my institution specifically, that the women generally come forward to a number of the clinical staff, that the line, although it's posted in every housing unit provided in the inmate orientation
manual, that the inmates feel compelled and safe to report it to their clinician.

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

I will share with you, though, the biggest frustration I have in dealing with these issues of report. It's not the issue of not reporting, but it's the issue of not cooperating. When we have cases where we believe a staff is involved in sexual misconduct with a prisoner, we have, on a number of occasions, had the prisoner deny the behavior, refuse to cooperate, obstruct the investigation. We've proceeded. We've even discharged employees for this. We are rarely
successful in upholding those when they go through the administrative process because of the statements that the prisoner has made and this adamant denial that it happened. We can't, obviously, get prosecution. And it's very frustrating when the end result of this is to see that prisoner's name at the top of a lawsuit alleging they were the victim of sexual assault in prison. That is a problem that we would love to find a way to adequately address.

MR. WALL: We, like others, have multiple channels of reporting within the agency outside the institutions, but beyond that we have, as do many departments, a telephone calling system which is monitored, but there are exceptions. One exception is that any phone call made to our investigative units is not monitored, not recorded, and can be anonymous. Any phone call to the Rhode Island State Police is not monitored, not recorded. And similarly, we treat mail to the American Civil Liberties Union as privileged mail, meaning that it cannot be read or examined. Those channels do
Finally, many of the reports we receive, be it inmate on inmate rape or staff on inmate sexual assault, come not from within the prison, not from the victim, not even from other inmates, they come from the outside. Family members are often the people to whom inmates confide at visits, for example. They will come forward and tell us.

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

The way in which we can protect is either through transfer or segregation. And a lot of times, folk don't want to be transferred and they
sure don't want to go into a segregated status, yet those are the two options that we have to protect. So the issue of retaliation, I think everyone has a zero tolerance position for that and we deal with it if it comes forward. But there has to be the communication and there has to be follow through from the point of accusation and then the changing of the accusation as to whether it was consensual or whether it was nonconsensual.

MR. DIGNAM: As I said in my testimony, all allegations of sexual abuse are referred first to the Department of Justice Office of the Inspector General, well outside our agency, obviously. They're our oversight agency. But in addition, all inmates, in fact any complainant has the capacity to send allegations directly to the Department of Justice Office of the Inspector General. And from my experience of the sheer volume of allegations that they receive, I know that capacity is in place. And the OIG also has a policy whereby if the complainant, no matter who it is, an inmate or someone from the community, or
even one of our staff members request anonymity, they preserve that confidentiality. Even to my office, they are required not to release that information to my office.

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

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

I'm not saying this in a way to be sarcastic or any way to denigrate you, your intentions or your veracity, but we heard testimony and some of you may have been in the room just earlier this morning, from two young women, one of whom is still in the room as far as I can see, that if you had heard only that testimony and you were let's say a civilian, you would conclude that the reporting systems for -- in this case, and we're focusing on staff abuse of prisoners in this particular hearing, the systems were nonexistent, broken, not enforced and nothing but paper tigers as far as any perpetrator might have to be concerned about. So, obviously, there is something of a reality and probably a big spectrum of reality in between the ideal that you portray, which would be achieved were your regulations, procedures and the obvious sincere dedication you have to your jobs and the other extreme of systems were reporting mechanisms are fruitless. Besides people's noble motivations,
and we have to count on noble motivations in any organization, our own society. If we don't count on that, we might as well give up.

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

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

Do any of you have any thoughts about that?

Yes, Ms. Caruso?

MS. CARUSO: We actually use cameras extensively in our system. And one of the things that I was shocked to learn when I became director three years ago is we do not use them as
extensively in the women's prisons as the male
prisons because of concerns of issues of privacy on
the part of the female prisoners. And so that was
a shock to me and that's something that we are
continuing to deal with. But we have spent a lot
of time exploring current technology for GPS
systems inside our prisons that will actually
resolve the location of staff and prisoners right
down to virtually an exact location, which I think
would really assist in an investigation. If
someone says such and such happened and you
absolutely know that either those two people were
not even on the same floor of the building or were
in the same area, you're way ahead in your
investigation.

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

COMMISSIONER KANEB: Well, thank you.
That's interesting and I will just react to that
quickly by saying as I was listening to the
testimony of the two young women who preceded you
all, I was thinking that, you know, if one of these
tracking systems actually worked and had been in
place in the facilities that they were talking
about, there's one particular woman who was hounded
and pursued by a particular corrections officer for
years, it would have been obvious that this guy was
in places he never should have been and nobody
would have been able to ignore it or protect him.
So thank you. Did somebody else have something
they wanted to say?

MR. REES: Well, I guess a couple of
things. One, I think the technology is there. I
think that in the testimony of the lady that was
from Michigan acknowledged that it was clear that
there was probably some staff supervision issues,
clearly. There was some lack of interest on the
part of prosecutorial agencies once she did make
the situation known. But I guess with regard to
the first woman's testimony, you and I have a
different view of that incident. It's a horrible
incident, a horrible situation, probably took too
long to be addressed, but it was, in fact,
addressed, and an individual was terminated and was
prosecuted.

I thought that the young woman's testimony
about the inappropriateness of the sentencing was
right on target. I agree with her, four months is
absurd. It's not a deterrent. That's outside the
realm of corrections. And I think what I was
trying to say in my testimony is that a lot of the
rhetoric and a lot of the publicity that has been
put forth is aimed at corrections staff and
corrections administrators. And when, in fact, we
do attempt to prosecute, attempt to terminate, it
is extremely difficult and extremely complicated
and those employees or those offenders, and I'll
say offenders, clearly should be not only
terminated, they should be prosecuted, but they
also have rights and they also have attorneys. And
when you began to deal with the termination within
a civil service environment or with criminal
prosecution where that's possible, these keeps of
situations are extremely complicated. And the
weight that the -- unfortunately, but the weight of
the testimony of a convicted felon is held in the
balance when put up against an individual who has
not been convicted of a felony.

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

But, it's just my view as a layman that maybe
some of the complication and ambiguity of proving
or disproving these charges could be nipped in the
bud if you had some of the evidence that the
systems at least purport to provide. And with
that, I'll give the mike -- yes, Mr. Wall?

MR. WALL: Thank you, Commissioner Kaneb.

With respect to your first point which is the
quality and the thoroughness of the investigation,
the PREA legislation has certainly accomplished
this. It has gotten the attention of correctional
leadership because Congress has made it very clear
that there is going to be, through these standards,
accountability for the prevention, investigation,
elimination sanction of sexual violence in prison.
And what that means is that if an investigation is
not thorough or is botched in some fashion, then
our job as leaders is to impose consequence. The
fact of the matter is that we investigate the
investigation. And if it wasn't properly done,
someone is going to be held responsible for that.
And if we are satisfied that the investigation was
plausible and credible, then we explain why we
support it and then we allow others to examine our
judgment.

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

With regard to investigations themselves, I
think that you'll hear from the panel of
investigators that there are ways to conduct
investigations that are very thorough that when
there are certain questions that can be asked,
especially in the staff/offender context, that will
get to the bottom of what happened and those will
be described in that panel. I think it has to do
with the training of the investigators, what kind
of sensitivity they have to the victim, their
attitude or how passionate and zealous are they,
how we'll equipment are they with certain
techniques.

Let me say that I think the challenge for
investigators is far more difficult in the context
of inmate on inmate sexual abuse because staff
sexual abuse of inmates is a strict liability
offense. It doesn't matter whether it was
dominance. It doesn't matter whether it was love
it doesn't matter whether it was loneliness on the
part of the staff member. The fact of it is
enough. Consent is not an issue and, therefore,
you look at other forms of evidence.

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

THE CHAIRMAN: Does somebody else want to
respond?

MR. DIGNAM: If I can quickly, Mr. Kaneb,
I appreciate the fact that you're scratching your
head over the first group of testimony and the
second. However, what I would add quickly is that
there are -- well, let me say this first. I
listened very intently and it troubled me greatly
to hear Ms. Ragsdale talk about what her experience was as when she was a complainant in an investigation in our system and I fully intend to go back and look at that to see whether any kind of complacency or other inappropriate behavior resulted in that being so lengthy. In fact, I spoke to Ms. Ragsdale during the break and asked for the name of the local investigator at FPC Alderson. Fortunately, her knowledge was that he's since retired, so maybe one complacent staff member is no longer with us.

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

COMMISSIONER FELLNER: I want to thank all of you for coming today and also reiterate the judge's request. There's too many of you and too
many questions to be able to deal with all today, so I hope you will respond to follow-up. I wanted to focus on a question in the staff/inmate context. And that goes to the standard of proof in administrative efforts and also what your ability is to get evidence.

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

I'm not interested at the moment on criminal prosecutions. And if there is no -- if there isn't a good investigation which often there isn't, or there's no physical evidence which often is the case especially if time has passed, then if it's a he said she said or she said he said, then automatically the inmate loses. Even in an
administrative context, again, so we're not talking about the public at large, who may never believe a felon, you all know that people in prison can and do tell the truth many times. So how do you handle -- what are your standards with regard to standard of proof in an administrative context? How do you handle -- do you have administrative sanctions when it's a he said she said? Can you tell us if that happens in your facilities? And then finally, Mr. Rees, I was curious in your testimony. You said if the officers had refused to take the polygraph, the case would have ended. And I wondered if also you could explain that. And more generally if others can explain, do you have as a condition of employment that officers must take polygraph and if you don't can you get that or does the union make it impossible?

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

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

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

COMMISSIONER FELLNER: What can be done
to change that? I mean that strikes me in the
criminal context you have a he said she said.
There's an assessment of credibility and, you know,
some people are more credible than others. Why is
it automatically, even within the agency, that
you're going to lose?
MR. REES: Well, it wouldn't have been within my agency. I was convinced that the DMA was telling the truth. Where we would have lost is we would have lost within the State Merit System hearing process. That's where we would have lost because clearly they would not have supported the statement of the inmate.

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

MR. REES: And I might point out, I'm currently having to go through the process to change the regulations dealing with polygraph. About a year and a half ago in the interim, the state polygraph regulations were changed to prohibit the polygraphing of sexual abuse or sexual assault victims. Understandably, a lot of police agencies before in the civilian world were
requiring a rape victim to take a polygraph to give
them some confidence in her testimony or his
testimony.

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

COMMISSIONER FELLNER: Thank you.

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

Very quick example, we had a case very recently
where we had a he said — well, actually a he said
officer, two double she saids with two inmates and
we knew that would not go forward. So we requested
the assistance of the F.B.I., got positive
polygraph evidence from the two inmates, so my
office established that as a preponderance of
evidence that this abusive sexual contact occurred.
However, that just points up the immense complexity
of these issues and the competing interest that our
labor management relations folks looked at that
further, noticed that one inmate had been convicted
of perjury in the past, another inmate had other
problems about credibility, and their
recommendation was not to pursue any kind of action
in that case. We are asking for a rereview of that
and, perhaps, as Mr. Rees says, to go forward
anyway even if we lose. However, there are two
problems with that as well, again competing
interest.

The Department of Justice in our case
significantly monitors the cares that are brought
by our LMR people and they are effectively
punished, performance wise, for bringing too many
cases that they do lose on appeal. And then,
secondly, there's the added problem, less tangible,
but still a problem, of the tremendous impact on
morale when a corrupt staff member goes through the
process and then comes back vindicated with full
back pay. I mean it can be argued that that is
more corrosive than even not taking any action. So
you can see it's a very complex issue with many
competing interests.

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

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

I mean there are ultimately very few secrets
is prison. It's not unlike those reality TV shows
in which everybody's living under the same roof.
Everybody talks to everybody all the time. And so an aggressive investigator has options. You talk to everybody anywhere near the alleged perpetrator or the victim. You get statements. You look at logs. You review camera footage. You monitor the recorded telephone calls. You take it to the community. You talk to former cellmates who are now living in freedom. You talk to family members. You consider controlled phone calls. You look at possibly, in some cases, and you better know the law and you better be responsible about it, using a wire. And ultimately you also, as I've said before, have to get the investment of staff. You have to train staff so that they understand why this matters to them, because staff will, if they think the security risk is great enough or they are offended enough by the content, they will tell you what you need to know, but you have to till that soil by working with staff to change their attitudes.

THE CHAIRMAN: Ms. Caruso.

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

I have testified in front of legislative subcommittees that I clearly understand there are liars on both sides of the bars. And it's important that we not remember that. And sometimes you do have to go the extra step as A.T. mentioned.
We have, on occasion, taken the step of having hidden cameras in locations. When I was a warden, I participated in that investigation. I have also, in an administrative proceeding in front of a union, brought a prisoner in to testify based on behavior that was occurring. That was not a sexual misconduct related case, but it's still the same situation. You've got to balance all of that out and set that standard for people to understand that you will do that. That is your job.

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

What I want to talk about is what Courts have found as, say, a reality. And the reality is that
in institutional settings, many of whom are represented at the table right now, Courts have found that there's a code of silence that exist in your agencies that prevented grievances from being processed or even those grievances did not emerge up the chain of authority.

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

And so in taking my notes here, it seems to me based on both sets of testimony that we've heard that there are significant problems in the
grievance process. Commissioner Caruso, some of
people not reporting or inmates denying or staff
denying is totally about, and I see this in case
after case, didn't think I would be believed,
feared retaliation, did not want to be segregated,
did not want to lose good time. And it seems to me
that in working backwards and trying to figure out
solutions, we have to do something about that if
these cases are going to emerge and have the kind
of cultural effect that you want them to have.

I think that, in having said that, one of the
other things that I am also hearing from you, sort
of implicitly, is that you have staff who are, you
know, for lack of a better word, frequent fliers,
okay, who have been here before and you have not
been able to close the deal on them. And a lot of
it is because of the things that I mentioned. And
so I guess what I would ask is from your
perspective what are you doing about that to get
those frequent fliers because I will agree that
these are people, not the majority of your staff is
involved in this conduct, but those people have an
incredibly corrosive effect on the culture. And
with those people continuing to either no action
being taken against them or investigations failing,
it emboldens others and keeps other people from
reporting because they don't think anything will
happen.

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

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

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

I would just like to mention that I didn't
hear any agency today say we didn't have a problem.
I did hear that every one of us are committed to
addressing the problem the best that we possibly
can given the resource issue that we all have.

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

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

You know, for instance, we recently had a case
where an inmate alleged that he was having sexual
contact with his counselor. So we did an
And during the interview, the counselor, obviously, denied the activities. Well, we certainly weren't going to give up, so we used surveillance cameras and guess what? The following counseling session it was verified, the allegation was true. So it's really a matter of what your intent is. If your intend is to fully investigate the allegations, you can't stop with a he said she said issue.

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

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

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

MS. CARUSO: Sir, I will tell you I agree
with you, with your concerns on the length of
investigations. And one of the things that our
investigators are probably getting a little tired
of are the notes coming back from me when I read
all of the investigations when I say, why did it
take, and I count out the length of time.
Sometimes there are legitimate reasons for that.
In my opinion, quite frankly, many times there are
not.

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

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

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

COMMISSIONER AIKEN: Thank you.

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

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

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

COMMISSIONER STRUCKMAN-JOHNSON: Just asking for your opinion. Given that the investigations can take a long time and are difficult and complicated, we still have the issue that if it's a credible charge and what in the
meantime happens to the inmate who is still being exposed to, let's say in this staff misconduct, what happens to the inmate if the person who is charged still has supervision over him or her? Is there any way that there could be a separation that's both sensible and humane in case the person is found to be guilty or innocent, that nonetheless the two people are separated from each other physically?

MR. REES: Absolutely.

MS. CARUSO: That's a given.

COMMISSIONER STRUCKMAN-JOHNSON: That happens?

MR. REES: Yeah, absolutely. That happens the instant that the allegation is made.

COMMISSIONER STRUCKMAN-JOHNSON: For staff? Staff are moved out?

MR. REES: Yeah, absolutely.

COMMISSIONER STRUCKMAN-JOHNSON: I was just thinking of Mr. Wood. Of course, that allegation came, I guess, later.

MR. REES: The allegation wasn't made as
I heard.

COMMISSIONER FELLNER: Me either.

COMMISSIONER STRUCKMAN-JOHNSON: Right.

COMMISSIONER FELLNER: No.

MR. REES: The allegation wasn't made.

COMMISSIONER STRUCKMAN-JOHNSON: Okay.

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

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

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

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

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

COMMISSIONER FELLNER: Can I just follow up briefly on the notion of the vigorous investigations? I don't remember the exact data in the most recent BJS report or the last one, but there's a very high number of investigations that end up unsubstantiated, which means that they don't figure out what happened one way or the other. How do you explain the inability to make that high number of investigations in which they can't figure out what was going on?
MR. WALL: I think in order for me to assess the significance of that data, I would need to look at those investigations and ask my own investigators to offer a second opinion to see whether there are other avenues that could have been pursued that haven't been pursued. It may be that opinions would differ as to whether in all of those cases they should be logged in as unsubstantiated.

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

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

COMMISSIONER FELLNER: In Pennsylvania?

MR. SPRENKLE: No, nationally.

COMMISSIONER FELLNER: But in your agency?

MR. SPRENKLE: In Pennsylvania for year
2005, the percentage was 26 percent.

COMMISSIONER FELLNER: And in Michigan?

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

MR. WALL: And I think that relates back to Commissioner Smith's question, what happens with these cases in which somebody appears on the radar screen relatively frequently as involved in a case that isn't substantiated. I think in those instances sometimes the department has to take a risk, a responsible risk, but a risk. In other words, if you have a series of unsubstantiated cases involving the same employee, perhaps that fact alone, as John Dignam suggested, might indicate that you've got a preponderance of the
evidence needed for administrative staff. If you can correlate that to the fact that other staff in the facility who don't have the same track record and if the employee says, well, it's because I enforce the rules and so the inmates want to bring me down, well, you can point out cases where other staff issue more disciplinary infractions and these allegations aren't made. You aggregate that kind of information to make your case that there's too much smoke here now. This is more than just he said she said. There is, we believe, a preponderance of the evidence and then you proceed.

If you are confident that you've got a predator in your midst, then sometimes it is better to try and fail than never to try at all. Ultimately, you bring that forward. There is due process available to employees in virtually every system with which I'm aware. Ultimately, it goes to a personnel commission, an arbitrator, a Court. An independent fact finder reviews your decision. And if you believe it happened, and they find the other way, well that's on them. You did everything
THE CHAIRMAN: I would like to go on, but we are past time, so we are going to have to stop. I again want to thank all of you for your willingness to appear and testify.

And as was previously indicated by my fellow commissioners, at least several of them, you confirmed my belief that in today's corrections world, individuals who occupy your positions are by and large highly professional individuals who are concerned about these issues and are doing the best you can to address it. And I am convinced that if we had all administrators like you, that would go a long way in addressing the problems that we're talking about. And one of the questions I wanted to ask, and I don't have time to address it, but I hope that you will respond to it in some way, it's my belief that if you have top flight leadership and if you have good employees that that goes a long way in addressing these problems. And my question is, are you able to attract a pool of employees that qualify for what you want as
correctional officers? We don't have time for you to respond to it now, but are there impediments?

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

12:05 p.m..

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

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