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

I thank you.

THE CHAIRMAN: Thank you very much.

Questions?

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

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

I know in years past, this was certainly true in Texas long before you were where you are now, but I wonder if that is generally true. And if it is generally true, what recommendations do you have
then for us, the commissioners? We are charged
with trying to come up with standards and effective
methods for dealing with sexual assault, but can we
do that if we're not looking at the broader
problems of overcrowding and the factors that cause
violence in general?

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

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

You heard some testimony this morning about
ASCA's Performance Base Measure System, what we
hope to do, and because the information is so
scattered around the country is to be able to
correlate levels of violence, levels of escape, and
other kinds of important statistical data between
jurisdictions, but not necessarily just between
states, but between institutions in one state. And
so these are all the kind of information that we're
trying to compile, collate and make sense of, and
then make some policy decisions regarding that
information that we get.

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

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

If you look at all 94 of our facilities,
there are different groupings that we can do. We
identical facilities, has the same custody and
classification of offenders. At our very large
facilities that house our maximum custody offenders, those are where our highest rates come from. Those are where we house offenders who are maximum security offenders, offenders who have had disciplinary problems within the system and so forth. Plus, they're our biggest numbers. We have well over 15 facilities that house well in excess of 2,000, 3,000 offenders. And certainly that's where some of our highest rates come from.

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

And part of our safe prison program has been to collect all of that data and to learn about it. What's it telling us, what's it teaching us, and then, subsequently, what are strategies both focussed on our staff, focused on the facility, focused on the leadership, focused on our offender
population, what are the things that we could do.
And so I think we can learn a tremendous amount of
things like that. I, though, agree too we counting
across jurisdictions and then comparing those
numbers is a very, very complex slope as you've
heard a number of us talk about.

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

THE CHAIRMAN: Mr. Maupin, let me just
ask you a question, and I preference it by saying
I'm not antiunionized. I'm the son of a Pennsylvania steel worker, so I know how unions have done a lot of good in improving the work environment for workers. But I've heard from some directors, and I've heard, not in your state, from some executive officers that unions have been an impediment to the ability of correction officials to improve the correctional system. I don't know if that's true or not, but I've heard it, that in reference to disciplinary actions, other aspects of the prison environment, that unions have at least to some degree in certain jurisdictions been an impediment.

MR. MAUPIN: Well, we have differences of opinion from time to time. And I remember in 1996 when the Department of Corrections in Illinois allowed inmates in maximum security prisons to put blankets inside their cells so that officers walking down the unit could not see inside. They would hang them inside their cell doors so we couldn't see the inmates inside the cells. And we said this is a health and safety violation. They
do not have an expectation of privacy. We think you should take them down. They refused. We had a dispute over that. We had to go to the legislature and get legislation passed to force the department to take down what they call the cell curtains because actually a horrible rape and homicide occurred in our correctional center behind those very curtains while we were fighting this fight in a cell. So we do have disputes on occasion with employers about best practices. We think we were right on that. And I think history has born us out as an example. And I don't think that that is an example of the union being impediment to best practices. We advocate for best practices because it's our members whose health and safety is on the line when an employer engages in less than best practices.

I just had a dietary worker at Jacksonville Correctional Center three weeks ago in dietary raped, beaten, strangled with an electrical cord and left for dead by an inmate in a minimum security prison because we had a dispute with
management that they should have had a kitchen
officer post man as a mandatory post. They think
we're an impediment for fighting for that post
because they have other priorities. I think
history will prove that that fight was right.
Those are two examples I think of.

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

Through grievance procedures, we can make sure
that people get the commensurate and appropriate
level of discipline for misconduct and, at the same
time, innocent people don't get scapegoated. So I
have no apologies for ensuring that if people get
fired, it's because they should be fired. And there
are some people that should be fired and we do not
oppose that. And I think in my earlier remarks I was pretty clear about some of that.

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

COMMISSIONER SMITH: First, I want say that there were things in the testimony of each of you that I sort of marked and said that I really wanted to go and follow up with you on, Director Wilkinson, your information management system; Professor Frasier, sort of this dialogue about gender specific issues with regard to both offenders and with regard to what's going on with staff, the institutional character profile, and, Director Maupin, your statement that as a union you had a zero tolerance for staff sexual misconduct with offenders. But what I want to do is I want to sort of follow up the judge's comment some about not necessarily just with unions, but I would like you to respond from a union perspective, but across the board.
I asked this question on the earlier panel and Professor Frasier mentioned it, which is, okay, you admit that these folk have no place in your union, right?

MS. FRASIER: Um-hum.

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

MS. FRASIER: No, one state in between.

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

I mean, for example, why shouldn't these be registrable offenses because they aren't in every state? Why shouldn't there be a data base where they are founded complaints that's kept by a
neutral entity so that states from around the
country can call in and check in and find out if
somebody has this kind of stuff on their record
because then it would, you know, create at least a
flag.

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

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

MR. WILKINSON: That's the same case in
Ohio. You know, we don't allow you to quit. You know, we fire you, we prosecute you, we even flag our personnel file that says you can no longer be hired in the state government. And if anybody does, you know, any kind of a decent background check, that information is easily determined. So I fault the agency who hires those people if they can't find that information out.

MR. MAUPIN: Especially if they have a conviction.

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

MR. MAUPIN: Not in Illinois.

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

COMMISSIONER FELLNER: Can I jump in with a question?
COMMISSIONER SMITH: I want to hear.

Margo?

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

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

Often people do resign. In many states there is no procedure. Like in Texas we have a reporting process if someone is fired, but that's if they're fired, not if you allow them to resign. You know, not to start that management/union argument here, but I often would have the folks from AFSCME come in and say or the state equivalent, which is called
cleat (ph.) in Texas, come in and argue and say, well, let them resign, don't send in that letter. We want that part of the agreement. And I would refuse to do it, but I know there were plenty of agencies that did acquiesce to that kind of pressure and they would not send anything into the State Licensing Board and if they checked with the State Licensing Board, it just showed that they left that employment, and if they checked with the agency, they were told that the person had resigned, like I said in some cases, and they gave them a favorable recommendation even though they, in one case I know of, where the person had admitted to actually having had sexual intercourse with an inmate.

COMMISSIONER FELLNER: I wanted to follow up because there has been a lot of discussion both here and in prior hearings about how can you balance the rights of the worker to be treated fairly, the correctional officer, let's say, but the necessity of management to be able to act effectively and quickly to protect inmates,
particularly when maybe there are only allegations where there's smoke, you can't necessarily prove it, but you have concerns and yet maybe you have contracts that somebody gets a post and you can't move them. You have a situation like Commissioner Dennehy mentioned where you have five people were where they shouldn't have been, something happened in that room, there was some kind of misconduct, if only because of the code of silence, and yet certainly in states like I think the govern's report in Massachusetts, and certainly in California, have talked about how the code of silence impedes the ability of senior correctional officers to take effective action.

So I know you are sympathetic to their need to be able to get rid of bad apples and you also, of course, want to protect the due process rights of your members, but what do you see as the proper way of handling the code of silence and the refusal of some people to talk about what their fellows have done and the difficulty it can be to have them terminated for maintaining the code of silence and
should they be terminable if they keep the code of silence?

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

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

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

But under the just cause standards of
discipline, you have to find a punishment that fits
the crime for the misconduct. I don't know how
senior these employees were. An arbitrator takes
record? If they've got 20 years with no prior
discipline, they're likely to be given more
consideration for reinstatement than if they're a
two-year employee that has some prior discipline.
So there are remaining questions that were not
brought before the commission here today on that
specific example that would have been relevant to
flesh out the rest of the details as to how the
decision was made by an independent third party who
didn't work for the union or the state, sat in
judgment on the facts and made a decision.

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

MR. MAUPIN: No question.

COMMISSIONER NOLAN: First of all, an
amusing, but frustrating anecdote about training.
I got a call from John Thompson who heads up Kairos
ministries, which I think most of you are familiar
with, just tremendous work trying to heal the
families of the incarcerated. And he was in a
panic because the Alabama Department of Corrections
had said because of the Prison Rape Elimination
Act, none of their volunteers were certified any more until they went through new training as required by the Prison Rape Elimination Act, also even after they went through that training, so they had to cancel all the Kairos activities.

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

But more question is for you, Director Maupin. You said you have zero tolerance of this. Have there ever been any officers in the Illinois Department of Corrections that you represented that
were accused of staff sexual misconduct where you
have declined to defend them as they tried to keep
their job?

MR. MAUPIN: Yes.

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

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

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

COMMISSIONER NOLAN: Um-hum.

MR. MAUPIN: Well, first of all, in
Illinois, you'd be prosecuted for that if that's
what you were terminated for. The department would
not permit you to resign. And any due diligence from a perspective employer would find out that you were fired and you would be prosecuted and there would be a record of the prosecution, whether there was a conviction or not.

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

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

But, no, we don't run into much reticence to pursue cases like that because they're not that common. You know, we don't have that in common. I think with respect to the circumstance you raise in Massachusetts, there's just too many unanswered questions with respect to the facts. I
think an arbitrator agreed discipline was appropriate by sustaining a level of discipline, but that the measure of discipline was inappropriately harsh. Could be because they were long-term employees with no prior discipline, could be because there were unanswered questions with respect to what actually happened. It's speculative to guess. In fact, you ought to ask for the provision of that arbitration decision to read the entire decision and elucidate the rest of the facts. That might be more helpful than my speculation.

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

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

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

    Now, sometimes I will tell you that there are
people who say, well, I want to be able to make my
own choices to whether or not I give that person a
chance. My feeling is well, that's kind of
obviously a judgment call, but at least then you'll
have knowingly walked into that lion's den. If you
choose to do so, so be it.

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

Those cases where an employee resigns prior to
a termination or some of those in between, we don't
have enough, we know there's something, an
investigation is happening, we very much in our
record have that this person resigned with a
pending investigation or disciplinary. And so that
even though there might not be a termination, we
have not lost fact of the issue and that person
would not we eligible for rehire. And so, I mean
those are some techniques.
And, you know, with our state it's less than an issue. Someone coming from out of the state, I think the professor is right, it's more of an issue of one of our people leaving and we being able to accurately relay to the county if questioned. And we do have a big issue with people from out of state coming in, but we have a big issue of tracking our own employees who leave us around the state. And so we've developed some pretty strong systems that irregardless of how an employee leaves, there's enough flags that we know to dig further.

THE CHAIRMAN: Questions from this side of the table?

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

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

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

Depending on the issue, everything, especially our sexual assaults, every single one is referred
to the office of the Inspector General, who is our
law enforcement wing. We have sane nurses. We
have a sane nurse program. We have victim
representatives, chaplaincy or correctional
counselors, case managers, psychologists, that are
all trained as victim representatives. So we have
a strong program in place.

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

Now, on the other side of that, though, when
we report into a BJAS system, that's a number of
allegations and every state counts those
differently, we stand by ourself and we don't back
up from that. We've had a lot of discussions and
we're going to continue to stay where we are and do
what we do so that we can learn the things that we
need to to make a difference.

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

The other thing is because of the way we
count, we count allegations, but we learn things
from that. We can statistically break those apart.
Very quickly we learn cell blocks and inside cells.
That's where our greater number of allegations occur without yet making a determination how many were real, how many were manipulative, how many were sustained.

But when we break them all down, in our classification plan for a number of years we have a process that we house offenders within their classification in custody in the next available cell. That was our policy and process that we set up to fully integrate our system some years ago.

So, it's a next available cell based on classification custody.

We found that size made a difference. Over 30-pound difference in weight, the data seemed to be suggesting that there could be a victim predator issue there. We saw age issues start to immerge in our allegation. So now we use the word "not next available cell," we use the word "next available appropriate sell." Still race is never an indicator, but age, height. And I think I used age. Height was the other indicator that popped up that was kind of interesting, height and weight
indicators, as we use our cellsing process. And so we're learning things about that.

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

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

And so we're continuing to move forward and continuing to learn. And rather than spend a lot of time debating the number issues, what we're doing is using PREA and our Safe Prison Program as
an opportunity to focus on our environment and
culture.

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

COMMISSIONER KANE: Well, thank you.

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

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

COMMISSIONER KANE: Well, this is very,
very interesting to me. I hope I won't get in
trouble by saying that we are very seriously
considering having a hearing in the future in the
great state of Texas and we'd like to talk to you
in the meantime, perhaps.

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

COMMISSIONER NOLAN: Thank you.

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

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

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

If we looked at it as one isolated incident
without doing a proper analyses, then we're going
to be doing ourselves an injustice, and we're going
to look pretty stupid, quite frankly, if a similar
type of situation happened in the near future. So
we try to understand not just what happened at that
particular point in time. We want to know why it
happened. We want to know if there is a problem
bigger than just the one that we're attempting to
investigate and/or prosecute.

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

Many of our prisons are overcrowded. It has
nothing to do with anything that we can control.
To me it's a travesty when I have 7,000 people in
our prison system who are in prison for truly
nonviolent offenses. It makes my job more
difficult when these people could be punished in
the community with other kinds of nonprison
correctional officers, and we're represented by
AFSCME as well when we can concentrate on those
people who truly need to be behind bars and truly
need to be supervised with some level of intensity.
It also makes it more difficult for us to
detect and supervise prisoners when our
institutions or crowded. So if all we're talking
about is a prison rape sexual assault incident, and
not looking at the bigger picture of what's
creating that environment for sexual assaults to
take place, I think we're not doing all that we
can.

COMMISSIONER AIKEN: Maybe I didn't ask
the question correctly. I am saying or asking what
is the impact upon the inmate, what is the impact
upon the employee, what is the impact upon the
prison system, what's the impact upon the potential
employee in relationship to sexual intimidation,
perception of sexual rape even if it hasn't
occurred or even one incident? And I certainly
agree with you about the predator behaviors or
contraband as well as the other issues that are
involved. And I'm not just talking about inmate on
inmate sexual misconduct, but staff on staff, staff
on inmate, and all of the above combinations.
That's the question. What is the descriptive
impact of those incidents or even the perceptions of those incidents occurring within a correctional environment?

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

Included, for example, in our 10-point plan is a victim's assistance. You know, if we think that a person has been assaulted, we'll do a victim impact assessment of that person. We'll determine whether that person needs to still be at that institution or somewhere else. We will immediately do like Mark said, oftentimes if we suspect a staff person involved, put that person on administrative leave so that person does not have any additional contact until we understand exactly what has taken
place. So, there are a lot of different impacts based upon the circumstances and the facts of that particular investigation, and they can be different.

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

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

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

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

MS. FRASIER: I think he does a couple of things, Commissioner. One is the fact that whenever, particularly -- and there are different
issues. I mean contraband and all those sort of things are very serious, but sexual assault is something that if someone is able to be violated behind the walls, then what that says to me as an inmate, no matter how big a mean son of a gun I might be, is that I'm not safe and that there is a lack of feeling of safety in the institution. And so I think often that there's a link between sexual assault and other violence in the institution that I best do some things to protect myself and that I best not associate too closely with the corrections staff and believe that they're there to try to help me in all these sorts of things.

And also I think one of the other things that is self-perpetuating is what happens is, and you see it, I mean the jokes on television about, oh, you're going to go to prison and say hello to Big Bubba on me, and these sorts of things. What that says to an inmate is as soon as I hit that door, before I even actually have any experience that should lead me to believe this, just by what I see in the media, tells me I better go find me the
biggest sun of a gun and do something that I don't want to do, but, you know, you know protective pairing. You know, I better go find me somebody to be my protector.

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

COMMISSIONER AIKEN: Thanks.

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

So, resolution of that with the local prosecutors is something that we're going to have to figure out because the department is now working on reviewing all the job assignments, looking at
anyone that has a marginal sex offense to make sure
they don't have a job assignment in like an office
area or outside the security fence and things like
that. But these are things that were not
communicated from the County of Prosecution to the
Department of Corrections when they made the
classification of the inmate.

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

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

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

THE CHAIRMAN: From the example you gave where you said information about the actual charge that the person was charged with, not being
disseminated, was there a presentence investigation
report done in that case?

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

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

MR. MAUPIN: I hope I'm invited.

COMMISSIONER PURYEAR: I did have a
question, though, following up on Brenda's question
with the first panel about reporting staff sexual
misconduct. I applaud you for saying that AFSCME's
position is that if you engage in staff sexual
misconduct, you should be terminated, that ought to
be the end of the discussion. Of course, the devil
is sometimes in the details about what actually
happens in the Sheriff's office or the
Commissioner's office when the termination is being
discussed.

MR. MAUPIN: And whether the accusation
is true.

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

MR. MAUPIN: Well, in Illinois it is.

THE CHAIRMAN: Do you agree with that?

MR. MAUPIN: Well, arbitrators have
upheld it and that's the law of the state, that if
you have knowledge that somebody is engaging in an
activity like that, that puts everyone at risk,
personally, I do agree with it, but it's irrelevant
whether I agree with it, that the arbitrators have
determined that that's just cause for termination
because you're concealing information that puts the
entire facility and hundreds of other people at
risk.

COMMISSIONER FELLNER: We'd like to know
--

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

COMMISSIONER FELLNER: We are going to be
trying to come up with standards and
recommendations, so I think what the judge would
like to know, what we'd like to know is do you
think that would be a good recommendation that we
should be making, that there should be a valid law
and I think Marty Horn is passing the buck to the
legislature, which is harder to get the right
decisions than maybe other groups. But should
there be some kind of known sanction for failure to
come forward when you have knowledge of staff
sexual misconduct? Do you think that's a
recommendation?

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

You should also pay more attention to driving
up the wages in this industry that collective
bargaining will do to reduce the turnover so you
retain and retain more quality staff. Almost
everyone we have walking in the door now has got a
law enforcement degree because it's a profession
because of our success in doing that. And while we
are focused on that side of staff issues, the other
side of staff issues extensively here today, I
don't want to lose focus of the fact that if you
pay somebody $48,000 a year to be a correctional
officer, you're going to get a skilled professional
committed to the profession that's not going to
engage in the kind of things that somebody making
$7 an hour is going to engage in because they're
going to want to keep that job. They're going to
want to make a career out of it, and they're going
to want to engage in best practices in the
profession.

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

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

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

THE CHAIRMAN: Yes.

COMMISSIONER SMITH: One of the things that I've heard, and, Director Maupin, when we have that conversation about union issues, we can talk about sort of where the 48,000 or 7,000 makes a difference and sort of the other stuff, but one of the things that I really want to follow up on because I think that I'm seeing opportunity here. I've heard across the board that one of the things that would really make a difference on this issue is overcrowding, right? And I wondered whether the professional organizations that are represented here had taken that pitch on the road to the Hill, okay, whether they had said that in their state legislatures, whether you've said that in Washington, because I really do believe that your visibly coming out and saying that would make a true difference in some of these sentencing policies, which you seem to think -- not what you
seem to think, but which tie your hands and which
have an impact on those environmental factors. And
so I would really encourage you to take that on the
road and let that be known in places where it can
truly make a difference. I mean we can certainly
but it's very different to have Gwenn Shun (ph,)
who is the head of ACA saying that, you know, in
congressional bodies when we're looking at our
sentencing policies.

MR. MAUPIN: If I may, we have a piece of
legislation that's moved through the senate, it's
going to the house and the Illinois General
Assembly, that fixes staff to inmate ratios and
says that when it gets to a certain level, you
either have to hire more staff or you have to
release inmates to get it down to that level. So,
sufficient staff to provide security in the
facilities. And if you're not willing to fund it,
then you have to start moving some people out to
get the population down to what is an acceptably
manageable level. And it passed our senate 54 to
2, very bipartisan support, and that's in the House
now.

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

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

In Texas we haven't been a state as long as
the great Commonwealth of Massachusetts, so we
can't, you know, boast to being back to the 1600s,
but we've got, you know, institutions that are 150 years old that he is forced to still use when, you know, more inmates come. But, in the same way it is a very difficult issue.

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

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

We're talking about now, for the first time, on the Hill, issues like Mentally Ill Offender Act
where we're trying to prevent, you know, persons
from reoffending because of their mental illness by
seeking treatment for those persons. So think we
have a venue, you know, now that is different than
what we've had in Washington for many, many years.
And, you know, I think it needs to be a
multi-frontal attack, not just from Gwenn Shun, but
from the commission, from your Dues Commission and
whatever other commission you want to think about.
We need to start saying some things that we haven't
said in the past.

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

MR. WILKINSON: Sure.

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

We'll take a recess until 3:30.

(Brief Recess.)