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OFFICE OF JUSTICE PROGRAMS

REVIEW PANEL ON PRISON RAPE

HEARINGS ON SEXUAL VICTIMIZATION IN U.S. PRISONS,
JAILS, AND JUVENILE CORRECTIONAL FACILITIES

DIGITAL TRANSCRIPTION

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1 P R O C E E D I N G S

2 (8:32 a.m.)

3 INTRODUCTORY REMARKS

4 DR. WILKINSON: Thank you all for attending
5 the 2014 version of the Review Panel on Prison Rape
6 hearing, a little bit unusual for us.

7 At times over the next day and a half, we are
8 going to hear testimony from juvenile agencies, from
9 adult institutional agencies, and adult detention
10 agencies.

11 We had only done one or two at a time, and
12 this time, we are going to do all three, probably in an
13 attempt to recognize the federal resources that go into
14 making sure these hearings take place.

15 We are pleased to be here to help facilitate
16 the process of the Review Panel.

17 I'm Reggie Wilkinson, chairperson of the
18 Panel. To my right is Anne Seymour, panelist, and Dr.
19 Gary Christensen to my left.

20 The hearings have always been very important
21 to the field, not just because of the witnesses who
22 will testify, but we use that information to help

1 understand more about the processes that agencies use
2 to abate the problem of sexual misconduct in
3 correctional institutions throughout the United States.

4 We recognize also that a lot of work has gone
5 into making sure that agencies have the tools to abate
6 the problem. The prison rape statute now is going on
7 eleven-years old. A lot has taken place. The PREA
8 Commission has performed its work. They should be
9 proud that the standards are now duly in place; and
10 that actual hearings or actual audits are taking place
11 on the now promulgated standards.

12 In the next two days, the Panel will be
13 holding hearings on sexual victimization in prisons,
14 jails, and juvenile correctional facilities.

15 According to the Prison Rape Elimination Act
16 of 2003, or PREA, as we all affectionately know it now,
17 for each of these three general categories of
18 correctional institutions, the Panel will hold separate
19 hearings - one for institutions that have a high rate
20 of sexual victimization. One for institutions that
21 have a low rate of sexual victimization.

22 To comply with this requirement, we will be

1 noting that we will proceed under which hearing the
2 Panel is receiving testimony. The Panel recognizes
3 that some of the testimony it receives in one hearing
4 may address broad issues that are applicable to the
5 other hearings.

6 The Panel has also received testimony from
7 many of our witnesses, from institutions that appear at
8 the hearings, and from others.

9 I note that the Panel has accepted these
10 documents into the record. All of the witnesses will
11 be sworn in for the official record as well.

12 It has always been fascinating to me that the
13 law is entitled "Prison Rape Elimination Act," not the
14 "Prison Rate Reduction Act." We know it will be
15 difficult, if not impossible, to eliminate all sexual
16 misconduct, but it certainly would not have been the
17 right thing to do to say all you need to do is reduce
18 the prevalence of sexual misconduct in our
19 institutions; so zero tolerance should indeed be the
20 goal, whether or not it can be attained.

21 We need to make sure those high standards are
22 ones that agencies are seeking to achieve and not

1 something less than that.

2 We are pleased to conduct these hearings. I
3 would turn to my colleague on the right, Anne Seymour,
4 if she has some opening thoughts.

5 MS. SEYMOUR: Thanks, Dr. Wilkinson. I'm also
6 really pleased to be part of these hearings. I look
7 forward to the testimony of tomorrow and today that I
8 know is going to have a positive impact on how we as
9 individuals and institutions -- I'd like to think even
10 as a nation -- prevent and respond to the sexual
11 assault and rape of individuals that are under any form
12 of correctional supervision.

13 I would be remiss if I did not thank our
14 amazing staff for their hard work in preparing for the
15 hearings. These four inch bulletproof binders did not
16 just create themselves. I appreciate all of the work
17 you have done.

18 I want to say it's just an honor to serve with
19 Dr. Gary and Dr. Reggie on this Panel. They are the
20 best partners I could ask for.

21 I've been a national victim advocate for over
22 thirty years and most of my work has been involved in

1 the post-sentencing phases of cases that involve crime
2 victims and survivors.

3 I learned early on that it is one thing when
4 you lose power and control because you did something
5 bad or wrong. We call that accountability. I know
6 when you lose power and control because someone chooses
7 to hurt you, that's bad. That is the crime of rape.
8 That is what we are here to stop.

9 I know the devastating impact of rape does not
10 lessen based upon where you were sexually assaulted,
11 and I also know that we have lots of evidence-based
12 protocols in the field of victim assistance and rape
13 response that have been effective in responding to
14 victims of rape.

15 I think most important -- I know one
16 correctional officer who was sexually assaulted by an
17 inmate, and she told me the sooner you deal with
18 trauma, the sooner it's over, and I know immediate and
19 effective response to survivors goes a very long way in
20 mitigating victim trauma.

21 I'm also really proud of the victim-assistance
22 professionals who have for many years in this country

1 partnered with institutional and community corrections
2 to identify and compassionately address the most
3 significant needs of victims who are sexually assaulted
4 while in prison or under probation-and-parole
5 supervision.

6 Joyce Lukima is going to address that today.
7 I am really looking forward to your testimony. Thank
8 you for being here.

9 The late great Nelson Mandela once said "Where
10 you stand depends on where you sit." I think the work
11 of our Panel is to make certain that every victim of
12 rape, whether they are sitting at home or at work or in
13 a parking lot, around a college campus, even in prison
14 or jail, can stand firmly with the knowledge that
15 validation, support, and assistance are available to
16 support him or her in the aftermath of such a terrible
17 crime.

18 I'm looking forward to today and tomorrow.
19 Thanks.

20 DR. WILKINSON: Gary?

21 DR. CHRISTENSEN: Thanks, Reggie. As Anne
22 said, it's a pleasure to serve on the Panel with both

1 Reggie and Anne and the staff. As Anne said, these
2 binders just don't create themselves. They have done a
3 wonderful job in preparing us with information that we
4 need to ask relevant questions and continue to learn
5 for the field.

6 Having said that, as a person who has been in
7 the field since 1978, the promulgation of the PREA
8 standards represent our continued progression of
9 correctional practice throughout our country, and in
10 keeping with that, we look forward to the questions and
11 answers that we will hear throughout this hearing to
12 help us continue to learn and move forward in our field
13 of corrections.

14 Part of what we will learn is some of the
15 continued differences between low incidence and high
16 incidence facilities, and help to advance the field
17 with everything that we hear here today.

18 In keeping with the objective, we certainly
19 appreciate the participants, and we appreciate any
20 insights they can give us to help move our field
21 forward.

22 DR. WILKINSON: After over forty years of work

1 in the corrections business, a few things have taken
2 place, especially from the United States Congress, that
3 has created a shift in the way correctional agencies
4 look at their work.

5 Certainly PREA has been something that is just
6 not designed, in my mind, from an operational
7 perspective to abate problems of sexual misconduct in
8 correctional institutions. It is my personal position
9 that if you fix the issues related to PREA, you fix the
10 orderly operation of correctional institutions in
11 general.

12 If you fix PREA, you create an environment, a
13 culture of safety in our correctional facilities, in
14 the correctional environment, which I think is why we
15 are there.

16 We do this work not because we are told to.
17 We do it simply because it is the right thing to do,
18 the best human interest kind of thing we can do to
19 protect those persons inside our correctional
20 institutions, and that should not be something we are
21 afraid to do.

22 Most of our correctional agencies across the

1 country do this and do it well. We still have a few
2 that have not made it the highest priority. It is the
3 mission of this Panel; it is the mission of the PREA
4 standards and other efforts to ensure that we are all
5 on the same page in all of our adult correctional
6 institutions, juvenile facilities, as well as adult
7 detention facilities across the United States.

8 HEARINGS ON HIGH INCIDENCE PRISON FACILITIES

9 DR. WILKINSON: With that, I'd like to invite
10 Dr. Allen Beck to join us. Dr. Beck is probably the
11 single-most person, him and his team, responsible for
12 putting together the process of determining high and
13 low prevalence of sexual misconduct in correctional
14 institutions in the United States in his position with
15 the Bureau of Justice Statistics, which is housed in
16 the Office of Justice Programs, which of course is a
17 division within the U.S. Department of Justice.

18 With that, Dr. Beck, we appreciate you being
19 here, as you have been for all of these hearings. As
20 part of the process, as you know, we must swear you in
21 prior to your testimony.

22 Do you swear and affirm that the testimony you

1 are about to give is the truth, the whole truth, and
2 nothing but the truth?

3 DR. BECK: Yes, I do.

4 Whereupon,

5 ALLEN BECK

6 was called as a witness and, having first been
7 duly sworn, was examined and testified as follows:

8 DR. WILKINSON: Thank you, sir. Do you have
9 testimony for us?

10 DR. BECK: Yes.

11 STATEMENT OF DR. ALLEN BECK,

12 BUREAU OF JUSTICE STATISTICS

13 DR. BECK: Good morning. Obviously, I could
14 talk at some length so I must be brief given the time
15 frame.

16 MS. SEYMOUR: I can't believe we only gave you
17 fifteen minutes.

18 DR. BECK: I urge you to give me the hook when
19 I need to get off stage here.

20 This is our third iteration of our National
21 Inmate Survey. We did it in 2007, did it in 2008 and
22 2009, and then most recently, between February of 2011

1 and March 2012.

2 We have a large survey, a very difficult
3 survey to conduct. We were in 223 state and federal
4 prisons, 358 jails, fifteen special correctional
5 facilities, meaning military facilities, ICE
6 facilities, and Indian country facilities.

7 We were required under the law to be in not
8 fewer than ten percent of correctional facilities
9 nationwide. In each of our surveys, we met that
10 condition. We were required to be in at least one
11 facility of each type in every state. We have met that
12 condition as well.

13 The facilities were not chosen based on
14 friendship or family. They were based on probabilities
15 proportionate to size, based on the enumeration of
16 facilities that were conducted in 2005, a census of
17 facilities, prisons and jails, updated since that time
18 to ensure that we captured the size of a facility, as
19 it changed perhaps since 2005.

20 We over-sampled for female facilities for a
21 very simple reason: female sexual victimization is
22 quite different from male victimization, has had very

1 high rates of sexual victimization, and consequently
2 comparing female facilities with male facilities would
3 be an unfair and inappropriate comparison.

4 This time, for the first time, we over-sampled
5 facilities that housed juveniles, youth under the age
6 of eighteen. We focused on sixteen- and seventeen-year
7 olds. In order to survey such individuals, we had to
8 include additional facilities. We had to do a special
9 sampling in order to ensure an appropriate number
10 represented a number of such inmates.

11 We also over-sampled for facilities with
12 mental health functions, in that this is the first
13 effort we have undertaken to try to measure the
14 relationship between individuals with mental health
15 problems and risk of victimization. We actually
16 over-sampled for mental health facilities.

17 With all that said, there were known
18 probabilities of selection and we adjusted for those
19 probabilities so our figures represent a national
20 estimate as well as facility-level estimates without
21 any bias resulting from the over-sampling.

22 We did a very high precision in our estimation

1 and we also get facility-level estimates with known
2 measurable confidence intervals. I will explain that
3 later.

4 In keeping with our mandate, we tried to
5 measure the prevalence of sexual victimization at a
6 facility level, assess risk factors and explore
7 additional risk factors, primarily those related to
8 juveniles and adult facilities, mental health issues,
9 and sexual orientation.

10 The good news in this most recent survey is
11 the rates in sexual victimization have dropped somewhat
12 in prisons. "Somewhat" meaning from about four-point-
13 five percent down to four percent.

14 Staff sexual misconduct was the reason for
15 that drop. Staff sexual misconduct was willing
16 activity between staff and inmates. There was a
17 measurable drop in prisons and also a measurable drop
18 in jails as well. This is perhaps not surprising given
19 the attention that staff sexual misconduct has
20 received, and it is probably that the staff are on
21 notice, and there is some return on that activity.

22 We found overall that about half of the

1 victims in prison reported inmate-on-inmate sexual
2 victimization, two percent of them. About half of the
3 victims reported staff sexual misconduct, a little bit
4 more than half, two-point-four percent, there was an
5 overlap; some were victimized both by staff and by
6 inmates.

7 With respect to staff sexual misconduct, about
8 half the staff sexual misconduct is identified as being
9 unwilling, involving some form of explicit coercion,
10 whether it be force or abuse of power, and about half,
11 there was no indication of any force, threat of force,
12 or explicit coercion.

13 Of course, all staff sexual misconduct is
14 considered coercive in nature given the relationships
15 that exist between staff and a supervised population.

16 We identified eleven male facilities, one
17 female facility, and nine jails as having high rates of
18 inmate-on-inmate sexual victimization. We identified
19 eight male prisons, four female prisons, and twelve
20 jails as having high rates of staff sexual misconduct.

21 Generally what we do is we identify those
22 based on the observed value of prevalence and compare

1 those values against a comparable group. For instance,
2 we would compare the male prisons against the average
3 for male prisons on inmate-on-inmate sexual
4 victimization.

5 The eleven that we identified as high rate had
6 actual estimates that ranged from five-point-eight
7 percent to nine-point-eight percent, while the national
8 average was one-point-seven percent. Considerably
9 higher. Based on various statistical properties, we
10 could unambiguously identify these facilities as being
11 considered high rate.

12 Similarly, we looked at female prisons, and we
13 have identified one female prison with a high rate,
14 Mabel Bassett Correctional Facility in Oklahoma, with
15 an estimate of fifteen percent, as compared to the
16 national average of about seven percent for females in
17 prisons.

18 We used the same methodology we used in the
19 2008/2009 survey.

20 In terms of basic findings, we found
21 consistently that females had higher rates of inmate-
22 on-inmate sexual victimization than males. Whites had

1 higher rates than Blacks. Those held for sex offenses,
2 violent sex offenses, had higher rates of sexual
3 victimization than those held for other offenses.

4 When it came to staff sexual misconduct, males
5 reported higher rates of staff sexual victimization
6 than females in jails, but not in prisons. Higher
7 rates of Black inmates reporting staff sexual
8 misconduct than Whites. We had lower rates of staff
9 sexual misconduct being reported by older inmates than
10 by younger inmates.

11 When it came down to looking at serious mental
12 illness and various measures, we found a very
13 substantial dramatic difference between those who had
14 indicators of serious psychological distress or other
15 indicators of past involvement with the mental health
16 system, whether it be staying overnight in a mental
17 hospital or ward, being told by a trained professional
18 they had mental or emotional problems, and use of drugs
19 prescribed by doctors for such things.

20 Persons with those characteristics had
21 substantially higher rates of sexual victimization,
22 inmates on inmates, than other inmates.

1 We found in our investigation of sexual
2 orientation, once again, that individuals who were gay,
3 identified themselves as gay, lesbian, bisexual, had
4 among the highest rates of sexual victimization,
5 whether it be inmate-on-inmate or staff sexual
6 misconduct.

7 We did also investigate individuals who were
8 transgendered and whether or not they had higher rates.
9 Unfortunately, there are too few transgendered
10 individuals we could collect in our survey to collect a
11 reliable rate, about two-tenths of one percent of all
12 our inmates identified as transgendered. In order to
13 provide an estimate that would be stable, we would have
14 to gang those up over multiple surveys.

15 Nevertheless, transgendered individuals
16 identified largely as gay, lesbian, bisexual or some
17 other orientation, that is ninety-five percent of the
18 transgendered individuals that we surveyed in 2011,
19 reported themselves as having a non-heterosexual
20 victimization. That victimization risk is picked up
21 through the heterosexual orientation, non-heterosexual
22 orientation.

1 The combination of mental health and
2 non-heterosexual orientation, whether it be gay,
3 lesbian, bisexual or other, was a particularly high
4 risk group. That is, twenty-one percent of those in
5 prison who were identified as having serious
6 psychological stress and non-heterosexual orientation,
7 twenty-one percent reported inmate-on-inmate
8 victimization in prison; fifteen percent reported that
9 in jails.

10 I think we have learned a great deal from
11 looking at mental health and issues related to sexual
12 orientation.

13 Turning to the issue of juveniles held in
14 adult facilities, this is the first time we did this
15 collection in the sense that we had to specially design
16 the survey in order to do so accurately. Since
17 juveniles are concentrated in some facilities in some
18 states, you have to over-sample for such facilities,
19 and then make a greater effort to over-sample once in
20 the facility to capture sufficient numbers of youth in
21 adult facilities.

22 Be mindful that the number of individuals,

1 numbers of youth being held in adult facilities, is
2 dropping, dropping significantly across the country.

3 In our survey we identified 1,700 juveniles
4 held in prisons and 5,800 held in local jails. That
5 number in prisons has dropped since then. Our latest
6 figures are around 1,300 juveniles held in prisons.

7 The long-term trend is a decline in youths in
8 adult prisons to house juveniles, and in jails, they
9 are held for relatively short periods of time awaiting
10 transfer and placement elsewhere in the system.

11 Nevertheless, they are at risk for sexual
12 victimization, and we pursued that effort to try to get
13 a sense of how much risk there was.

14 We interviewed roughly 600 juveniles in state
15 prisons, sixteen-to-seventeen-year-olds, and 1,200 in
16 local jails, a fairly large sample, a fairly large
17 proportion of youth under such circumstances. It gave
18 us a very high degree of precision when making our
19 estimates.

20 The data did not support the conclusion that
21 juveniles held in prisons and jails are more likely to
22 be sexually victimized than inmates held in other age

1 groups. We do not see an extreme risk for such youth
2 in these conditions.

3 The inmate-on-inmate victimization rate in
4 prisons was one-point-eight percent, in jails, one-
5 point-eight percent, compared to two percent of adults
6 in prisons and one-point-six percent in jails.

7 We looked at staff sexual misconduct, the rate
8 for juveniles, sixteen-to-seventeen-year-olds, was two-
9 point-eight percent, three-point-three percent in
10 jails, compared to two-point-four percent of adults in
11 prison, and one-point-eight percent in jails. Although
12 the staff sexual misconduct rates are somewhat higher,
13 they do not test to be statistically different. That
14 is, they could occur simply because of sampling error.

15 There is a striking similarity between
16 sixteen-and-seventeen-year-olds and the experiences of
17 eighteen-and-nineteen-year-olds. There is very little
18 variation by age within demographic groups or by sexual
19 orientation.

20 Of course, the question is how does this
21 square with what we know from administrative data. We
22 have been collecting administrative data based on

1 reports of administrators from a large sample of jails
2 and prisons every year.

3 We look at numbers of allegations, and we also
4 look at substantiated incidents in detail; that is,
5 those allegations that upon investigation have been
6 proven to be substantiated, that is, to have occurred.

7 What we have found in doing that work is that
8 the substantiated incidents have shown slightly higher
9 rates of sexual victimization for youth than what would
10 be expected based on their representation in the
11 population.

12 The story is a complex one in that we are
13 finding rates of less than one percent of sexual
14 victimization, one percent of the victims being under
15 the age of eighteen in the administrative data in
16 prisons; that is, point nine percent in 2005, point six
17 percent in 2006, and then one-point-three percent in
18 2008. More recently those numbers have declined.

19 We are soon to release a report, that is, on
20 January 23, that will provide this in detail. I have
21 somewhat limited capacity to talk about that.
22 Nevertheless, what we are talking about here is one to

1 two victims per year showing up in our inmate
2 surveys -- in our administrative data -- which yields a
3 very unstable set of estimates.

4 When we gang all these years up, we find that
5 the rates of sexual victimization for youth based on
6 administrative data that have been substantiated are
7 very similar in prisons to the rates for older inmates.

8 Be mindful that the jail figures are slightly
9 different. They have been cited by others. I think
10 they have been cited incorrectly, and it is important
11 to understand there is sampling error when we do these
12 administrative data.

13 We are looking at percentage of youth under
14 eighteen in the substantiated incidents being two to
15 three times higher, not ten to twenty times higher.
16 The confidence intervals exist around those. BJS
17 increased the sampling for the survey of sexual
18 victimization in jails where we see these differences
19 from 350 jails to 700 jails in 2009, in order to get
20 more precise estimates.

21 The bottom line is I think there is somewhat
22 elevated risk of sexual victimization for youth under

1 the age of eighteen in jails, but that elevated risk
2 isn't as great and is also subject to sampling error
3 and imprecision nevertheless.

4 I think ultimately the National Inmate Survey
5 is dealing with allegations. The survey of sexual
6 violence is dealing with substantiated incidents. The
7 two may be in different populations, youth who have
8 come forward seemingly have some indication of having
9 been victimized in a more serious way involving more
10 threat and injury than those simply alleging sexual
11 victimization, so the two are not directly in
12 comparison.

13 It's a long discussion but it's an important
14 one related to the very issue of elevated risk of youth
15 in adult facilities.

16 Finally, let me talk somewhat about the
17 criticisms of the survey and the methodologies that we
18 have employed. First, the survey is a survey of
19 facilities not jurisdictions. We don't sample an
20 entire department of corrections. We don't sample an
21 entire jail jurisdiction. We sample facilities. The
22 law requires us to do that, to be in facilities and to

1 estimate the prevalence and incidences of sexual
2 victimization within facilities.

3 A jail jurisdiction, for instance, that may
4 have two or more different facilities will have the
5 probability of being selected based on the size of each
6 of those facilities, and we provide our estimates for
7 each facility, not for the jurisdiction.

8 There were roughly 2,800 jail jurisdictions in
9 the country compared to about 3,200 facilities. Our
10 sample is a facility-based sample.

11 Of course there is also the issue of absence
12 of external validation. The survey, after all, is
13 based on victim self-reports. There is not the
14 possibility of validating the self reports without
15 violating the confidentiality that has been given, and
16 without giving that assurance of confidentiality, we
17 could not collect the data, and victims would be not
18 willing to come forward without additional fears and
19 trauma perhaps or risk fear of retaliation, possible
20 embarrassment.

21 There is a real code of silence that exists.
22 We must give confidentiality that is absolute, and

1 consequently we cannot use the information we collect
2 to then go and check to see through records or other
3 reports the alleged incident was actually true.

4 In the absence of external validation,
5 however, we conduct extensive internal consistency
6 checks. We look at extreme responses, extreme
7 responses being that victimization was in excess of
8 one-point-five incidents per day every day they are in
9 the facility. We find that not credible.

10 We look at indications of time it takes to
11 complete the survey. We know you can't complete the
12 survey in ten minutes. It is a thirty-minute survey.
13 Humanly not possible to read all the questions and
14 respond to them in less than ten minutes.

15 Any interview that took less than ten minutes
16 in length to be conducted through the audio computer-
17 assisted self-interview, we had a timer on the
18 computer, any interview that was too short was thrown
19 out.

20 We also developed a whole set of indicators to
21 look at lack of understanding, inconsistent set of
22 responses, and if they had three or more conditions

1 under which there was some inconsistency or internal
2 conflict, we threw the interview out.

3 We went through a fairly extensive set of
4 internal consistency checks. We found a very high
5 level of internal consistency, relatively few inmates
6 had three or more; that is, seventy-one interviews out
7 of 92,000 had three or more inconsistent responses and
8 were thrown out.

9 It's also very hard to spin a consistent tilt
10 under conditions of the audio computer-system self-
11 interviewing. Respondents simply do not know the
12 questions in advance and do not know the consequences
13 of responding in one way or another for subsequent
14 questions and what questions might follow.

15 Audio computer self-interview, that is, a
16 computer-driven survey with a synchronized audio feed
17 is ideal for such a survey administration, and
18 respondents will have a very hard time spinning a
19 consistent false story.

20 Levels of patterns of victimization that we
21 observed in prisons are very similar to what we observe
22 when we interview former prisoners. These are

1 prisoners who are no longer incarcerated, are freed of
2 the motivation to get back or get even at the facility
3 or particular staff.

4 The things that we find based on interviewing
5 inmates outside of the institutional setting are things
6 that look a lot like what we see inside. That gives us
7 some sense of consistency and some reasonable
8 confidence in what we are observing.

9 We see no evidence of collusion; that is,
10 rates of sexual victimization do not rise with the
11 length of time the survey team is in the facility. One
12 would expect that if inmates are talking to each other,
13 they are talking up the survey, and you would think if
14 there is mischief in the hearts to mislead, the rates
15 of sexual victimization would be higher for inmates
16 interviewed later than earlier.

17 The patterns of victimization have a certain
18 face validity. Inmates are not being selective; they
19 are not lighting it up; they are not reporting sex
20 every which way, every time and every place. There are
21 real stories, and the stories vary.

22 The estimates have been validated. We say

1 most notably we found Baltimore Detention Center, City
2 Detention Center, was among the higher rate of jails in
3 our survey, that had a rate of six-point-seven percent
4 in our survey of staff sexual misconduct. This was
5 determined before revelations were revealed by law
6 enforcement and in the press.

7 Let me say this does not mean that every
8 allegation is true nor needs to be true in order for
9 the surveys to be taken seriously. Ultimately I think
10 correctional authorities have to ask themselves, "Why
11 should inmates in my facility be any less truthful than
12 inmates elsewhere?"

13 These are rankings based on the methodology
14 that is applied uniformly. The arguments that inmates
15 lie are not sufficient to justify or dismiss the
16 findings of any one particular facility.

17 These co-vary with problems in a facility of
18 disorder, problems of management. It's clear that high
19 rates of sexual victimization should cause
20 administrators to pause, to question, to wonder why.

21 Finally, I've heard arguments related to my
22 rates are high because we house inmates that pose the

1 greatest management problems, the most incorrigible,
2 most disruptive, the most difficult to manage, the
3 toughest.

4 Let me say denial of the allegations should
5 not be considered an explanation but a condition that
6 administrators perhaps must address when they hear a
7 high rate and have a high rate.

8 Our past work suggests that high rates are not
9 entirely due to the bad risk profiles. That is, the
10 high rates that we have identified in the 2008/2009
11 survey were high even when we controlled for the
12 composition of risk, even when we controlled for the
13 proportion of inmates who were in those high risk
14 categories.

15 That is based on our logistic regression
16 models and ultimately the distributions within those
17 facilities. We determined that in every high rate
18 facility that we identified, some portion of that high
19 rate, a major portion of that high rate, still remained
20 unexplained.

21 A bad risk profile does not give one a pass as
22 to why a facility is observed to be high.

1 Ultimately, the issue is about risky inmates.
2 How much of that high rate is about risk and how much
3 is it about bad management? I think our surveys raise
4 those issues and point to issues the inmates bring with
5 them to facilities, the issues inmates face while in
6 facilities, and the challenges correctional
7 administrators have in addressing the special needs of
8 those higher risk inmates.

9 DR. WILKINSON: Allen, thank you for the
10 testimony. I'm sure we all have a lot of questions for
11 you, but in the interest of time, we will forego them.

12 Maybe just one. The concern about the self-
13 reports was from day one when you first started doing
14 these surveys, and whether it is through audio CASIs,
15 kiosks, or interviews.

16 Has that changed over the surveying periods?
17 Are people more confident that this is good statistical
18 methodology, or is there still the same trepidation
19 that was existent years ago?

20 DR. BECK: I think there is a body of evidence
21 that suggests consistency. I think that enlightens
22 people to the issues and seriousness of those issues.

1 The question is, "Can that methodology be a
2 gold standard for truth?" And it's not, cannot be.
3 All we can do is look at things, look at consistency.
4 We can look at some of the external validations that do
5 occur and have occurred.

6 Ultimately, correctional administrators have
7 to be the judge of what we find in their facilities.
8 At a minimum, I think it should demand of the
9 administrators to take a pause, to take a look. The
10 first instinct should not be denial; it should be we
11 want to know, we want to investigate what is going on.

12 DR. WILKINSON: Dr. Beck -- I'm sorry, go
13 ahead, Gary.

14 DR. CHRISTENSEN: I just have one question,
15 Dr. Beck. Explain to us what it means, for instance,
16 the national value for inmate-on-inmate sexual assault
17 within jails is one-point-six percent, and then you
18 referenced a specific jail in your comments that had
19 one over six percent.

20 Can you explain in terms of statistical
21 significance and confidence intervals what that means,
22 as far as what that difference means and how you can

1 speak to the validity?

2 DR. BECK: Since we're not doing a complete
3 enumeration, we understand that not everyone is being
4 interviewed. In any survey that you do, there is
5 sampling that goes on. If you were to do another
6 sample, you might find a different result.

7 Confidence intervals are an expression of the
8 notion that if you took one hundred samples using the
9 same design, you would see a range of outcomes that
10 could vary depending on who is sampled and who agreed
11 to be interviewed. So you have a combination of
12 sampling error and non-response error that goes into
13 these estimates.

14 The sampling with confidence intervals take
15 that into account. It says that ninety-five times out
16 of one hundred, the confidence interval is going to
17 capture the true parameter, the true estimate. That
18 is, if you talk to everybody, everybody agreed to be
19 interviewed.

20 The jail estimate of one-point-six percent for
21 inmate-on-inmate sexual victimization has a confidence
22 interval of one-point-four percent to one-point-nine

1 percent. We know the true value is somewhere in that
2 zone on a statistical basis ninety-five times out of
3 one hundred and the gold standard for estimation. That
4 is, confidence interval would capture the true
5 parameter.

6 That's a very precise estimate, a very large
7 survey, when you are talking to 58,000/60,000 inmates,
8 to get that kind of precision.

9 It is very much like in a political poll where
10 you are trying to estimate the outcome of an election,
11 and you get the margin of error. This is an expression
12 of that margin of error.

13 We use that at a facility level to say well,
14 is this facility high or low compared to other
15 facilities? We compare the estimate, the one point
16 six, against the confidence interval that we observed
17 for a specific facility.

18 If the lower bound of that confidence interval
19 is substantially higher than the comparable estimate,
20 we are able to say without much question that is a high
21 rate facility.

22 That is essentially what goes on in the survey

1 to provide an indicator of high rate facilities or low
2 rate facilities for that matter.

3 DR. CHRISTENSEN: Thank you.

4 DR. WILKINSON: Anne?

5 MS. SEYMOUR: I just have a comment. Your
6 testimony on the combination of being an inmate who is
7 LGB and mental illness. A couple of years ago, we went
8 and visited a prison in Louisiana, had an opportunity
9 to meet with mostly teenagers and young adults who had
10 been incarcerated, were LGBTQ. Many of them had mental
11 illness, alcohol, and other drug problems.

12 I remember feeling like they felt like the
13 helpless of the hopeless. I think your testimony today
14 about the higher level of risk sort of validates what
15 they said and how they told us they felt. I wanted to
16 say I really appreciated that.

17 DR. WILKINSON: Thank you, Dr. Beck.

18 MS. SEYMOUR: Thank you.

19 DR. WILKINSON: If I could invite our next
20 witnesses to the table together. Robert Dumond with
21 Just Detention International, better known as JDI. He
22 is the Senior Program Director there.

1 MR. DUMOND: Great; thank you. Honorable
2 members of the Review Panel, honored guests, ladies and
3 gentlemen, I'm privileged to testify before this
4 distinguished Panel, which is a vital partner in
5 ensuring implementation of PREA, and I appreciate the
6 opportunity to do so.

7 I am also honored to be testifying among other
8 experts, including my co-panelist, Ms. Lukima, Vice
9 President of Services, Pennsylvania Coalition Against
10 Rape.

11 I have had the pleasure of working with PCAR,
12 a national leader in advancing quality care to
13 survivors of sexual assault, and I've always been
14 impressed with their commitment to sexual abuse in
15 detention.

16 Sexual abuse in detention has been called the
17 most serious and devastating non-lethal offenses which
18 can occur in corrections because its impact is so
19 significant and profound upon survivors and ultimately
20 society.

21 Your leadership as a Review Panel is essential
22 to fight this problem.

1 My name is Robert Dumond. I am a board-
2 certified and licensed clinical mental health counselor
3 and a diplomat of clinical forensic counseling. I have
4 been providing services to crime victims and to
5 offenders in a number of settings since 1970 in both
6 correctional, adult and juvenile, prosecutorial
7 agencies. I have also had the privilege of working
8 nationally on prison sexual violence.

9 Today I'm representing Just Detention
10 International where I serve as a senior program
11 director. JDI, as you know, is a health and human
12 rights organization that seeks to end abuse in all
13 forms of detention, and was at the forefront of
14 developing and advocating for PREA and continues its
15 leadership with PREA-implementation efforts.

16 It is my hope that my testimony will be
17 instructive.

18 I have been asked to provide testimony on the
19 challenges faced by prisoners with mental health issues
20 and which ways those challenges increase the risk of
21 victimization.

22 Throughout my testimony, I'm going to be

1 discussing four interrelated issues: the epidemiology
2 of mental illness in detention, the challenges of
3 inmates with developmental disabilities, the specific
4 problem of suicide, the elevated risk faced by inmates
5 with a history of being sexually abused, particularly
6 female inmates.

7 I will also conclude with a series of
8 recommendations. Please note that my written testimony
9 will expand upon these verbal remarks and incorporates
10 appropriate references.

11 The National Inmate Survey which Dr. Beck so
12 ably identified was really very helpful. Again, on the
13 record, I want to congratulate Dr. Beck and his team.
14 I think they have done an outstanding job in bringing
15 to light this important issue.

16 He noted with concern that inmates with mental
17 illness face significantly higher risks of
18 victimization, and that is independent of sex, race,
19 age, sexual orientation, and most serious offense.

20 If you were an inmate-on-inmate sexually
21 victimized person and you were mentally ill, you were
22 two to three times higher for inmates taking

1 psychiatric prescription medications than the general
2 population. That is a concern.

3 Inmates with serious psychological distress
4 also reported they were more likely to be injured, more
5 likely to be victimized more than once, subjected to
6 force of threats and injured, and those reporting staff
7 sexual misconduct were being pressured and injured by
8 staff were at higher rates than inmates that suffer
9 such abuse.

10 The National Inmate Survey also concluded with
11 concern that having a history of being sexually
12 assaulted is an extremely high risk of being sexually
13 abused in detention.

14 For example, among prison inmates, twelve
15 percent of the inmates who reported a history of sexual
16 abuse reported being sexually abused by another inmate
17 in the previous year, while jail inmates were fourteen
18 times more likely to be sexually abused by another
19 inmate and four times more likely by a jail or staff
20 member.

21 The report also notes that lesbian, gay and
22 bisexual inmates are at increased risk of

1 victimization. I will not re-duplicate the testimony
2 of Professor Shay, who is an expert witness this
3 afternoon, but I will deal with some of the challenges
4 this population faces.

5 I think to encapsulate our problems, we need
6 to consider where we are in corrections today. It's
7 important to note that the United States, although
8 accounting for five percent of the world's population,
9 we currently incarcerate twenty-two percent of the
10 world's prisoners. On any given day in the United
11 States, there are two point three million people
12 incarcerated in jails and prisons, juvenile
13 correctional facilities, with the rate of 716 per
14 100,000, which exceeds every other nation in the world.

15 Interestingly and sadly, this percentage is a
16 relatively recent change in the population. The rise
17 began in the 1980s after nearly a century of relatively
18 stable incarceration rates.

19 There is a graph in my written report. This
20 is related to the war on drugs, the
21 de-institutionalization movement, get tough on crime
22 era.

1 Other salient facts of importance. U.S. jails
2 and prisons are disproportionately male and African
3 American, a situation that has been identified as an
4 epidemic of incarceration and affects the health and
5 well being of American society.

6 Finally, we face some very significant
7 challenges: the realities of overcrowding; under-
8 funding; under-staffing; inadequate resources; a lack
9 of educational, vocational, medical, and mental health
10 programs; and over the last two decades, additional
11 factors, like the increase in inmate populations, the
12 aging of inmates, longer sentences, and the prevalence
13 of mental and medical disorders, are very significant.

14 As a whole, I'd like to address the four
15 issues I mentioned earlier. A significant scandal, and
16 this was particularly early in my career -- I started
17 my career in 1970. The scandal of the 21st Century, we
18 are now faced with more individuals who are housed in
19 jails and prisons than the entire public and private
20 psychiatric facilities nationwide. That is completely
21 unacceptable. We are the new Bedlams of the 21st
22 Century.

1 We are for all intents and purposes the
2 country's front-line mental health providers even
3 though we don't have the ability and the equipment to
4 do so.

5 In communities throughout the United States,
6 the rate of serious mental disorders clusters at lower
7 ends while in corrections, it clusters at a very high
8 level. Well constructed studies using rigorous
9 diagnostic criteria, epidemiology of mental health
10 issues, at six to twenty percent, one systematic review
11 cited two to four times a higher rate of psychotic
12 illness than in the correctional population overall.

13 If we look at the summary of all this data,
14 three issues emerge: the prevalence of severe mental
15 illness is significantly higher in corrections than in
16 a community, with major depression and psychotic
17 disorders being four to eight times more prevalent in
18 corrections. Women in both adult and juvenile
19 correction facilities face higher rates of mental
20 illness than men, and co-morbidity of substance abuse
21 and mental illness is often and most often present.

22 The next issue I would like to address is

1 developmental disabilities. A variety of disorders are
2 considered to be developmental disabilities, cerebral
3 palsy, epilepsy, autism and mental retardation. Of the
4 three, mental retardation is the most common, and it is
5 characterized by significantly below average tests on
6 mental ability and intelligence.

7 Unfortunately, the data we have to date, there
8 is no consensus on the prevalence of mental retardation
9 in corrections. The studies unfortunately have rates
10 between two to three percent to twenty-seven percent
11 which doesn't give us a real good understanding of how
12 many folks have that particular problem.

13 What is undeniable, however, is that prisoners
14 with mental retardation and other developmental
15 disabilities have a significantly higher rate of
16 victimization risk and enormous challenges of adjusting
17 to corrections.

18 In the community, individuals with
19 developmental and intellectual disabilities are four to
20 ten times more likely to be victims of crime, and this
21 is also true when they are incarcerated. Because of
22 their cognitive limitations, persons with developmental

1 disabilities are often exploited, sexually victimized,
2 and abused. They are also more likely to be
3 manipulated and to have their property stolen.

4 The last two topics I mentioned, in other
5 words, persons with mental, developmental and
6 neurological disabilities, also may have a decreased
7 ability to recognize, react, and respond to threats and
8 abuse. They are often preferred targets in part
9 because they cannot muster the right defenses, and even
10 if they can defend themselves, a predator may assume
11 they may not be able to receive adequate assistance and
12 response from those who provide protection because
13 their pleas for help are considered incredible.

14 Inmates who have particularly been in
15 incarcerated settings or in institutional settings have
16 also been taught about questioning compliance, which
17 puts them at a particular vulnerability for abuse from
18 staff and powerful inmates and also compromises their
19 ability to understand body safety.

20 Predators, both in the community and in jails,
21 want an easy conquest, someone who will submit with
22 little resistance. Because their goal is to commit a

1 crime and escape undetected, assailants will choose
2 victims who they perceive are weak and vulnerable.
3 Predators hone their skills on identifying victims and
4 assessing their potential to be exploited, coerced,
5 intimidated, and manipulated.

6 The precision of an assailant's skill in
7 evaluating the vulnerabilities is a major factor in the
8 selection of a victim. Research on perception of
9 vulnerabilities as manifested by body language is
10 especially relevant here. Individuals who are targeted
11 as vulnerable tend to emit non-verbal cues that suggest
12 ease of victimization, cues that have been confirmed by
13 additional studies.

14 In looking at these factors, one can easily
15 see that the victim-selection process is a complex
16 calculus that includes a cost/benefit ratio, likelihood
17 of success, and other characteristics.

18 The third area is suicide. A number of
19 community studies have suggested that sexual abuse is a
20 significant precursor for suicidal behavior, especially
21 in women. This has been demonstrated in adolescents.
22 Sexual abuse is also strongly associated with suicides

1 both directly and indirectly as a result of
2 hopelessness and depression.

3 In the community, there is a known risk of
4 suicide following sexual abuse. National studies have
5 reported rape victims were four times more likely than
6 non-crime victims to have contemplated suicide, and
7 thirteen times more likely than non-crime victims to
8 have made an attempt.

9 Lesbian, gay, bisexual, and transgender people
10 also appear to be at increased risk of suicide. There
11 is considerable evidence emerging, and I'm sure you
12 will hear that from Professor Shay, that LGBT
13 individuals face unique risks to their well being, to
14 their mental health, as a result of prejudice and
15 discrimination from society, family, friends, and
16 co-workers.

17 They are also disproportionately targeted for
18 violence and victimization as adults. The BJS reports
19 have consistently reported the significantly higher
20 rate, as we just heard from Dr. Beck.

21 Suicide also remains one of the leading
22 non-natural causes of death in U.S. prisons.

1 Certainly, we have improved since the first jail study
2 in 1983 on jail suicides. Nevertheless, the risk in
3 jails continues to be paramount. Suicide makes up
4 five-point-five percent of the deaths in state and
5 Federal prisons, more than drugs, alcohol,
6 intoxication, homicide, and accidents combined.

7 Preventing suicide in corrections is the
8 collective responsibility of all staff. Suicide is
9 widely believed to be the most lethal
10 concept/consequence of sexual abuse and victimization.

11 We know contemplating and attempting suicide is far
12 more common among victims of sexual violence. What we
13 don't know is how many have attempted or completed
14 suicide as a result.

15 Finally, the history of sexual abuse. The BJS
16 data did confirm that inmates who were being sexually
17 abused experienced higher rates of sexual victimization
18 in detention, particularly by other inmates.

19 This problem unfortunately plagues both male
20 and female inmates but the exceptionally high rates of
21 previous inmates/incidents among women may have a
22 disproportionate effect on female inmates.

1 Men and women have trauma histories. However,
2 there are differences. Many incarcerated men have had
3 childhood victimization physically, but the rate of
4 sexual victimization appears far less. On the other
5 hand, women in corrections appear to have had
6 disproportionate long-term exposure to three
7 interrelated issues -- trauma, substance abuse, and
8 mental health, which began in childhood and continued
9 into adulthood.

10 As a result of these long-term exposures,
11 incarcerated women appear to have higher rates of PTSD
12 than women in the community. The rate is significant,
13 a rate which is two to three times higher than in the
14 general population, and women in general also appear to
15 be more vulnerable to PTSD. The reported rates of PTSD
16 in incarcerated men in studies is far lower.

17 As a result, it has been postulized (sic) that
18 the ongoing trauma of women contributes to something
19 known as complex post-traumatic stress disorder, in
20 which the lack of control, helplessness, and
21 deformations cause a difficulty with identity and sense
22 of self.

1 Corrections thankfully has really appreciated
2 this new concept and have begun to develop much needed
3 gender responses and trauma-informed treatments and
4 programs. One particularly important tool in
5 increasing safety of sexual abuse is the early
6 detection and treatment standard that was promulgated
7 by our standards, which should initiate follow-up
8 interventions to help survivors of abuse stay safe, to
9 facilitate recovery and increase their successful
10 reintegration.

11 Unfortunately, far fewer facilities have the
12 expertise and depth of services to be able to use this
13 tool.

14 As a result, I'd like to just proffer several
15 recommendations. First, there must be a sufficient
16 number of properly trained and carefully vetted
17 corrections staff in our facilities. The staff alone
18 will not alleviate the problem because we know that
19 about half of the incidents involve staff.

20 However, facilities must be encouraged to take
21 full advantage to educate their staff about the
22 dynamics of abuse and the methods of eliminating it.

1 All corrections staff must be given adequate and
2 appropriate medical and mental health care training.
3 That will allow them to understand and recognize
4 prisoners with mental illness, adequately manage them,
5 and respond to threats or incidents of sexual abuse.

6 The other thing is facilities should put
7 cross-training with custody staff and medical and
8 mental health professionals together as an option.
9 There also must be a significant sufficient number of
10 credentialed mental health staff at all facilities,
11 including psychiatrists, prescribers, psychologists,
12 mental health counselors, social workers, and ancillary
13 staff. The goal is to provide adequate care and
14 treatment on both an emergency and ongoing basis. They
15 must have the cooperation of custody staff and the
16 caseloads must be reasonable.

17 The quality of mental health should also be
18 consistent with the community standard. It should be
19 evidence-based and consistent with current scientific-
20 practice guidelines, focusing on health, resilience,
21 and accessible to all inmates.

22 Develop a full range of supportive programs

1 and services for mental illness. We have to have
2 services for female prisoners and trauma-informed care.
3 We must provide adequate psychiatric medications. We
4 must increase the number of specialized housing units
5 and units to ensure safety. We must provide ongoing
6 suicide training for all staff. We must ensure
7 adequate community re-entry and reintegration services.

8 You should consider developing the crisis-
9 intervention team model which is in place in law
10 enforcement but has also been promulgated by the
11 National Institute of Corrections. We must focus on
12 dignity and respect. All prisoners who are
13 incarcerated deserve that, independent of their age,
14 race, sexual orientation, gender identity.

15 We must have continued understanding on how to
16 make PREA standards work together, and finally, we must
17 find a way for the United States to decrease the
18 overall number of inmates without compromising public
19 safety. We can work on this together.

20 The problem of sexual assault is really
21 profound. Just Detention and I are looking forward to
22 work collaboratively with you, with corrections, to

1 make this human rights violation no longer part of our
2 American correctional landscape.

3 Thank you very much.

4 DR. WILKINSON: For the audience, your entire
5 testimony will be included. We have it. Thank you not
6 just for your testimony but your research.

7 We will hear from Ms. Lukima now. What we
8 will do is reserve questions for the two of you once
9 her testimony is complete.

10 Ms. Lukima?

11 STATEMENT OF MS. JOYCE LUKIMA,
12 VICE PRESIDENT OF SERVICES
13 PENNSYLVANIA COALITION AGAINST RAPE

14 MS. LUKIMA: Thank you. Thank you for the
15 opportunity to talk with you today about sexual
16 violence in corrections settings.

17 Established in 1975, the Pennsylvania
18 Coalition Against Rape is one of the oldest
19 anti-sexual-violence coalitions in the country. It is
20 a coalition of fifty rape crisis centers that provide
21 services to all sixty-seven counties in Pennsylvania.

22 We also have two national projects, the

1 National Sexual Violence Resource Center, which focuses
2 on the prevention of sexual violence, and the other,
3 Equitas, which focuses on providing training and
4 technical assistance to enhance the prosecution of
5 sexual-violence cases.

6 My colleagues at both PCAR and in the advocacy
7 community and I have been involved in the issue of
8 sexual violence which occurs in corrections settings
9 since prior to the implementation of the Prison Rape
10 Elimination Act in 2003.

11 This is an issue which was long recognized as
12 an often ignored and overlooked form of sexual
13 violence, which presented unique barriers for both the
14 victimized and those who are trying to serve victims.

15 Rape crisis centers provide both community-
16 based prevention and intervention services. Frequently
17 these services include organizing communities to
18 prevent sexual violence, as well as providing
19 counseling and advocacy services to help victims of
20 sexual violence.

21 The understanding of sexual violence has
22 expanded since the first rape-crisis centers were

1 formed in the 1970s. Sexual violence has grown to
2 include a wide range of crimes, including rape, incest,
3 child sexual abuse, sexual exploitation, sex
4 trafficking, voyeurism, exhibitionism, harassment, and
5 much more.

6 We also know that sexual violence can occur in
7 a myriad of settings, including homes, schools,
8 religious institutions, military settings, workplaces,
9 jails, and prisons.

10 The unfortunate reality is that sexual
11 violence occurs more often than we like to think about.
12 Our knowledge regarding the range of people who can be
13 sexually victimized has also expanded to include not
14 only women, but girls, boys, and men.

15 Services offered by rape crisis programs have
16 evolved to meet the changing needs of victims of sexual
17 violence. Rape crisis centers have become valued
18 partners in their communities, providing much needed
19 expertise on the issue of preventing and responding to
20 sexual violence. They have become integral members of
21 community collaborations, such as multidisciplinary
22 teams or MDTs and sexual assault response teams or

1 SARTs.

2 Sexual violence is a crime of secrecy and
3 silence. It often invokes denial. Rape, a form of
4 sexual violence, is a devastating and often violent
5 crime, but until recently was viewed by many as an
6 inevitable consequence of incarceration.

7 Parallels can be seen when looking at sexual
8 violence in the community and sexual violence in
9 prisons.

10 In an attempt to explain the unexplainable
11 behaviors, society often seeks to blame the victim
12 regardless of their status. Historically, victim
13 blaming has been a common reaction to sexual violence.
14 It is often played out through a series of questions.
15 "Why were you there?" "Why did you go on that date
16 with him?" "Why were you dressed that way?" "Why were
17 you alone?"

18 In a corrections setting, victim blaming is
19 played out in the assumption that the inmate caused the
20 sexual assault simply because he has been incarcerated.

21 As our understanding of sexual violence has
22 grown, we have come to recognize collectively we each

1 have a role to play in the prevention of sexual
2 violence. To do this, we not only need to address
3 sexual violence which occurs, but we also need to
4 address the cultural factors and norms that support
5 this violence.

6 Both a measured and serious approach to sexual
7 violence that occurs in corrections settings as well as
8 changing the underlying structural beliefs which
9 support sexual violence require a collaborative or team
10 approach.

11 PCAR has worked with the Pennsylvania
12 Department of Corrections on its implementation of the
13 PREA standards since 2005. This relationship has
14 evolved into a partnership which has a clear focus on
15 preventing and responding to sexual violence in
16 corrections settings.

17 Each partner in this collaboration brings
18 specific expertise to the table. The Pennsylvania
19 Department of Corrections is well versed in the
20 corrections field, and PCAR has three-plus decades of
21 expertise in responding to sexual violence.

22 This partnership involved cross-training

1 corrections and advocacy staff, establishing policies
2 which address sexual violence and the response process,
3 which included both corrections and community
4 responders.

5 This team approach is not unique to
6 corrections. It has been found to be the best approach
7 to responding to and preventing sexual violence in
8 multiple settings.

9 In the twenty-plus years in which I've worked
10 in addressing sexual violence, one of the biggest
11 lessons I have learned is that sexual violence is not
12 an issue that can be solved by one person or one
13 agency. Both prevention and response needs a
14 multifaceted approach. It is a complex problem which
15 requires the expertise of multiple professions.

16 An approach which involves community
17 investment and coordination not only provides the best
18 response to investigating and responding to inmate
19 victims of sexual violence, but it changes the long
20 accepted message that sexual violence is a crime of
21 secrecy and silence.

22 By addressing sexual violence in a

1 collaborative manner, we challenge the belief that
2 sexual violence is a crime which impacts only the
3 person who is victimized. We acknowledge that sexual
4 violence impacts the entire community.

5 On a practical note, by taking a collaborative
6 approach to sexual violence, resources are used
7 efficiently by limiting the duplication of existing
8 services and exploiting the expertise of each member of
9 the collaborative. Corrections staff bring knowledge
10 related to the workings of the prison system, and the
11 community-based sexual-violence advocates bring
12 tremendous experience regarding the dynamics, impacts,
13 and responses to sexual violence, as well as cultural
14 factors which need to change to create a safer
15 environment.

16 Since the implementation of the Prison Rape
17 Elimination Act and prior to the Act, we have seen
18 excellent models of collaboration, from jails in rural
19 Washington to Miami, Florida. Collaborative approaches
20 have evolved which address sexual violence. These
21 efforts have resulted not only in expanding resources
22 but in building relationships that extend beyond the

1 collaboration.

2 Correction institutions and community-based
3 rape crisis centers have found new allies and
4 partnerships when addressing sexual violence both in
5 and out of the corrections settings.

6 In a recent conversation with a colleague from
7 Just Detention International, I was told that in every
8 project he worked on, rape crisis centers and
9 corrections facilities found a way to work together
10 that was meaningful.

11 We have seen similar results in Pennsylvania
12 where community-based rape crisis centers have
13 developed partnerships with jails as well as counties,
14 states, and federal prisons. Relationships have evolved
15 which have positive implications throughout the
16 country.

17 In Pennsylvania, a state prison in a very
18 rural area, attempted to do the right thing by sending
19 out an inmate to a local hospital. The captain called
20 the PREA coordinator to make sure they were following
21 the protocol. The report happened just days after the
22 corrections training was held on the Prison Rape

1 Elimination Act.

2 Unfortunately, when the inmate arrived in the
3 hospital, the physician in charge did not allow for the
4 sexual assault nurse examiner to be called, and the
5 local rape crisis center was not called for support
6 services, as we would generally advise them to do.

7 The captain had concerns about the treatment
8 of the inmate and contacted the PREA coordinator to
9 discuss these issues. In turn, the PREA coordinator
10 contacted PCAR. After leaving a message for the
11 emergency department manager and not receiving a reply,
12 PCAR's medical advocacy coordinator contacted the CEO
13 of the hospital. After talking with the CEO, the risk
14 management person contacted PCAR for follow up.

15 The hospital agreed that proper care was not
16 provided and is currently reviewing protocols and
17 establishing a training plan which will involve the
18 rape crisis center.

19 In turn, the rape crisis center will be
20 receiving training on PREA through the PREA coordinator
21 and PCAR. Both the rape crisis center and PCAR will
22 continue to follow up with the hospital to monitor this

1 issue and to make sure victims of prison rape get the
2 proper care.

3 This is something that would have never
4 happened if we hadn't had pre-established
5 collaboration. Collaboration does require deep
6 commitment and a willingness to cross the barriers of
7 language and perspectives. Both corrections staff and
8 advocates speak different languages, but both want to
9 do the right thing. Obstacles can be overcome with
10 training which focuses on communication and
11 understanding the roles of corrections staff and
12 advocates.

13 Education on the dynamics and impact of sexual
14 violence for corrections staff and the operations of
15 corrections for the advocacy staff helps each to
16 understand the perspective of the other.

17 Recognizing the difference in philosophy and
18 finding common ground is imperative to success, but it
19 is possible. When members of the collaboration are
20 committed to doing everything conceivable to prevent
21 rape in corrections settings and to provide the optimal
22 response when sexual violence occurs, it is amazing

1 what can happen.

2 I am the first to admit that collaborations
3 take work, and we are fortunate that as PREA has been
4 implemented, the resources to support these
5 collaborative efforts have evolved.

6 The National PREA Resource Center has tools to
7 assist corrections staff in this area, and Just
8 Detention International has resources for advocates and
9 survivors.

10 Both organizations have worked collaboratively
11 with PCAR and the National Sexual Violence Resource
12 Center to make sure available resources are distributed
13 to a wide audience.

14 It is important that collaboration continues
15 to be modeled on the national level as well as the
16 state and local levels. Continuing to build
17 partnerships among the corrections and advocacy
18 communities needs to include state sexual-assault
19 coalitions as well as representatives from local rape
20 crisis centers who can identify the on-the-ground
21 challenges which exist.

22 There also needs to be a mechanism for

1 ensuring resources are provided to support the
2 expanding work of community-based rape crisis programs.

3 In closing, the mission of PCAR is to
4 eliminate all forms of sexual violence and to advocate
5 for the rights and needs of victims of sexual assault.

6 This is a mission that will only be
7 accomplished by many people and systems finding ways to
8 work together.

9 Thank you.

10 DR. WILKINSON: Thanks to both of you for your
11 testimonies as well as your work on the ground. It's
12 important to say the least.

13 We probably have time for one question apiece,
14 so let me direct mine to Mr. Dumond. You mentioned
15 something that I think is very important. You talked
16 about mental health issues and suicide, persons with
17 developmental disabilities in correctional
18 institutions.

19 Most corrections agencies don't pay that much
20 attention to persons with developmental disabilities.
21 We know a lot about suicide. We know a lot about
22 mental health.

1 The new DSM-5 is out. If some of you aren't
2 familiar with it, it's the bible of psychological
3 disorders. It is maybe twice as big as DSM-4 now.
4 Nevertheless, it shows just how prevalent mental health
5 disorders are in correctional facilities.

6 We struggled for years and years, and the
7 literature talks about something called the difference
8 between those who are mad and bad in correctional
9 institutions and trying to discern the differences is a
10 major challenge.

11 How do you suggest that -- maybe one other
12 thought. I've had judges tell me that we send people
13 to prison because we know they will get treatment
14 there, which means -- I totally agree. We shouldn't
15 have persons, especially those with serious mental
16 illness, in prison, to the extent we do.

17 We also know the community mental health
18 system is broken and communities understand that. I've
19 had judges tell me I'm going to send this person to
20 prison because I know they will get treatment there.
21 It may not be the best treatment but in some cases it
22 is better than what they would get in the community.

1 There is something askew there in my mind. It
2 is something that we have to deal with, specifically
3 about persons with developmental disabilities. And
4 this all relates to PREA. hHw do we get the word out
5 that DD is something different than MH?

6 MR. DUMOND: I think we have to do at the
7 front end good classification and examination when an
8 inmate comes into the facility. Some states do have
9 the opportunity and do have the vehicle to do the
10 testing that is necessary.

11 I think where it is breaking down is with --

12 DR. WILKINSON: With DD, the age of onset
13 determines whether you have had it. If you had a
14 developmental disability, you have had it in high
15 school; you had it in elementary school.

16 MR. DUMOND: Right. If someone had been doing
17 a comprehensive evaluation and history, and it should
18 be a mental health person doing that -- it is first
19 done by the medical person, the mental health person
20 should be inquiring about that, and the next step
21 should be contacting that person's providers, their
22 school, to get that information, and then determine

1 where is this person going to be best served, what kind
2 of treatment does he or she need.

3 In addition, also trying to identify what they
4 can do to help prepare that person for life in
5 incarceration.

6 I think the issue particularly with
7 developmental disability, most of those individuals
8 have been taught to comply. Clearly, they also want to
9 fit in and they don't want to be seen as different,
10 which makes them perfect targets, unfortunately.

11 I think part of it is early identification;
12 second is doing some on-site work with that individual
13 to help them to recognize boundary issues; and third, I
14 think we really need to reconsider what kind of places
15 we are going to have in corrections in the future.

16 We already have intermediate facilities for
17 people with disabilities who are mentally ill. We
18 already have facilities for people who are aging and
19 have chronic disease.

20 I think a similar model can be in place there.

21 I think this is part of more a policy
22 question. I recently managed a mental health court for

1 the last three years before coming to JDI. Mental
2 health courts are a vehicle to keep people with serious
3 mental illness in the community but also provide them
4 with the carrot-and-stick approach, which says if you
5 don't comply with your medication, you do face the
6 possibility of going to incarceration.

7 I think there has to be a dialogue with the
8 community justice system. I think mental health courts
9 are a very promising practice that needs to be
10 replicated, and I think that is another part of that
11 solution, how do we get the community to provide those
12 services with the proper support and supervision
13 without necessarily putting that person in an
14 incarcerated setting or making that incarcerated
15 setting much more truncated/limited than they would
16 normally have to without the mental-health-court model.

17 DR. WILKINSON: I also agree with you when you
18 said prisons are the new Bedlams or the new asylums, so
19 to speak. I know in Ohio, the Department of
20 Corrections was the largest single agency who provided
21 mental health care in our state. I am willing to bet
22 the Federal Bureau of Prisons is the largest mental

1 health agency in the country.

2 MR. DUMOND: The largest psychiatric
3 facilities nationwide are Cook County, Rikers Island,
4 and Los Angeles County Jail. That is a scandal. As a
5 mental health professional, I'm appalled we have
6 allowed as a society that to be the case.

7 DR. WILKINSON: Anne or Gary?

8 MS. SEYMOUR: I just want to tell Joyce that
9 your testimony makes me really proud of the victim
10 assistance field.

11 MS. LUKIMA: Thank you.

12 MS. SEYMOUR: My question is what you are
13 describing is kind of a phenomenal culture shift.
14 Thirty years ago when I began -- Reggie knows this
15 because we have been working together for a long
16 time -- we thought people in corrections had cooties,
17 and they thought we were hand-holding social workers,
18 and yet you are describing phenomenal partnerships.

19 I just want to ask you -- it happened pretty
20 quickly. Why do you think it happened?

21 MS. LUKIMA: I think because we looked at this
22 as something we needed to do together. We

1 recognized -- PCAR and the advocates in the
2 community -- really recognized -- this to me was
3 something that the only way for it to be accomplished
4 is for us to work together.

5 The first step was in understanding. I think
6 with some of our folks who were in corrections when we
7 would sit down at the table and try to have a
8 conversation we would realize we were using the same
9 words.

10 One example would be the word confidentiality.

11 It means something very different for me as an
12 advocate than it might mean for a corrections person.

13 Really understanding that and being willing to
14 maybe make some mistakes but also tolerating each other
15 doing that. We have the same goal, but our way of
16 getting there was a little bit different.

17 I really do feel like our attitude on both
18 sides -- I feel like both corrections and the advocacy
19 community were very open and just sort of recognized
20 this is really big and we really can't do it by
21 ourselves.

22 MS. SEYMOUR: I really appreciate that.

1 DR. CHRISTENSEN: Mr. Dumond, in your written
2 testimony, you included a PREA program model that
3 talked about prevention, a four-stage program-
4 prevention model that talked about prevention data
5 collection and analysis, interdiction and prosecution,
6 and lastly, intervention.

7 Could you describe the intervention phase a
8 little bit more and talk specifically as you describe
9 that in your experience, what barriers you encounter as
10 people go through and look to intervene?

11 MR. DUMOND: Intervention really describes a
12 set of processes and interventions at the crisis level,
13 the short-term level, and at the long-term level.
14 There are several components to it, and what has
15 happened to date.

16 Prior to PREA and the standards, the community
17 involvement was very limited. The standards have
18 thankfully allowed now for a better cooperation with
19 the community medical and mental health system and with
20 the rape crisis system.

21 I think there are challenges, however, because
22 if you're in a jail setting, you are going to get out,

1 and you may not necessarily have a referral to follow
2 up with, for example, in the community, to provide
3 support of trauma counseling.

4 If you are in a prison system with multiple
5 agencies, it is going to be imperative that as you move
6 from one facility to another facility, that information
7 and that treatment plan get modeled throughout the
8 whole life cycle of your incarceration, and finally
9 follow up.

10 I think, frankly all of us in corrections, we
11 don't always even know when people are going to be
12 discharged. I think that is a crisis. If you have an
13 existing substance abuse issue, mental health issue and
14 trauma issue, it is imperative that you have adequate
15 follow up care in the community. I think it is
16 important to get the ongoing psychiatric medication,
17 having the ability to get a referral and actually
18 appointment with someone in the community.

19 I think that intervention really means what do
20 you do at the crisis level. I think the standards
21 address that very specifically so we have a blueprint
22 for that. The short term, I think, that is really now

1 a collaboration between the mental health people inside
2 with the rape crisis people outside, and then the long
3 term means the continuity of care is going to be
4 carried through throughout their incarceration and back
5 into the community.

6 DR. CHRISTENSEN: Is the collaboration that
7 Joyce talked about actually -- we know that is an
8 important thing for us to do, but is it also one of the
9 biggest barriers to achieving it?

10 MR. DUMOND: It is a barrier because not every
11 correctional agency has that availability. Rape crisis
12 centers, in some settings, it is very difficult to
13 engage that kind of process. I think we have to be
14 creative, teleconferencing. I think there are
15 different ways to make that happen.

16 I think the second thing is building the
17 capacity inside the institution itself. Just because
18 you are licensed as a mental health practitioner
19 doesn't necessarily mean you understand rape trauma and
20 the trauma environment.

21 I think one of the ways to actually build
22 capacity is to make sure the mental health people that

1 you have in an institution have the availability to get
2 training about sexual assault, about the trauma
3 reactions, how best to intervene, and the interventions
4 that would be most appropriate.

5 I think there are strategies to overcome some
6 of those challenges but I think it is a matter again of
7 working collaboratively.

8 I have to go back to what Dr. Wilkinson said.
9 When I started in corrections, we were insulated, out
10 of sight, out of mind. We didn't have contact with the
11 community. It is a real culture shift now. I think
12 that's part of what we need to begin to develop. We
13 need to engage the community because these are our
14 communities, ninety-five percent of the people that
15 come to jail and prisons come back home.

16 DR. WILKINSON: Thanks to both of you for your
17 testimonies. We appreciate you being here today. We
18 must move on, however.

19 We are going to take about a ten minute break
20 so our technicians can get our next witnesses on.
21 Relax for a little bit.

22 (Recess.)

1 DR. WILKINSON: If we could reconvene. We
2 will convene the hearing on adult correctional
3 institutions with high incidence of sexual misconduct.

4 Before we get to Montana, who will be
5 providing remote testimony for us, there is a
6 procedural issue I need to do because the witnesses
7 from the Oklahoma Department of Corrections are not
8 here. I do have a statement that I need to read into
9 the record. I will do that at this point.

10 We are now ready to take testimony regarding
11 three prisons with high prevalence of sexual
12 victimization and two with a low prevalence as
13 determined by the Bureau of Justice Statistics.

14 Before we begin, I would like to again thank
15 those of you who took time out of your busy schedules
16 to attend these hearings. As you know, the Panel has
17 made every effort to accommodate both your schedules
18 and the unique challenges that you face in appearing in
19 person at these hearings.

20 Most of the time we were able to work with the
21 department of corrections staff to work out an
22 accommodation that would enable representatives from

1 DOCs to personally appear. In a few instances, we
2 weren't able to accomplish that.

3 For example, because of a scheduling conflict
4 facing officials from the Montana Department of
5 Corrections and the Montana State Prison, we worked out
6 an arrangement that would allow them to participate by
7 video conferencing, as you will see later in these
8 hearings.

9 The Panel selected two facilities from the
10 Oklahoma Department of Corrections to participate in
11 its hearings on victimization, the Mabel Bassett
12 Correctional Center, which BJS identified as having a
13 high prevalence of sexual victimization, and the Jackie
14 Brannon Correctional Center, which BJS identified as
15 having a low prevalence of sexual victimization.

16 Although we are disappointed that
17 representatives from the Oklahoma Department of
18 Corrections will not appear at these hearings, the
19 Panel is in communication with the Oklahoma Department
20 of Corrections and officials from the State of Oklahoma
21 to obtain sworn testimony regarding their operations of
22 these facilities.

1 We will continue to work with the DOC in good
2 faith to develop a hearing record that explores why
3 Mabel Bassett Correctional Center has such a high
4 prevalence of sexual victimization while the Jackie
5 Brannon Correctional Center has a much lower rate of
6 prison sexual misconduct.

7 In addition, during the hearings today, Dr.
8 Allen Beck from the Bureau of Justice Statistics will
9 provide testimony, as a separate piece, to the Panel on
10 the National Inmate Survey results at these facilities.

11 The Panel will also recess rather than adjourn
12 its hearings on high and low incidence prisons. By
13 recessing these hearings, the Panel preserves its
14 ability to supplement the hearings record in the coming
15 weeks with additional evidence such as sworn testimony
16 from the Oklahoma Department of Corrections
17 representatives and others who can discuss their prison
18 system at the Mabel Bassett Correctional Center and the
19 Jackie Brannon Correctional Center.

20 That's for the record.

21 Would you have witnesses from the Montana
22 Department of Corrections -- gentlemen, can you hear

1 me?

2 MR. BATISTA: Yes, we can. Can you hear us
3 okay?

4 DR. WILKINSON: Okay. We can see you as well.
5 Thank you very much for being here today. Before we
6 begin the proceedings, it is our process to swear in
7 all of our witnesses, if you don't mind doing so.

8 Do you swear or affirm that the testimony you
9 are about to give is the truth, the whole truth, and
10 nothing but the truth?

11 MR. BATISTA: We do.

12 MR. KIRKEGARD: I do.

13 Whereupon,

14 MIKE BATISTA and

15 LEROY KIRKEGARD

16 were called as witnesses and, having first been
17 duly sworn, were examined and testified as follows:

18 DR. WILKINSON: Thank you very much. Director
19 Batista, we appreciate you being here and look forward
20 to your testimony. You have about ten minutes or so
21 apiece and we might have a question or so following
22 your testimony. Thanks again for being here.

1 STATEMENT OF MR. MIKE BATISTA,
2 DIRECTOR, MONTANA DEPARTMENT OF CORRECTIONS

3 MR. BATISTA: Thank you, Mr. Chairman, and
4 thank you, Committee members, for allowing Warden
5 Kirkegard and I to testify before your Committee. I
6 want to thank your IT technical people for helping
7 arrange for us to be able to testify via video
8 conferencing and taking into account our schedule
9 today. We certainly appreciate it.

10 On behalf of the Montana Department of
11 Corrections, I am Director Mike Batista. This month
12 marks the beginning of my second year as Director of
13 the State's corrections system.

14 A year ago, January 7, I accepted a cabinet
15 position with the new administration, Governor Steve
16 Bullock. Prior to that appointment, I served for
17 twenty years as the administrator of the Division of
18 Criminal Investigation for the Montana Department of
19 Justice.

20 Before returning to Montana to lead DCI, I was
21 an intelligence manager for the Drug Enforcement
22 Administration for eight years, working in both Nevada

1 and Texas.

2 I have a Bachelor's degree in criminology from
3 Eastern Washington University and am a graduate of the
4 FBI Academy, Drug Enforcement Division, where I
5 specialized in investigations, intelligence, and
6 management training.

7 With a thirty-year career in law enforcement
8 and a number of successful initiatives behind me, I am
9 confident of my ability to lead an agency as complex
10 and demanding as the Montana Department of Corrections.

11 To give you a few examples of my priorities
12 and ability to assess and respond to emerging issues,
13 during my time with Justice, I was on the leading edge
14 of identifying and responding to the surge in
15 prescription drug abuse in Montana through the
16 Invisible Epidemic Campaign and working to enact a
17 prescription drug registry in the state. We are very
18 proud of that, and it involved a number of people in
19 ensuring that the state was on the leading edge of
20 identifying the prescription drug problem.

21 I am also proud to say that I launched the
22 Montana Children's Justice Center, which has focused on

1 building multidisciplinary teams and child-center
2 facilities across the state to improve Montana's
3 ability to respond to crimes against children.

4 Since 2011, I have served on the Board of the
5 National Children's Alliance.

6 Today with Warden Kirkegard, I am responsible
7 for the State's Men's prison in Montana. That facility
8 oversees 2,400 offenders, 600 staff, and a \$74 million
9 budget, which includes contract placement of
10 approximately 840 offenders.

11 The Montana State Prison houses offenders at
12 all custody levels, from inmates under death sentence
13 to low security offenders. It is the only facility
14 that provides sex offender treatment.

15 The secured perimeter of the Montana State
16 Prison, which opened in 1977, encompasses approximately
17 sixty-eight acres on the outskirts of Deer Lodge, a
18 rural town in southwestern Montana with a population of
19 just over 3,000.

20 The facility opened in 1977 with three housing
21 units, each designed for ninety-six offenders. Those
22 three units now each house approximately 162 offenders.

1 Other units were added in the late 1970s, two more
2 units in 1986, and the newest housing facility within
3 the secured perimeter was completed in 1990.

4 The Work Re-Entry Center was initially opened
5 in 1997 and in 2006 expanded to house 192 offenders.
6 The Work Re-Entry Center is not a part of the secured
7 facility and houses minimum security offenders who work
8 on the prison ranch.

9 The Martz Diagnostic Intake Unit, MDIU, was
10 completed in 2004 and can house 180 offenders prior to
11 placement in the facility.

12 The age and diversity of the campus present a
13 number of challenges. These different units were built
14 with technologies of their respective times with little
15 in the way of video and audio monitoring or other
16 technological resources.

17 As funding has become available, the prison
18 has added cameras, upgraded intercoms, and added or
19 upgraded software, but not to the level necessary to
20 fully modernize the facility first occupied thirty-six
21 years ago.

22 While zero tolerance is a primary goal at the

1 Montana State Prison, the reality is, given the lack of
2 modern infrastructure, shortage of staff and funding
3 and other challenges, it is difficult to ensure that
4 sexual victimization will never occur.

5 As of December 30, 2013, despite ongoing
6 recruitment efforts, the prison was operating with
7 forty-eight correctional officers vacant out of 344
8 authorized positions, representing a fourteen percent
9 vacancy rate. I think those numbers today are closer
10 to fifty-three correctional officer positions that are
11 vacant.

12 In 2011, as part of the BJA Demonstration Site
13 Grant, the Montana Department of Corrections submitted
14 a request to the U.S. Department of Justice for PREA
15 implementation. The original application requested a
16 total budget of over \$1 million which included federal
17 funding of \$580,000 and local matching funds of just
18 over \$400,000 for a three-year project.

19 Due to significant cuts to the federal budget,
20 BJA approved an award for the Montana Department of
21 Corrections but cut approximately \$350,000 of the
22 federal funding and one year from the project.

1 These monies were used to hire a Department of
2 Corrections level PREA coordinator to continue
3 oversight of PREA standards across the Department. The
4 reduced funding limited our ability to expand the
5 capacity in our Investigations Unit as well as
6 decreased training opportunities designed to help staff
7 further facilitate PREA implementation.

8 Nonetheless, over Warden Kirkegard's two-year
9 tenure, in conjunction with the efforts of the
10 Department's PREA coordinator, the prison has been more
11 proactive in its implementation of PREA standards.

12 Through a range of policy and procedural
13 changes, expanded staff training and education, and
14 outreach initiatives, the Department had made and is
15 continuing to make concerted efforts to become
16 compliant with PREA standards.

17 A summary of the steps the Department has
18 taken is provided in Appendix A, which I believe the
19 Committee has.

20 The Montana Department of Corrections
21 recognizes that there have been gaps in our policies
22 and processes, and we have worked diligently to fill

1 those gaps.

2 A PREA working group comprised of division
3 administrators and other personnel meet on a monthly
4 basis and are tasked with establishing consistent PREA
5 reporting procedures within the State Prison and other
6 DOC facilities, including our contracted facilities.

7 Since 2008, the prison has recognized the
8 importance of PREA and has implemented a number of
9 concrete changes, including improvements pertinent to
10 inmate education and reporting.

11 These include development of a new reporting
12 mechanism, an anonymous telephone hotline staffed by
13 the YMCA in Missoula, Montana, initiated in 2013.

14 In addition, inmates can report any type of
15 victimization through medical, direct contact with
16 security staff, and family members alerting staff to
17 sexual victimization allegations.

18 It may well be that part of the underlying
19 reason for the number of sexual assaults reported is
20 not based on an increase in the number of assaults but
21 on increased awareness among inmates of PREA policies
22 and reporting mechanisms.

1 For example, all inmates who come to the State
2 prison first go through the Martz Diagnostic Intake
3 Unit that I mentioned earlier. Since December 2006,
4 while they are at MDIU, every inmate receives training
5 and guidance about the prison's zero-tolerance stance
6 towards sexual victimization and the need to abide by
7 the Prison Rape Elimination Act of 2003.

8 As part of this training and guidance, case
9 managers must complete the PREA Risk Assessment Form
10 during classification. Inmates receive MSP's PREA
11 procedure for review, MSP's Procedure 1.3.14, Prison
12 Rape Elimination Act of 2003. A staff member reads and
13 explains the procedure to any inmate who is not able to
14 read it for themselves.

15 Inmates are given substantial time to review
16 all PREA procedures. Formal policy review is conducted
17 with all inmates concerning the PREA procedure. A PREA
18 video titled "Speaking Up" is shown to all inmates.
19 Upon completion of the PREA training, all inmates must
20 sign the Offender PREA Acknowledgement Form.

21 While in the Martz Diagnostic Intake Unit, all
22 inmates undergo a comprehensive assessment, including

1 medical and mental health, sexual victimization
2 history, sexual orientation, and the more routine
3 classification assessment.

4 Weekly follow up is conducted with offenders
5 identified as vulnerable or at risk of victimization,
6 and placement is determined based on these ongoing
7 assessments.

8 The information is placed in the Offender
9 Management Information System or OMIS, and is
10 accessible to all staff to ensure that inmates are
11 protected to the best of our ability.

12 The availability of this information helps
13 unit managers, case managers, supervisory staff, and
14 officers make better decisions on offender placement
15 and provides the necessary information to all staff to
16 better protect inmates and hold offenders accountable
17 for their actions.

18 Since the NIS Survey was anonymous, the
19 Department is unable to accurately identify specific
20 factors related to the high incidence of allegations
21 reported in the survey. Records from the grievance or
22 hearing officer designated as the PREA liaison for the

1 Montana Department of Corrections indicate there were
2 twelve staff-on-inmate PREA complaints and nine inmate-
3 on-inmate complaints from the prison during the time
4 frame of the survey, which was February 2011 through
5 May of 2012.

6 The Department of Corrections takes seriously
7 and investigates thoroughly all reports of sexual
8 victimization in its prison facilities.

9 We suspect that many of the staff-on-inmate
10 complaints were related to the manner in which two
11 correctional officers conducted clothed pat-down
12 searches.

13 These allegations were thoroughly investigated
14 and no evidence of wrongdoing was found. The officers
15 were observed during searches at times without their
16 knowledge and were found to consistently follow to the
17 letter the procedure for conducting body searches. In
18 fact, one of the officers accused excelled in finding
19 contraband on inmates, which potentially made him a
20 target for inmates who would prefer that officers
21 search less effectively.

22 That said, the Department recognizes that PREA

1 is founded upon an understanding of the nature of
2 sexual abuse and harassment in confinement.

3 As with victims of child sexual assault and
4 domestic violence, inmates who are victimized should be
5 taken seriously, and the harm done to them should not
6 be minimized or viewed as inconsequential.

7 The difficulty is in distinguishing inmates
8 who have been victimized from those who misuse the
9 reporting process.

10 Based on the reviews of the inmate complaints
11 related to sexualized pat searches, the Department
12 determined that most were part of an orchestrated
13 campaign among inmates to discredit particular
14 officers.

15 The Department last month hired a new PREA
16 program manager. Prior to posting that position, it
17 was reclassified to elevate it within the Department
18 and at a higher pay level. The position now reports
19 directly to me.

20 Sergeant Andrew Jess has worked at the Montana
21 State Prison for twenty-one years and brings a wealth
22 of knowledge and experience in prison operations,

1 supervision, program development, program management
2 and training. Since 2005, Jess has managed the field-
3 training officer program, supervising sixteen unit
4 sergeants. As the first person to hold that position,
5 he developed and implemented the prison's field-
6 training program.

7 I've learned over the years if you are going
8 to successfully change direction, you need leaders who
9 have a solid understanding of operations.

10 Sergeant Jess has demonstrated that he is an
11 effective, credible leader in the prison setting,
12 important qualities in the PREA role.

13 I look forward to working with Jess to build
14 on a solid foundation we have laid over the last two
15 years.

16 I appreciate the opportunity to present
17 testimony on the efforts underway at the Montana State
18 Prison and throughout the Department of Corrections to
19 implement the new PREA standards.

20 I'm sure it comes to no surprise to Panel
21 members that states throughout the nation have
22 experienced some difficulty in implementing and

1 understanding the PREA standards, particularly in
2 regard to staffing, training, and financing.

3 While we recognize there have been gaps in our
4 reporting process in the past, we are continuing to
5 make substantial progress. Progress reflects Montana's
6 genuine commitment to a high standard of ethical
7 conduct that includes providing offenders with humane
8 custody and care, void of retribution, harassment,
9 abuse, or mistreatment.

10 Thank you very much, Mr. Chairman and Panel
11 members.

12 DR. WILKINSON: Thank you, Director Batista,
13 for your testimony. Warden Kirkegard, do you have
14 testimony as well?

15 MR. KIRKEGARD: Yes, I do.

16 STATEMENT OF MR. LEROY KIRKEGARD,

17 WARDEN, MONTANA STATE PRISON

18 MR. KIRKEGARD: Good morning. I'm Montana
19 State Prison Warden Leroy Kirkegard. Like Director
20 Batista said, I'd like to thank you for the opportunity
21 to not only testify but testify via video. Our
22 schedules are pretty tight over here, but more

1 importantly the weather is not very conducive to air
2 travel at this time. I'm just glad we are able to do
3 this via video.

4 I've been the warden at the Montana State
5 Prison in Deer Lodge since November of 2011. Prior to
6 this appointment, I spent twenty years with the Las
7 Vegas Metropolitan Police Department Detention Services
8 Division.

9 I started my career as a corrections officer
10 in 1992 and rose through the ranks to become the Deputy
11 Chief of the Detention Services Division in 2007. In
12 this position, I was responsible for about 3,400
13 offenders, 1,200 staff, and a budget of \$174 million.

14 I retired from the Las Vegas Metropolitan
15 Police Department in November 2011 to accept this
16 appointment as Montana State Prison warden.

17 I've a veteran of the United States Air Force,
18 serving for ten years, from 1981 to 1991, and I hold a
19 Bachelor's degree in criminal justice from the
20 University of Nevada, Las Vegas.

21 In his testimony, Director Batista briefly
22 discussed some changes I have made in my first two

1 years at the Montana State Prison. I would like to
2 expand on some of those changes for this Panel.

3 While PREA incidents were being reported by
4 staff, the distribution of the instant reports were
5 inconsistent. Some reports were being forwarded to the
6 respective unit managers for distribution and follow
7 up. Others were going to the command post.

8 This procedure was changed to ensure that all
9 reports are forwarded confidentially to the command
10 post and the follow up would begin from there.

11 We have created a document available to all
12 staff on the specific steps to follow when a PREA
13 incident is reported. This step-by-step procedure
14 assists all staff in meeting their reporting
15 responsibilities.

16 When I arrived at the Montana State Prison, we
17 did not have a specific PREA liaison at the prison.
18 When the DOC PREA coordinator position was filled in
19 July of 2012, an MSP grievance coordinator from our
20 Classification Office was assigned the additional duty
21 of the Montana State Prison PREA liaison to work not
22 only with the DOC coordinator but with DOC

1 investigators.

2 As the Director indicated, staff training in
3 PREA standards has also increased over the past two
4 years. All new employees of Montana State Prison are
5 required to attend a new-employee orientation class.
6 This is an eighty-eight hour class, five hours of which
7 are related to PREA compliance specifically. Security
8 staff must also attend the corrections-and-detention-
9 officer basic courses at the Montana Law Enforcement
10 Academy. Two hours of this four-week class are
11 dedicated to PREA awareness and compliance.

12 In addition, the MSP Training Section offers
13 classes in the following areas:

14 Crossing professional boundaries. This is a
15 four hour class focused on maintaining a high
16 professional relationship between staff and offenders.

17 We have had 429 people trained.

18 Sexual harassment and discrimination. This is
19 a four hour class. It covers interaction between staff
20 and offenders. We have had 433 staff trained in that.

21 In our PREA compliance class, 300 staff
22 trained, and we are revamping this class to make sure

1 we have all the updated policies and PREA standards
2 covered in this class.

3 We have utilized our Offender Management
4 Information System to create a program called Cell
5 Compatibility, so officers, supervisors, and managers
6 can more readily identify offenders who may have
7 housing issues with other inmates.

8 Recognizing the need for more focused PREA
9 presence at the Montana State Prison, the policy PREA
10 specialist position was established. This position
11 filled in October 2013 and is responsible for all the
12 policies at the facilities, but is primarily focused on
13 tracking PREA incidents, investigatory results, and
14 standards compliance.

15 The National Inmate Survey 3 covered the time
16 frame of February 2011 to May 2011. The survey itself
17 was conducted at Montana State Prison in September
18 2011, prior to my appointment as warden.

19 While I can't definitively answer to the high
20 incidence of inmate-on-inmate and staff misconduct
21 allegations reported in the survey, I have discussed
22 the matter with some of my senior staff for their

1 perspective.

2 During the time frame of the survey, there was
3 an ongoing lawsuit for an alleged staff misconduct
4 incident which occurred in July 2009 surrounding a pat-
5 search on an offender.

6 The lawsuit did not go to jury trial until
7 late 2011. During this time, there was an open
8 discussion of the lawsuit among inmates, which may have
9 resulted in increased reports of staff misconduct
10 during pat searches.

11 This particular lawsuit was awarded in favor
12 of the corrections officer and made its way all the way
13 to the 9th Circuit Court of Appeals where it was
14 affirmed.

15 Also, during the time period of the survey,
16 according to senior staff, there was increased
17 awareness of PREA issues for the inmates through
18 training and education at Montana State Prison, which
19 may have contributed to the high incidence of inmate-
20 on-inmate allegations in the survey.

21 As the Director stated, the Montana State
22 Prison staff continues to be proactive in addressing

1 sexual victimization of offenders. We review
2 procedures and policies and look for ways to improve on
3 a daily basis in order to better protect those
4 offenders we are charged with managing.

5 The Montana Department of Corrections and the
6 Montana State Prison have a zero-tolerance policy in
7 reference to the sexual victimization of incarcerated
8 offenders. The prison's Code of Ethics, attached as
9 Appendix A, is a basis I expect all employees to
10 follow, from new hire's to seasoned veterans.

11 Based on a twenty-two year career in the
12 corrections profession, I can testify that Montana
13 State Prison employees are diligent in their duties and
14 in their ongoing efforts to ensure the safety of
15 offenders, security staff, and civilian staff at the
16 facility and are committed to keeping the citizens of
17 the State of Montana safe.

18 Thank you.

19 DR. WILKINSON: Thank you, Warden, for your
20 testimony. We do have some questions for you, if you
21 don't mind us asking them.

22 MR. KIRKEGARD: Mr. Chairman, if I may, our

1 screen is frozen again but we can still hear you.

2 DR. WILKINSON: It may be your weather in
3 Montana. We have had bad weather here, too. Let's
4 proceed. If you can't hear me, then wave, because I
5 can see you.

6 First of all, how many institutions are there
7 in the State of Montana? Adult correctional
8 institutions.

9 MR. BATISTA: Mr. Chairman, Committee members,
10 there are five adult facilities.

11 DR. WILKINSON: Are you responsible for
12 juvenile as well or not?

13 MR. BATISTA: Mr. Chairman, yes, we are.
14 There are two juvenile facilities.

15 DR. WILKINSON: Okay. Both of you are recent
16 to your positions, within the last two years; is that
17 correct?

18 MR. BATISTA: Yes, we are. Warden Kirkegard
19 has been here for two years, and I just completed my
20 first year.

21 DR. WILKINSON: Okay. The survey period was
22 kind of ending as both of you were assuming your

1 positions there. I want to congratulate you on a
2 document I am reading called The Montana Department of
3 Corrections PREA Status Report.

4 This appears to be a document. Is that not
5 right?

6 MR. BATISTA: Yes, that document was put
7 together for the Panel.

8 DR. WILKINSON: It is really an impressive
9 piece of work. I think if all this is happening, I
10 don't think you will ever hear from us again.

11 I do have one question. I have more than one
12 question. The PREA law has been in existence since
13 2003. It's kind of interesting that you all have a
14 PREA coordinator for the first time at a high level in
15 your agency. I know you are new.

16 Can you kind of tell me the culture of what
17 happened for those nine years that you didn't have a
18 PREA coordinator, why not, what your observation of
19 that might be. It is just interesting to me. The
20 discussions on PREA and what it is all about is
21 certainly not a new discussion.

22 Can you maybe elaborate a little more on that?

1 MR. BATISTA: Sure, Mr. Chairman and Committee
2 members. First of all, I want to thank you for your
3 compliment as to the work we have done. And both
4 Warden Kirkegard and the staff at Montana State Prison,
5 we appreciate that and we will continue to make
6 improvements where necessary.

7 Your question about the PREA coordinator, I
8 mentioned that Mr. Jess is our new PREA coordinator.
9 We did have a PREA coordinator before that. I'm not
10 sure how many PREA coordinators the Department has had.
11 Warden Kirkegard just gave me some specific information
12 about that.

13 Our first PREA coordinator was hired in 2007,
14 left in 2009. There was no PREA liaison at Montana
15 State Prison, as Warden Kirkegard mentioned in his
16 testimony, from 2011 to 2012. We now have a policy
17 PREA liaison at Montana State Prison.

18 I guess in total we have had three PREA
19 Coordinators for the Department of Corrections. The
20 first one lasted two years. Mr. Jess replaced an
21 earlier PREA coordinator that we had. I think in total
22 we have had three PREA coordinators.

1 DR. WILKINSON: Maybe I misheard your
2 testimony about that, but one thing you did say is that
3 person now reports directly to you or is now in your
4 direct chain of command?

5 MR. BATISTA: Yes, Mr. Chairman, that is
6 correct. That speaks to how important this issue is to
7 the Department. We need to make sure all our
8 administrators are on board and paying attention to
9 PREA requirements, and the way to do that is to elevate
10 the position within the Department, and the position
11 does currently report directly to myself.

12 DR. WILKINSON: Can you talk a little bit
13 about kind of what the reasons were for having a high
14 incidence of sexual misconduct reported at the Montana
15 State Prison during the reported time? Do you all
16 agree that was the case? I presume you do a little bit
17 because you are fixing these things now.

18 What led up to it? Do you have any
19 information you can share with us about that?

20 MR. KIRKEGARD: Mr. Chairman, part of the work
21 that we are doing now quite frankly is getting our PREA
22 policies in line for the Montana State Prison. It's

1 not specifically related to this survey, to be quite
2 honest.

3 To go back to inmate-on-inmate allegations, I
4 can't answer that other than what I spoke to in my
5 testimony and what Director Batista spoke to, more
6 awareness through our training, through introduction at
7 the Martz Diagnostic and Intake Unit.

8 As far as the staff misconduct allegations, I
9 think that is the only thing in talking to the senior
10 staff that were there prior to myself being appointed
11 as warden -- a lot of issues surrounding those pat
12 searches. I think during the time frame of the survey
13 we had nine or twelve staff misconduct issues -- there
14 were twelve, and eleven of them were around clothed pat
15 searches.

16 DR. WILKINSON: Director Batista, I just want
17 to make sure I heard you correctly. You mentioned
18 something about a staff member thinking they were being
19 set up, something like that. Is that something you all
20 have been looking at as well?

21 MR. BATISTA: Mr. Chairman, some of the
22 information that came out of our investigations at

1 least have led us to question whether inmate concerns
2 were largely because of conflict with our correctional
3 officers. That is something that we have looked at in
4 each one of the cases that have been reported to us.

5 DR. WILKINSON: I understand that. Certainly,
6 the possibility exists around the country that inmates
7 sometimes don't have the best of intentions when
8 reporting. We can't deny there might be situations
9 that are subversive on their behalf.

10 We heard a lot of testimony earlier from the
11 statistician at the Bureau of Justice Statistics that
12 talked about the process used to survey inmates at our
13 institutions. We do believe they are statistically
14 sound. We know there is a margin of error here and
15 there with the reporting. Nevertheless and regardless
16 of the reason, whether it is because of this hearing or
17 because you are just being forward thinking about this
18 as an agency, it is still impressive, and I appreciate
19 that.

20 The other thing that I'm aware of and Director
21 Batista, you know these are issues that the Association
22 of State Correctional Administrators are talking an

1 awful lot about, and quite frankly, I think it might be
2 important for you to even share some of what you have
3 done recently with that group, and when you have the
4 opportunity to share it with the Western Directors, I
5 think Montana is part of the Western Directors, or with
6 the national group, I think it is important.

7 The reason for these hearings, it is not to
8 call any state or institution on the carpet. It is to
9 find a way that we can take this information and the
10 data that we have and hopefully make some good of it.

11 Let me turn to Anne Seymour who has a question
12 for you.

13 MS. SEYMOUR: Thank you both for your
14 testimony. Director Batista, it is nice to see you
15 again. Thank you for your good work with the National
16 Children's Alliance.

17 MR. BATISTA: Thank you.

18 MS. SEYMOUR: I also like Reggie read your
19 status report, and I appreciate that. It indicates
20 there is like some policy development and a whole lot
21 of training going on, which is really great.

22 My question is can you describe support

1 services that are available to inmates who claim sexual
2 victimization in the Montana State Prison? Is there a
3 contract that you have with service providers? I know
4 you have the hotline to the YWCA. Would you have
5 mental health services, community-based or victim
6 advocates, who could provide confidential support to
7 people who are making these allegations?

8 MR. BATISTA: Leroy, would you like to answer
9 that?

10 MR. KIRKEGARD: Ms. Seymour -- Mr. Chairman,
11 if I could just take two seconds to clarify something
12 the Director said. There is one main male unit in
13 Montana State Prison, and we contract with three other
14 facilities in Shelby, Great Falls, and Glendive. All
15 the male inmates at one point or another come through
16 the Montana State Prison. I just wanted to bring that
17 up because there is a lot of long-term inmates and a
18 lot of long-term officers that see each other a lot,
19 when we talk about some of these allegations of staff
20 misconduct.

21 Going back to your question, Ms. Seymour,
22 Montana State Prison has a full infirmary and mental

1 health staff. Mental health staff, mental health
2 technicians that see inmates on a routine basis. That
3 becomes more prevalent when there is sexual
4 victimization. Those mental health techs are on the
5 scene to talk with those inmates and continue to follow
6 up with the inmates. That is our primary support role,
7 our mental health section at the prison.

8 MS. SEYMOUR: I think of sort of the example
9 of the Department of Defense, who we are working with
10 now, some people are uncomfortable reporting and
11 accessing services within the chain of command, and I
12 think in prisons it might be similar; they would prefer
13 to seek confidential support services.

14 Is that something you would consider? We
15 heard earlier from Joyce Lukima from PCAR about the
16 partnerships that are developing that include
17 community-based services. Is that something you all
18 could consider?

19 MR. KIRKEGARD: Yes, absolutely. We are
20 looking at a lot of different options right now to
21 support the offenders. That is something we are taking
22 a look at. We are not quite there yet, but we are open

1 to everything.

2 MS. SEYMOUR: I appreciate that. Thank you so
3 much. There are lots of good resources at the national
4 level that you can tap into. I'm volunteering Joyce
5 right now.

6 MR. BATISTA: Thank you.

7 MS. SEYMOUR: Thank you both.

8 DR. WILKINSON: Do you have questions?

9 DR. CHRISTENSEN: Yes, one question. Warden
10 Kirkegard, this is Gary Christensen. You mentioned
11 when you came in in 2011 you spoke with senior staff
12 trying to make some sense of what had gone on; you
13 mentioned you found certain gaps in reporting and
14 different things like that; and I'm sure largely this
15 PREA status report is a result of some of those initial
16 inquiries that you made.

17 We talked about the high incidence, and one of
18 the reasons that you are here is to talk about the high
19 incidence of inmate-on-inmate sexual misconduct over
20 the reporting period. I'm sure you have noted your
21 nine-point-zero percent rate versus a two-point-zero
22 national normative value is quite high.

1 I'm wondering when you spoke with senior staff
2 about inmate-on-inmate sexual misconduct, if there was
3 anything to indicate or validate a rating of nine
4 percent.

5 MR. KIRKEGARD: Dr. Christensen, thank you,
6 good question. Not really. There was nothing that led
7 me to believe at that point in time when I first took
8 over that things were that bad, that nine-point-one
9 rating would indicate.

10 We do know there are incidences, there are
11 things that happened at the Montana State Prison, but
12 nobody gave me any indication that things were to that
13 level.

14 DR. CHRISTENSEN: Okay. Thank you.

15 DR. WILKINSON: I don't have any further
16 questions for you. We probably do but we are on a time
17 schedule. I just want to thank the two of you for your
18 due diligence, quite frankly, and for appearing
19 remotely for the hearing today.

20 Do you have any questions of us?

21 MR. BATISTA: We do not. We thank you for
22 your time and appreciate your comments. We will

1 continue our work here in Montana.

2 DR. WILKINSON: Thank you. If you have any
3 other information following your testimonies here today
4 that you would like to share with us for the record, we
5 would be more than happy to receive it.

6 Otherwise, we know it is early in Montana.
7 Thank you for getting up to be part of this session,
8 and we wish you the best.

9 MR. BATISTA: Thank you, same to you and
10 thanks to everyone on the Panel.

11 MR. KIRKEGARD: Thank you.

12 DR. WILKINSON: Thank you and Happy New Year.

13 We will continue with the hearing. We would
14 like to invite Dr. Beck back to the table as well as
15 Warden Richard Comerford from Florida. I understand
16 the Assistant Director was not able to make it today.

17 MR. COMERFORD: Yes, sir. His flight was
18 canceled yesterday, and they tried to get him out early
19 enough this morning, and that got delayed due to
20 weather and mechanical issues.

21 DR. WILKINSON: Dr. Beck, there is no need to
22 swear you in again. Warden Comerford, I do need to

1 swear you in, if that is okay.

2 MR. COMERFORD: Yes, sir.

3 DR. WILKINSON: Do you swear or affirm that
4 the testimony you are about to give is the truth, the
5 whole truth, and nothing but the truth?

6 MR. COMERFORD: Yes, sir; I do.

7 DR. WILKINSON: Thank you.

8 Whereupon,

9 RICHARD COMERFORD

10 was called as a witness and, having first been
11 duly sworn, was examined and testified as follows:

12 DR. WILKINSON: I presume it is a little bit
13 warmer in Florida than it is here. I'm a little bit
14 jealous. Nevertheless, we appreciate you being here.

15 Before your testimony, Warden, we are going to
16 hear again from Dr. Beck, who will provide some insight
17 on the Mabel Bassett Correctional Center with the
18 Oklahoma Department of Corrections.

19 STATEMENT OF DR. ALLEN BECK, BUREAU OF JUSTICE
20 STATISTICS ON MABEL BASSETT CORRECTIONAL CENTER

21 OKLAHOMA DEPARTMENT OF CORRECTIONS

22 DR. BECK: Thank you. Mabel Bassett

1 Correctional Center is a very large institution, female
2 institution. We estimate about 1,054 in custody, that
3 would not include any young women under the age of
4 eighteen. Nationwide, there are roughly 9,600 females
5 in facilities that were eligible to be sampled.

6 We over-sampled for female facilities. Mabel
7 Bassett is one of forty-three female prisons that were
8 in our sample. We over-sampled for the reason that
9 female inmates had high levels of inmate-on-inmate
10 sexual victimization, and if we were not to
11 over-sample, we would significantly miss that dynamic
12 in sexual victimization, and if we were to commingle
13 female facilities with male facilities, the female
14 rates would overwhelm the male rates on inmate-on-
15 inmate sexual victimization.

16 We separated the female facilities and we
17 provided estimates for each of the forty-three.

18 The Mabel Bassett facility was the only female
19 facility that met the standard of being classified as a
20 high rate facility. In that facility, we found fifteen
21 percent of the respondents, female respondents,
22 reporting some form of inmate-on-inmate sexual

1 victimization. That is double the national average,
2 and based on our confidence interval standards, could
3 be classified as uniquely a high rate facility.

4 That rate of inmate-on-inmate sexual
5 victimization is higher than any rate we observed for
6 male facilities. The highest rate we observed for male
7 facilities was nine-point-six percent.

8 The Mabel Bassett Correctional Center truly
9 stands out among our correctional facilities and
10 particularly among female correctional facilities.

11 We had a reasonable response rate of seventy
12 percent; that was higher than the national rate of
13 sixty percent. We found that about half of the inmate-
14 on-inmate victimization could be classified as
15 non-consensual sexual acts.

16 Those are acts that we most often associate
17 with the notion of rape; they involve penetration or
18 some form of sexual activity involving penetration.
19 About half of the female-on-female sexual victimization
20 involved abusive sexual contacts, typically the
21 unwanted grabbing, groping, touching, involves less
22 physical force, often times by surprise.

1 Over half of the women who reported inmate-on-
2 inmate victimization reported physical force, and
3 almost three-quarters also involved some form of
4 pressure. They could be victimized multiple times and
5 with different types of coercion.

6 We are talking about very serious inmate-on-
7 inmate sexual victimization going on within this
8 facility.

9 Along the way, based on a request from
10 correctional administrators who happened to find
11 themselves high on either inmate-on-inmate or staff
12 sexual misconduct, we provided an array of
13 circumstances to try to identify for those
14 administrators what exactly we found.

15 I can describe the circumstances surrounding
16 inmate-on-inmate victimization within Mabel Bassett.
17 Typically, the victims reported one incident and one
18 incident only, although some reported multiple.

19 Typically, the inmate victims reported they
20 were persuaded or talked into it as opposed to other
21 forms of force or pressure; although every kind of
22 pressure was reported, the main category was being

1 persuaded or being talked into it. That is not
2 atypical of female sexual victimization elsewhere.

3 Most victims reported they were typically
4 victimized by one perpetrator, typically there was
5 little gang involvement. At least one reported gang
6 involvement.

7 The finding was that victimization occurred
8 most typically after about thirty days. What we are
9 talking about is inmate victims experiencing some
10 degree of risk within the first thirty days, but the
11 bulk of the victims reported this first happened after
12 thirty days. Again, not atypical of female sexual
13 victimization.

14 We found in Mabel Bassett, similar to places
15 elsewhere, that the most common time this occurs is on
16 the second shift, 6:00 p.m. to midnight, where inmates
17 are still up and about, and staffing levels are lower.
18 Of course, it happens at all times of the day, but the
19 most frequent category is on that second shift.

20 We find it happened most commonly in the
21 victim's cell or sleeping area. This is true of
22 inmate-on-inmate victimization whether it be male or

1 female. At Mabel Bassett, it was most common in the
2 victim's cell or sleeping area.

3 Relatively little injury, reflective of
4 relatively lower levels of force, nevertheless,
5 physical force was true in about half the cases.

6 There were some victims who reported the
7 incidents, but most did not.

8 That is what we know about the profile of
9 experiences within Mabel Bassett. We know Mabel
10 Bassett has a very high rate, and the profile of
11 experiences looks a lot like the profile for women
12 generally; however, in Mabel Bassett, there is just
13 more of that going on.

14 Just to round out the picture, we took a look
15 at the Mabel Bassett Correctional Center and looked at
16 various characteristics of who is in that facility, the
17 kinds of inmates that are being held there, and
18 comparing those against women held in other prisons.

19 The Mabel Bassett Correctional Center has the
20 same age profile as women elsewhere. The Mabel Bassett
21 facility has a slightly less educated population, that
22 is, fifty-nine percent of the women had less than a

1 high school education compared to about fifty percent
2 of the women more generally.

3 We find a higher level of non-heterosexual
4 orientation with at least a third reporting being
5 bisexual and ten percent reporting being lesbian or of
6 other orientation. That is significantly higher than
7 the women generally in prisons nationwide.

8 One of the things that stands out about the
9 Mabel Bassett Correctional Center and perhaps not
10 surprisingly given its size is that it is populated by
11 violent women. That is, about forty-four percent of
12 all the women in the Mabel Bassett facility were either
13 violent or sexual offenders. That is about double the
14 distribution that we see among women nationwide.

15 Consequently, we also see a higher proportion
16 having been incarcerated in the past, much higher
17 proportion reporting having been assaulted sexually
18 prior to coming to the facility; over two-thirds,
19 seventy-one percent -- I'm sorry -- two-thirds reported
20 such an experience compared to half the women
21 nationwide in prison facilities.

22 Finally, we find the women in the Mabel

1 Bassett facility reporting much higher levels of
2 serious mental illness, severe psychological distress.
3 Nearly a third of the women are reporting serious
4 psychological distress as measured by our scale, the
5 Kessler-6 risk scale, that has been accepted widely and
6 used widely in epidemiological research, compared to
7 about one in five or twenty percent in females in other
8 facilities.

9 Consistent with that, we find a slightly
10 higher percentage of the women reporting having been
11 told by a mental professional that they have a
12 disorder, and a higher proportion having reported some
13 stay in a mental health hospital.

14 I think the bottom line is the profile of risk
15 is substantially higher in the Mabel Bassett facility.
16 It is a big facility. It houses large numbers of
17 violent offenders.

18 Of course, I cannot speak to the management of
19 that facility and how that risk profile is managed,
20 other than saying the rate of inmate-on-inmate sexual
21 victimization is high, perhaps the highest in the
22 nation.

1 DR. WILKINSON: Thanks for your profile of the
2 Mabel Bassett facility, Dr. Beck. My question is just
3 kind of a logistical one. We still would like to
4 collect testimony of some sort from the State of
5 Oklahoma on both the high and low incidence facilities
6 there.

7 Do you have a thought on how we would compel
8 that?

9 DR. BECK: The facility was cooperative, as
10 most prison systems were cooperative. The leadership
11 at the departmental level is strongly behind our work,
12 allows us to do our work. I think the key is
13 leadership at that level or higher, and appreciation of
14 this profile of circumstances and sets of risk factors
15 and the seriousness of what we have found perhaps can
16 be a compelling argument to gain support of the new
17 director when there is a new director within the State
18 of Oklahoma.

19 MS. SEYMOUR: Quick question, please. Looking
20 at the characteristics of the inmates here versus the
21 other prisons, it seems fairly similar except the one
22 that jumps out is that in Oklahoma, we are looking at

1 forty-four percent are incarcerated for violent sexual
2 offenses or other violent offenses versus twenty two
3 percent. If I'm doing my math right, that is twice as
4 high.

5 What advice could you give to Mabel Bassett
6 knowing that your population is twice as violent as
7 other prisons? What are things they could be doing
8 recognizing this? That jumps out at me in all the data
9 you collected in terms of characteristics.

10 DR. BECK: Sure. Let me say that is neither a
11 sufficient condition nor necessary one for high levels
12 of inmate-on-inmate victimization.

13 Clearly, correctional authorities face
14 different problems. Inmates bring problems to a
15 facility and they have to deal with them. While the
16 folks in Oklahoma are confronted with the problem of
17 how to house violent offenders and house them safely,
18 they are still under that obligation to do so.

19 As a part of our work, we have looked at
20 issues related to disorder, issues related to the
21 fundamental chaos that often occurs within these
22 facilities, particularly when there is lots of movement

1 and so forth.

2 I think it's a whole package of things that
3 are related to sexual misconduct in involving how you
4 handle and maintain order. In some ways, I think our
5 numbers are suggesting it is not wholly about risk or
6 the cards you are dealt with; it's how you manage that.

7 It is instructive to consider supervision. It
8 is certainly constructive to consider those standards
9 that have been promulgated related to staffing levels,
10 related to video surveillance.

11 Interactions that go on, some of them, if you
12 will, are spontaneous in nature, kind of if you will,
13 the drive-by grabbing and groping. Those are tough to
14 suppress. Nevertheless, I think through education of
15 the staff, through monitoring of staff, some of this
16 could be overcome.

17 MS. SEYMOUR: Thank you, Dr. Beck.

18 DR. WILKINSON: Thank you, Allen, again for
19 stepping in and helping us out with Oklahoma. You are
20 welcome to stay at the table if you wish.

21 Otherwise, we will move on to Florida. Thank
22 you, Warden Comerford, for being here. I understand

1 the Assistant Secretary was not available to come
2 because of flight issues.

3 Do you have testimony from the Secretary as
4 well? What kind of testimony do you have for us here?

5 MR. COMERFORD: Again, on behalf of Mr.
6 Upchurch, we do apologize. He was unable to make it.
7 He wanted me to extend his regrets to the Panel for not
8 being able to be here. He made all attempts today to
9 get here.

10 My presentation will cover Santa Rosa, and in
11 the course of that presentation, there will be some
12 issues that transverse to what the agency is doing as a
13 whole.

14 DR. WILKINSON: Okay. You may proceed.

15 STATEMENT OF MR. RICHARD COMERFORD, WARDEN
16 SANTA ROSA CORRECTIONAL INSTITUTION, AND ON BEHALF
17 OF THE FLORIDA DEPARTMENT OF CORRECTIONS

18 MR. COMERFORD: Again, thank you very much for
19 the opportunity to present this morning, and I would
20 like to extend appreciation to the Panel for the
21 support for the accommodations in travel and
22 communications leading up to this morning.

1 Mr. Chairman and members of the Panel, my name
2 is Richard Comerford and I'm the warden of Santa Rosa
3 Correctional Institution located in the Panhandle of
4 Florida.

5 I'm here today representing over 750 staff and
6 2,800 inmates of our facility.

7 I appreciate the opportunity to present to the
8 Panel on behalf of the Florida Department of
9 Corrections and Santa Rosa CI in response to sexual
10 victimization and staff sexual misconduct.

11 Our Department appreciates the efforts and
12 support of the Panel to monitor, advise, and assist the
13 correctional community in eradication of sexual
14 violence and exploitation of inmates and offenders
15 under our charge.

16 I'd like to take a few moments to provide the
17 Panel with a short background of Santa Rosa
18 Correctional Institution and the mission of our
19 facility.

20 Santa Rosa CI was first populated in 1996 with
21 the opening of the main unit and expanded in 2006 with
22 the opening of the annex. We are an adult male, Level

1 6, close-custody facility with the capacity of 2,827
2 inmates and an average daily population of around
3 2,800.

4 We house all medical grades, mental health
5 grades up to and including inpatient mental health, and
6 we are designated and equipped to house inmates
7 requiring ADA accommodations.

8 We have 616 correctional officers, sixty-two
9 administrative and support staff, thirteen program
10 staff, and seventy-five medical and mental health
11 personnel.

12 Our institution has a diverse array of
13 missions and objectives, the most prevalent of which is
14 housing inmates under close management. Close
15 management is Florida's classification for
16 administrative segregation of offenders apart from the
17 general population for reasons of security, order, and
18 effective management of the institution. This
19 population has demonstrated an inability to live in the
20 general prison population without abusing the rights
21 and privileges of others.

22 Parallel to the mission of close management

1 for Santa Rosa is our inpatient mental health facility.

2 It is comprised of two units.

3 Crisis Stabilization, or CSU, provides a level
4 of care to include a broad range of evaluation and
5 treatment services provided within a highly structured
6 residential setting. It is intended for inmates who
7 are experiencing debilitating symptoms of acute mental
8 impairment and who cannot adequately be evaluated and
9 treated in an outpatient or infirmary mental health
10 care setting. Such treatment is devoted principally
11 for rapid stabilization of acute symptoms and
12 conditions.

13 The Transitional Care Unit, or TCU, provides a
14 level of care that is more intensive than outpatient
15 and infirmary care, but less intensive than crisis
16 stabilization care. It is characterized by the
17 provision of mental health treatment in the context of
18 a structured residential setting.

19 Transitional mental health care is indicated
20 for a person with chronic or residual symptoms whose
21 impairment and functioning nevertheless renders him
22 incapable of adaptive functioning within the

1 incarceration environment.

2 Santa Rosa CI's mental health facility
3 provides mental health services to the close-management
4 population of our unit in addition to accepting
5 overflow inmates in need of mental health services from
6 other close management units within the state.

7 Florida has four male facilities and one
8 female facility designated to house close management
9 inmates. The most recent census numbers for Florida
10 indicates that close-management inmates account for
11 approximately three percent of the Department's
12 population statewide.

13 Santa Rosa CI houses the largest population of
14 male close-management inmates in the state, which
15 equates to approximately thirty-eight percent of the
16 total CM population for the state or a little over
17 1,200 inmates.

18 In the past twelve months, Santa Rosa CI has
19 issued 1,325 disciplinary reports from major rule
20 violations. These include over 190 reports for battery,
21 432 reports for participating in a disturbance, 184
22 reports for lewd and lascivious behavior, forty-four

1 reports for possession of weapons, and 106 reports for
2 possession of contraband.

3 We reported 147 recoveries of major contraband
4 and documented 790 uses of force incidents.

5 Additionally, we maintained averages of one hundred
6 inmates on heightened security and over ten inmates at
7 any given time on spit-shield status due to documented
8 and observed threats against staff.

9 In the past year, we have incurred sixty
10 injuries to staff related to inmate violence or
11 resistance that required reports to Risk Management.
12 Close-management inmates are among some of the most
13 incorrigible and disruptive members of the prison
14 population.

15 The background and information I have provided
16 about Santa Rosa Correctional Institution is not
17 intended to mitigate or minimize in any way the
18 significance and gravity of sexual victimization and
19 staff sexual misconduct.

20 We feel the missions of our facility, the
21 caliber of inmate we house, and the subsequent
22 discipline and management encounters that arise at

1 Santa Rosa Correctional Institution are a primary
2 contributing factor to the allegations of sexual
3 misconduct against staff.

4 Security practices in the spirit of ensuring
5 the safety of the public, staff and offenders are
6 extensive, rigorous, and carefully monitored.

7 Departmental policy along with correctional
8 officer post orders have extensive requirements for
9 searches of inmates, both clothed and unclothed.
10 Movement and escort requirements dictates the
11 application and removal of restraints and custodial
12 touch for staff and inmate safety.

13 These requirements and the frequency in which
14 they occur are magnified greatly with the close-
15 management inmates in general and even greater at Santa
16 Rosa Correctional Institution, considering our census.

17 All of our close-management, mental health,
18 and confinement units have continuous, secured, fixed-
19 wing digital video recording around the clock. All of
20 our close-management, mental health and confinement
21 units along with our open population, secured-cell
22 housing units, have intercom systems that are placed in

1 active listening mode when inmates are confined to
2 their cells.

3 Staffing levels are maintained, and gender-
4 specific requirements are set to ensure adequate
5 staffing is present and available at all times to
6 provide oversight and support in housing units and
7 movement points for the safety and protection of staff
8 and the offender population.

9 The situational and logistical challenges of
10 the mission at Santa Rosa Correctional Institution are
11 not used as a crutch but rather as a motivator for our
12 staff to achieve the goals of the Prison Rape
13 Elimination Act.

14 The Florida Department of Corrections'
15 Strategic Plan states the first goal of our agency is
16 to provide for the care, custody, and management of
17 inmates while ensuring public and staff safety.

18 A prevailing strategy within this goal is to
19 provide a safe and humane environment for inmates.
20 Since 2005, the Department of Corrections and Santa
21 Rosa Correctional Institution has operated under a
22 comprehensive procedure focused on reducing and

1 eliminating sexual victimization and abuse within our
2 offender population.

3 In the Summer of 2013, the most recent updates
4 to this procedure captures several significant changes
5 the Department and Santa Rosa CI has implemented in
6 regards to PREA.

7 Updated and enhanced training was provided to
8 the inmate population. Since 2005, training has always
9 been a part of our reception and orientation process
10 for our inmates. The most recent training program was
11 provided to all inmates under the charge of the
12 Department and documentation retained in our database.

13 This training program will continue for all
14 inmates during the reception process and during inmate
15 orientation when transferred between facilities.

16 This training program includes a video
17 presentation, a comprehensive fact sheet, and details
18 on the intervention, prevention and reporting of
19 incidents of sexual abuse and harassment.

20 In-service training for staff, contractors,
21 and volunteers has been updated and expanded with an
22 increased focus on the dynamics of sexual abuse and

1 harassment -- the Department's zero-tolerance policy --
2 the rights of inmates and staff to be free of
3 retaliation for reporting incidents, and how to
4 communicate effectively and professionally with all
5 inmates, including lesbian, gay, bisexual, and
6 transgender.

7 PREA and the expectations and requirements of
8 all staff are discussed and presented at all staff
9 meetings and supervisors' meetings. Posters have been
10 placed in all housing units and program areas stating
11 our Department's zero tolerance, and providing hotline
12 information for both inmates and the public.

13 Santa Rosa CI and the Department have
14 implemented the procedure of announcing the presence of
15 opposite gender staff on inmate housing units and
16 living areas in an effort to increase awareness.

17 The Department has also implemented an
18 electronic screening system to aid in the
19 identification of aggressive and dangerous inmates in
20 addition to those inmates who show a potential to
21 victimization.

22 The inmate behavioral assessment scale and

1 sexual risk index instrument is a tool used to assist
2 Santa Rosa CI in properly assigning and housing inmates
3 within our large close-management population. This
4 screening process is completed within seventy-two hours
5 of an inmate's transfer and remains ongoing during his
6 presence at the facility.

7 Santa Rosa Correctional Institution has one
8 correctional officer dedicated to the bunking and
9 assignments of inmates. This officer utilizes the
10 information obtained from the IBAS and SRI and works
11 closely with Classification, Security and Mental Health
12 to ensure inmates are appropriately housed and
13 monitored.

14 In support of our zero-tolerance policy on
15 sexual victimization and abuse, the Santa Rosa
16 Correctional Institution and the Department reports any
17 and all allegations and complaints of sexual abuse,
18 sexual battery, and harassment to the Office of the
19 Inspector General, the independent investigative arm of
20 our Department.

21 We operate under transparency in that all
22 allegations are submitted for review and action

1 regardless of whether they are received directly,
2 anonymously, or via third party, or contain facts or
3 specifics that may appear inconceivable to have
4 occurred.

5 Incidents of alleged sexual battery are
6 reviewed in real time as they are reported through our
7 security supervisors, duty wardens, and Office of the
8 Inspector General on-call inspectors.

9 All staff are trained on established protocols
10 in processing these types of incidents, to include
11 providing for the preservation of evidence, safety and
12 treatment of the victim, and access to victim advocacy
13 and crisis intervention.

14 Allegations of staff sexual misconduct and
15 sexual harassment are processed in a similar manner.
16 Regardless of the nature or content of these
17 allegations, it is reviewed by the Office of the
18 Inspector General and assigned for a full investigation
19 as warranted. Multiple allegations will trigger an
20 automatic full investigation of the staff member.

21 The administration works closely with the
22 Office of the Inspector General in all these incidents

1 and uses all assets at our disposal to include review
2 of video, inmate statements, and supervisor
3 observations to respond swiftly and appropriately.

4 Our assistant wardens of operations and
5 programs, security chiefs, classifications and myself
6 tour all housing units, dining halls, program areas,
7 and recreational areas weekly and interact with the
8 inmate population.

9 Medical personnel and chaplaincy staff visit
10 inmates in close-management status at a minimum of
11 weekly, and access to the chaplaincy and medical for
12 open population is available daily.

13 Shift supervisors visit all segregated inmates
14 each shift and are available to open population inmates
15 throughout the course of their shift.

16 Inmates have unimpeded access to our grievance
17 coordinators through locked drop boxes on the compound
18 and in the housing units. Santa Rosa CI and the
19 Department strives to ensure our population has an
20 avenue through which to report all complaints, and they
21 are addressed in a swift and unbiased manner.

22 We feel the demographics of our population

1 increases the propensity of allegations of staff sexual
2 misconduct for which Santa Rosa Correctional
3 Institution is cited as having the highest rate of in
4 the survey.

5 In the restrictive environment in which Santa
6 Rosa CI operates, whereby freedoms are necessarily
7 limited and activities are closely monitored, we strive
8 to find ways to reduce confrontations and acts of
9 violence which correlates to these types of allegations
10 and complaints.

11 Appropriate self-betterment programs,
12 stimulating activity, and positive interaction are a
13 priority of Santa Rosa and the Department.

14 In the spirit of our agency's re-entry
15 initiatives, we at Santa Rosa have taken several
16 programs historically presented to open population
17 inmates and implemented them into our close-management
18 population. Stress awareness, victim impact, anger
19 management, and rethinking personal choices are
20 provided to appropriately screened inmates. These
21 programs help inmates focus on release from close-
22 management status and eventually release from

1 incarceration.

2 We are currently providing a crisis-
3 intervention-techniques training program to all of our
4 close-management, confinement, mental health, security
5 staff and supervisors. This unique program was
6 developed with the goal of effective conflict
7 resolution and intervention to de-escalate aggression
8 and prevent incidents requiring force.

9 By fostering a positive environment and
10 enhancing staff awareness and equipping them with
11 proven intervention techniques, we will impact the
12 prevalence of complaints and allegations of staff
13 sexual misconduct.

14 The Santa Rosa Correctional Institution is
15 committed to reducing the presence of sexual
16 victimization and abuse in our facility and within the
17 Department.

18 Our unique mission provides a challenging
19 population to manage and protect and is equally matched
20 with our hard working and dedicated staff and team
21 members and the support and guidance provided through
22 our executive leadership.

1 Again on behalf of Santa Rosa Correctional
2 Institution, I appreciate the opportunity to address
3 the Panel today.

4 DR. WILKINSON: Thank you, Warden, for your
5 testimony. Just for the record, we do have testimony
6 prepared by Secretary Michael Crews. We appreciate the
7 cooperation from the Florida Department of Corrections.

8 I will turn the questioning over to Dr.
9 Christensen.

10 DR. CHRISTENSEN: Thank you, Warden Comerford.
11 My first question is Secretary Crews in his statement
12 to the Panel as well as yours, you referenced a policy
13 that's in place citing zero tolerance, zero tolerance
14 for sexual offenses.

15 I've looked at the policy and the policy is
16 included in the binder. It says it has an effective
17 date of this year, September 2013, this past year, yet
18 it has an initial issue date of June 2005.

19 Can you explain that?

20 MR. COMERFORD: Yes, sir. In Florida, when a
21 policy is initiated, it has an implementation date,
22 which was 2005. As there are changes and so forth, the

1 most current date is the actual effective date for
2 those changes, which the most recent changes were
3 September of 2013.

4 DR. CHRISTENSEN: Were there significant
5 policy changes that went into effect in September 2013
6 that might shed any light on or were in response to the
7 very, very high incidence of staff-on-inmate sexual
8 misconduct reported within your facility?

9 MR. COMERFORD: Yes, sir. I think I can
10 answer some of those or provide a few of those. Of
11 significance was the assurance of all of our fixed-wing
12 video-recording systems within our secured cell and
13 confinement, close-management facilities; the mandates
14 of the intercom systems to be placed into monitoring
15 modes at all times; the announcement of staff being
16 present, opposite gender staff being present on housing
17 units.

18 That procedure also encapsulated some changes
19 where we actually identified PREA compliance officers
20 at all of our facilities, which at each of our
21 facilities, assistant wardens of programs are tasked
22 with that goal as well.

1 DR. CHRISTENSEN: With the implementation of
2 these things, would you expect the rate of ten-point-
3 one percent staff-on-inmate in your facility would
4 decrease dramatically?

5 MR. COMERFORD: I think it will have a
6 positive impact on reducing it. Again, I know the type
7 of inmates and the manner in which we manage them, even
8 with our population of a closed management population,
9 they are segregated from the other population in the
10 system because of their inability to operate or to
11 adapt and function there, they are still held to the
12 same expectations as it relates to maintaining of their
13 housing, their grooming, participating in programs.
14 They are given the same options or opportunities of our
15 open population inmates.

16 That will still be a contributing factor, but
17 I do believe the changes that we have implemented since
18 the most recent policy update, and in fact, it has been
19 updated again on December 13, there were a couple of
20 other additional changes -- December 30, 2013 -- excuse
21 me.

22 I do think those changes implemented in that

1 policy will impact the rate of victimization listed for
2 Santa Rosa.

3 DR. CHRISTENSEN: Okay. You mentioned the
4 very high prevalence of close-management inmates in
5 your facility, thirty-eight percent?

6 MR. COMERFORD: Yes, sir.

7 DR. CHRISTENSEN: As a guy who ran a
8 correctional a long time ago, usually close management
9 would tend to make one believe there would be less
10 incidents of sexual victimization given the increased
11 surveillance on the population. Is that safe to assume
12 that applies within your facility with close management
13 or am I off base?

14 MR. COMERFORD: I think the close
15 surveillance, the gender-specific requirements of
16 staffing, the video recordings we have, the ability to
17 go back and review, has a positive effect, but still,
18 you have the interactions, the mandated security
19 checks, the mandatory cell searches, the mandatory
20 searches when inmates are removed and taken to
21 programs, showers, recreation, things of that nature.

22 It is all hands on. There is always going to

1 be some type of interaction and communication between
2 the offender population and the staff.

3 DR. CHRISTENSEN: Your thoughts are the amount
4 of strip searches, pat searches, things that happen
5 that are more frequent with close security relate to
6 more inmate complaints about that?

7 MR. COMERFORD: I think it will raise the
8 propensity just because any time you have an
9 interaction between that inmate population and a staff
10 member of authority, whether it is security or the
11 other treatment staff and program staff, you run the
12 possibility of having that allegation.

13 DR. WILKINSON: With close and high security
14 facilities, there is less movement than medium. I know
15 when I had incidences of sexual misconduct, the
16 propensity was more in the medium security facilities.
17 First of all, there are more medium security inmates
18 and second, there are more places where unacceptable
19 incidents can take place and behaviors.

20 With less movement in a high security
21 facility, and a close security facility is high
22 security, they may have contact with more staff, but

1 there is less inmate-on-inmate contact, or is that not
2 right in Florida?

3 MR. COMERFORD: That's a very good point, sir.
4 Just to kind of elaborate on our close management, our
5 administrative segregation population, it is classified
6 into three levels. We have a CM-1, CM-2, and CM-3
7 level.

8 A CM-1 level for an inmate, he's confined by
9 himself and stays in that cell except for mandated
10 programs, medical, recreational, showers, and hygiene.

11 The CM-2 level have periods of time where they are
12 brought out in groups for mental health programs,
13 general groups, counseling groups, and they are also
14 allowed a certain amount of recreational day room
15 activities, allowed to interact with other inmates,
16 play cards, games, and socialize under a secured
17 setting. The CM-3 population continues to have the
18 same opportunities, to have interaction. They also
19 have job opportunities. They come out and they are
20 actually orderlies in our housing units.

21 The CM-1, CM-2 and CM-3 distinction is a
22 motivating factor to try to process these inmates out

1 of the administrative segregation back to the open
2 population.

3 DR. WILKINSON: You have gradations of close
4 security?

5 MR. COMERFORD: Yes, sir.

6 DR. CHRISTENSEN: Some of the other things
7 that obviously when there is a zero-tolerance policy
8 that governs the entire state -- the next part of the
9 hearings is to look at low incidence facilities, and
10 one of those is Florida as well, who also operates
11 under the same zero-tolerance policy.

12 We have heard your explanation about close
13 management and the type of interaction with staff, but
14 at the same time, Florida also reports several other
15 facilities that have various rates of high incidents
16 between either staff and/or inmates.

17 I don't know if you can comment on that or if
18 it is unfair to ask you that, but I'm going to ask it
19 anyway.

20 MR. COMERFORD: I believe you are talking in
21 reference to Northwest Florida Reception Center and
22 Apalachee Correctional Institution.

1 DR. CHRISTENSEN: Also Broward.

2 MR. COMERFORD: Yes. I can't really speak
3 with all certainty of their operations. I will tell
4 you that for the population of the Northwest Florida
5 Reception Center, they are a reception center, they are
6 also a transit point for the inmates moving throughout
7 the Panhandle. They take care of all movement in and
8 out of the Panhandle.

9 They also deal with a population that is
10 primarily or a large part of -- within our Department;
11 once an inmate is removed or released from CM
12 population, they route back to other facilities to kind
13 of transition back into open populations. Apalachee CI
14 and Northwest Florida are one of those facilities as
15 well.

16 I think that would have a contributing factor.
17 If I recall from reviewing it, too, their allegations
18 related a lot to inmate-on-inmate, their high
19 prevalence is related to inmate-on-inmate
20 victimization, which is kind of contrary to ours, which
21 was allegations against staff misconduct.

22 DR. CHRISTENSEN: Apalachee has both, and

1 Northwest has inmate-on-inmate. In keeping with that
2 and more pertinent to your facility, Secretary Crews in
3 his written testimony talked and noted there were 115
4 allegations from inmates and/or families of inmates
5 regarding staff sexual misconduct.

6 I'm wondering what your knowledge is of those
7 and how many of those might have occurred in Santa Rosa
8 first, and then once you identify any of those about
9 which you have knowledge, walk us through the process
10 and what some of those outcomes were.

11 MR. COMERFORD: The 115 allegations involving
12 inappropriate conduct by staff all revolved around or
13 all related to Santa Rosa Correctional Institution;
14 twenty-nine of those involved inmates; eighty-six
15 involved allegations of staff sexual harassment;
16 twenty-nine were allegations of some type of
17 inappropriate physical contact.

18 One allegation against a former staff member
19 was substantiated for unprofessional relationship with
20 an inmate. The sexual contact portion of that
21 allegation could not be corroborated because it was
22 brought to light after the subject staff member had

1 actually resigned and separated from the Department.
2 Basically based on lack of supporting evidence and
3 leads, the others were unfounded.

4 Any one allegation or any one incident of
5 sexual misconduct or victimization is one too many.
6 Again, I think as an agency, in the last two years, we
7 have went a long ways, I can tell you, for Santa Rosa
8 Correctional Institution.

9 My management team, our interactions with our
10 inmate population, getting out and communicating with
11 the population and talking with them, we are trying to
12 break down those barriers and open up those lines of
13 communication.

14 When you have an allegation that is two- or
15 three- or four-days old, naturally there is not an
16 option for a lot of evidence. We are trying to bring
17 on early reporting. We work with our supervisors and
18 our security staff that when they do have an
19 allegation, to act promptly and swiftly.

20 We are in contact with our Inspector General's
21 Office, the ability to activate the sexual assault
22 response team if we have an incident that occurs.

1 I think by doing those things, if there are
2 allegations that can be founded and investigations
3 sustained, it will be more prevalent by making those
4 efforts to have earlier response than in the past, and
5 those are efforts that we have really implemented in
6 our agency and in our facility in the last two years.

7 DR. CHRISTENSEN: Thank you. Just so I'm
8 clear, of the 115 allegations, one was substantiated?
9 Am I correct?

10 MR. COMERFORD: Yes, sir.

11 DR. CHRISTENSEN: I apologize for asking you
12 questions to answer for the whole State of Florida, but
13 I certainly appreciate your openness in discussing your
14 facility in Santa Rosa, and it sounds like given the
15 policy that has been promulgated or updated as recently
16 as December of this past year we will see some decrease
17 in those rates. Thank you.

18 MR. COMERFORD: Yes, sir.

19 MS. SEYMOUR: I feel we are like the
20 principal, we do not want to see you in the office
21 again. No, thank you. I really appreciate your
22 updated policy as well.

1 DR. WILKINSON: Warden, when you do have a
2 sexual assault, what happens after that? When a person
3 makes a claim, are there counselors, are there victim
4 advocates, are there mental health administrators,
5 physical health persons who intervene? What happens
6 once a person claims or has some sort of physical
7 evidence that a sexual assault has taken place? How do
8 you help the person out?

9 MR. COMERFORD: Well, that's a good question.
10 Naturally, we go through our -- as I spoke a few
11 minutes ago, we go through our initial response with
12 our Office of Inspector General. We secure the crime
13 scene, we secure the victim, the alleged assailant as
14 well.

15 If there is ability to extract any kind of
16 physical evidence, we go the investigative route,
17 parallel to that for the actual victim, and I think
18 that is the direction you were going with the question.
19 We do have several avenues, a couple of brochures that
20 we actually give to the inmates or the alleged victim
21 at the time.

22 Part of our sexual assault response team has a

1 component in the actual physical exam. The Department
2 of Corrections actually contracts with an agency that
3 comes in and provides the actual examination and follow
4 up. We don't have to take them to outside medical
5 departments.

6 MS. SEYMOUR: Is that a community-based nurse
7 or member of a SART? Who would do that examination?

8 MR. COMERFORD: It's contracted with a
9 corporation or company in the Panhandle and they
10 provide those services. It's a group of doctors and
11 nurses. They are the same group that responds to our
12 agency, and it is nurses, and they also have an on-call
13 medical doctor. At any given time when they come in to
14 do an exam, if there are communications or follow up,
15 they need to have a doctor on call they can communicate
16 with.

17 As we speak, the Department is in negotiations
18 to contract with an outside agency or advocacy agency.
19 Right now we are providing follow up care and
20 assistance through our contracted mental health and
21 medical staff. They are on-site and on board with us
22 in our facilities.

1 Hopefully, within the next few months, the
2 Department will have a victim advocacy program with
3 twenty-four hour access through an 1-800 number,
4 ability to have personal visits and interactions. We
5 are also expanding the reporting mechanism to allow for
6 the third party reporting. We have a complaints access
7 on the website.

8 Right now, our follow up as far as the
9 advocacy portion of it is being provided by our mental
10 health counselors and our medical staff on site.

11 DR. WILKINSON: Where does that inmate go? Is
12 that person in segregation again? Is there a safe
13 room? What happens to that inmate in terms of where do
14 they spend the night? Are they reassigned to a
15 different cell? What exactly happens to that person?

16 MR. COMERFORD: A lot of it is the level of
17 the allegation and evidence available at the time. If
18 it is by all means a cell or location, housing unit,
19 it's a crime scene, so he's removed from that unit.

20 We do have a separate infirmary location in
21 our facility that has secured cells that we can place
22 them. They are also under video monitoring and video

1 capabilities.

2 If at any time the Office of the Inspector
3 General, who is in charge of that investigation, feels
4 that inmate's presence to stay at that facility is in
5 jeopardy, then we will immediately transfer him to
6 another facility.

7 DR. WILKINSON: That's an option as you move
8 through the investigation process?

9 MR. COMERFORD: Yes, sir. Again, the Office
10 of the Inspector General is an independent arm of our
11 agency, and as it relates to protection and to the
12 safety and security of the victim, that's paramount.

13 If we transfer or we have allegations of
14 sexual assault or victimization that relates to an
15 inmate that is transferred, we share that with the
16 administration of that facility.

17 Also, our policy allows for say an inmate who
18 is transferred into our facility from another facility,
19 and now that he's been removed from that facility,
20 feels the need to make a complaint or to make an
21 allegation, we respond immediately to that from my
22 facility and initiate the investigation and follow up

1 to include medical exams and other clinical issues if
2 needed.

3 DR. WILKINSON: Who does the SART report to?
4 Is it management or Office of the Inspector General?
5 How does that happen?

6 MR. COMERFORD: Their reports and findings are
7 shared with the Office of the Inspector General.

8 DR. CHRISTENSEN: I'm sorry, Warden, I told
9 you I was finished. I lied; sorry.

10 Getting back to the 115 allegations, I'm
11 struck that only one was founded and 114 weren't. I'm
12 wondering in not being founded, did you find the
13 inmates had lied? Did you find there was some
14 combination of inability to prove something, something
15 was unsubstantiated? That's the first part. The
16 second part is what happened to those inmates who made
17 those allegations after that?

18 MR. COMERFORD: I can't speak specifically on
19 those because my tenure at Santa Rosa began in July of
20 2012. I believe these were prior to that.

21 The incidents as they occurred, if they are
22 found to be unfounded, it doesn't necessarily mean that

1 our monitoring of that inmate and to include that staff
2 member changes. Just because a case is unfounded, it
3 does not mean there may not be a propensity there. We
4 monitor our confinement staff routinely for burn out
5 and significant issues. That is our management style
6 in the Department and my facility.

7 The old adage sometimes if there's smoke,
8 there will be fire. If there is a situation that
9 dictates the relocation of a staff member, we may do
10 that as well. If there is an indication of an inmate
11 needs to be relocated, we may process that move through
12 Population Management to relocate him to another
13 facility.

14 The evaluation and review is an ongoing
15 process. As far as any disciplinary reports for lying
16 or providing false testimony, just for the sake of
17 validating the process and keeping it in place, I feel
18 that could have a negative impact. I think that would
19 contribute to the allegation of well, I reported a
20 situation, it's unfounded, so therefore, I'm penalized.
21 I'd rather err on the side of caution and not process
22 disciplinary action.

1 Again, I think any and all allegations warrant
2 full review and monitoring, and even though an
3 investigation may not have an outcome of an actual
4 substantiation, it still needs to be monitored and
5 followed through.

6 DR. CHRISTENSEN: Lastly, I promise. You
7 mentioned relocation of either inmates or staff. How
8 often in your tenure has that happened as a result of
9 any type of sexual impropriety or allegation of that?

10 MR. COMERFORD: Very seldom. Usually, it's in
11 the situation of a staff/sexual offender relationship,
12 an established one. Even though as we have discussed
13 and heard this morning, that is criminal and
14 inappropriate. It is a sexual victimization incident.
15 Usually, it's an issue that has occurred from a
16 relationship that has developed between the
17 incarcerated subject and the staff member.

18 DR. CHRISTENSEN: In those cases, is that
19 staff member prosecuted, relocated, released? What?

20 MR. COMERFORD: Again, under our zero
21 tolerance, any time a staff member is substantiated of
22 any type of sexual victimization, it usually includes

1 termination, separation of employment.

2 In those incidents where we can prosecute them
3 criminally, we will. Since 1996 in Florida, it has
4 been a criminal offense for any type of sexual conduct
5 or sexual contact with an inmate incarcerated, so we do
6 proceed and pursue outside charges and prosecutions to
7 the full extent on those employees.

8 DR. CHRISTENSEN: Thank you.

9 DR. WILKINSON: Warden, one last question. I
10 promise we will let you go. This is a statewide
11 question. Florida DOC contracts with a number of
12 private companies to operate facilities; is that
13 correct?

14 MR. COMERFORD: Yes, sir.

15 DR. WILKINSON: How does the DOC interface
16 with those institutions to ensure compliance with your
17 policies and practices? Ultimately, if there is a
18 lawsuit at those facilities, they are going to sue you,
19 too.

20 MR. COMERFORD: Right.

21 DR. WILKINSON: How do you interface with
22 those companies to ensure their compliance with PREA

1 standards and your various policies?

2 MR. COMERFORD: Yes, sir. That's a good
3 question. There is actually a private facility in the
4 county that my facility is in, so I do have some
5 firsthand knowledge of their operations. I will say as
6 an agency as a whole that all of the private facilities
7 are held to the same standards, procedures, and
8 policies of the Department.

9 The Office of the Inspector General, their
10 jurisdiction is statewide. Their jurisdiction in a
11 state facility transcends to a private-run facility,
12 the same procedures issued by Secretary Crews is
13 expected of the private agencies or contracted agencies
14 as well.

15 The Office of the Inspector General has full
16 access; same reporting requirements for me as a warden
17 of a state facility, it is the same for a warden of a
18 private contracted facility.

19 As far as their operations internally, I can't
20 speak to knowledge of that, but I can speak to the
21 expectations and procedures within the Department of
22 Corrections as a whole; they are far-reaching for every

1 facility. I would expect the same process to be
2 followed in a privately run facility as a state-run
3 facility.

4 DR. WILKINSON: Thank you so much for your
5 testimony today, Warden. We appreciate it. You are
6 excused.

7 MR. COMERFORD: Yes, sir.

8 MS. SEYMOUR: Thank you.

9 DR. CHRISTENSEN: One more -- no. Thank you.

10 DR. WILKINSON: We will recess the hearings on
11 prisons with high incidence of sexual victimization and
12 reconvene the hearing this afternoon.

13 HEARINGS ON LOW INCIDENCE PRISON FACILITIES

14 DR. WILKINSON: We will now begin the hearings
15 on the low incidence of sexual victimization. Sorry,
16 Dr. Beck. We will bring you back on. You are earning
17 your bacon today.

18 Again, Assistant Secretary Upchurch was not
19 available to attend. You are Barry Reddish?

20 MR. REDDISH: Yes, sir; that's correct.

21 DR. WILKINSON: Warden, I do need to swear you
22 in. Do you swear or affirm that the testimony you are

1 about to give will be the truth, the whole truth, and
2 nothing but the truth?

3 MR. REDDISH: I do.

4 Whereupon,

5 BARRY REDDISH

6 was called as a witness and, having first been
7 duly sworn, was examined and testified as follows:

8 DR. WILKINSON: Thank you, sir. Do you have
9 testimony prepared for us?

10 MR. REDDISH: Yes, sir; I do.

11 DR. WILKINSON: Okay. You may proceed.

12 STATEMENT OF MR. BARRY REDDISH, WARDEN,
13 LAWTEY CORRECTIONAL INSTITUTION AND FLORIDA
14 DEPARTMENT OF CORRECTIONS

15 MR. REDDISH: Thank you, Mr. Chairman, Panel
16 members. Good morning. I'm Barry Reddish. I'm the
17 Warden at Lawtey Correctional Institution in Lawtey,
18 Florida.

19 Our facility was established in 1973 as a
20 community vocational center housing work-release
21 inmates. In 1977, it was converted to a major adult
22 facility housing male inmates.

1 In 2004, Lawtey became the nation's first
2 faith-and-character-based institution, and as recently
3 as 2012, was nationally recognized with the Judith
4 Coleman Chaplaincy Award for excellence in correctional
5 programming.

6 It houses medium and minimum community custody
7 inmates in eight barracks style open-bay dormitories
8 and one housing unit consisting of double occupancy
9 rooms that houses approximately 200 inmates.

10 There is no camera coverage in the living
11 areas, and the supervising staffing levels are greatly
12 reduced from those found at Santa Rosa Correctional
13 Institution. However, it is worth noting inmate-to-
14 staff ratios are lower at Lawtey than many comparable
15 facilities that house predominately open-population
16 inmates.

17 For example, the eight barracks-style dorms
18 have a ratio of approximately eighty inmates to one
19 officer, while a dorm in the housing unit with double
20 occupancy rooms houses approximately 200 inmates with
21 two officers, resulting in a ratio of one hundred to
22 one.

1 Some surrounding facilities have open
2 population housing units that have inmates and staffing
3 ratios of approximately 140:1.

4 In 2012, the administration at Lawtey reviewed
5 the physical layout of the dorm to identify any issues
6 that would pose a threat to the security of the dorm
7 and the safety of both staff and inmates.

8 It was found that each of the double occupancy
9 rooms had a solid steel door that could be closed but
10 not secured. The locking mechanisms had been removed
11 from all the doors, resulting in an ability to maintain
12 the door in an open or closed position with no benefit
13 to the security of the dorm.

14 However, the dorms did have handles on the
15 outside, and when two dorms are open and rooms directly
16 across from each other, it created the possibility of a
17 barricade situation by simply tying the doors together.

18 Shortly after, we asked for and received
19 permission to remove the doors, thus eliminating a
20 security threat and enhancing staff and inmate safety
21 at the same time. Removal of the doors also enhanced
22 visibility into the rooms as staff was making rounds in

1 the dorm.

2 Lawtey houses a vastly different population
3 than that of Santa Rosa Correctional Institution.
4 Lawtey does not house close management. Those are the
5 inmates assigned to segregated status due to security
6 reasons. We do not house inpatient mental health,
7 close-custody or confinement inmates.

8 Lawtey maintains approximately 800 inmates
9 that must meet reduced custody requirements and go
10 through an application process to be housed at Lawtey.
11 Additionally, they must meet behavioral requirements to
12 be considered for placement as well as to be allowed to
13 remain at the facility once they are accepted.

14 The highest custody-grade inmates allowed are
15 medium, and the typical inmate is within ten years of
16 release. There are no inmates that have a current or
17 prior sex offense.

18 While the choice to be housed at Lawtey is
19 totally voluntary, participation in intensive programs
20 is mandatory. With the voluminous variety of both
21 faith-and-character-based programming, inmates can
22 attend programming that fits both their needs and

1 individual tastes.

2 Over 400 civilian volunteers provide
3 approximately 10,000 hours of programming annually.
4 Idle time for inmates is kept to a minimum, as inmates
5 are required to attend programming in their off time
6 from their assigned jobs.

7 The environment is consequently much more
8 relaxed, commensurate with the lower risk or threat
9 level associated with this type of population. Since
10 inmates have the ability to request to be housed at
11 Lawtey and the ability to request voluntary removal and
12 transfer, typical inmate-manipulation behavior to
13 secure transfers are virtually non-existent.

14 With a relatively short amount of time left to
15 serve on their sentences, the vast majority of the
16 inmates have an increased sensitivity and desire to
17 take advantage of programming that will increase their
18 chances of making a positive re-entry into society once
19 they are released.

20 As one would logically expect, confrontational
21 incidents where staff must correct the inmate
22 population's behavior occur much less frequently than

1 at facilities such as Santa Rosa.

2 The bottom line is the inmates at Lawtey are
3 significantly less inclined to falsely allege
4 inappropriate sexual misconduct by staff when given
5 anonymous opportunity to do so.

6 It is quite clear the very obvious difference
7 is the composition of the inmate populations at Lawtey
8 and Santa Rosa, and this provides real insight into the
9 different frequency of sexual misconduct allegations
10 and not any particular action or inaction on the
11 Department's part to manage the issue of sexual abuse
12 or misconduct.

13 All of the Department's initiatives associated
14 with the Prison Rape Elimination Act of 2003 apply
15 equally to both Lawtey and Santa Rosa Correctional
16 Institutions.

17 In 2013, all of our inmates received training
18 from staff concerning PREA. Information was provided
19 that particularly addressed what PREA is as well as the
20 Department of Corrections' zero-tolerance policy on
21 sexual abuse and battery; preventive intervention and
22 self-protection methods were presented in addition to

1 information that specifically identified how an inmate
2 could report sexual abuse or battery and what treatment
3 or counseling was available to those inmate victims.

4 Thank you.

5 DR. WILKINSON: Thank you, Warden, for your
6 testimony. I think what we will do is hear both of
7 your testimonies and then come back with questions.

8 We just want to make sure we reserve enough
9 time. Dr. Beck, do you want to help us out again with
10 Oklahoma?

11 DR. BECK: Surely.

12 STATEMENT OF DR. ALLEN BECK, BUREAU OF JUSTICE
13 STATISTICS, ON BEHALF OF JACKIE BRANNON

14 CORRECTIONAL CENTER AND THE

15 OKLAHOMA DEPARTMENT OF CORRECTIONS

16 DR. BECK: Surely. I'll be talking about the
17 Jackie Brannon Correctional Center in Oklahoma. It's a
18 male facility. It is a relatively smaller facility,
19 housing 709 inmates.

20 We interviewed 179 respondents, had a
21 relatively high response rate of seventy-two percent,
22 better than the national average. We only had one

1 report, one of the seventy-nine reported being
2 victimized either by staff or by another inmate. The
3 nature of that victimization was an allegation of
4 abusive sexual contact.

5 That is a substantially positive finding for
6 Oklahoma and for those who operate the Jackie Brannon
7 Correctional Center.

8 We obviously can't speak to the management or
9 climate of the institution directly. However, given
10 the issues related to sexual victimization elsewhere
11 and how that is often associated with institutional
12 climate, in pursuing a better understanding of the
13 achievement of the Jackie Brannon Correctional Center,
14 I would urge the Panel to try to obtain information
15 about grievances, tickets, misconduct of various kinds.

16 Those are the things that would probably be
17 lower. If you're arguing a management-positive
18 climate, those would be pretty good co-variants and
19 good indicators.

20 If there is an opportunity to work with the
21 Department to obtain such information, I would urge you
22 to do so.

1 I did consider the characteristics of inmates
2 held in the Jackie Brannon facility and compared them
3 with males in other prisons. The Jackie Brannon Center
4 looks about average; it doesn't highly stand out.

5 However, it is notable that it is a facility
6 that is less violent than the national average. It
7 houses a higher proportion of drug offenders. That is,
8 over a third, thirty-seven percent of those in the
9 Brannon facility are being held for drug-law
10 violations.

11 We are finding that thirty-nine percent are
12 being held for violent offenses as compared to
13 forty-nine percent elsewhere.

14 With respect to other compositional factors,
15 higher proportion like, as Oklahoma tends to be, and a
16 slightly higher proportion of American Indians, again,
17 Oklahoma, in comparison to facilities and systems
18 elsewhere.

19 The inmates that are housed in the facility
20 are somewhat more educated than inmates held elsewhere,
21 with a third of them having more than a high school
22 education, some college or college degree, compared to

1 one in five among males held elsewhere.

2 Relatively few inmates at the Jackie Brannon
3 Center reported being non-heterosexual; that is
4 bisexual, gay, or other, meaning one percent bisexual,
5 one percent non-heterosexual. That is substantially
6 lower than what we would observe nationwide.
7 Nevertheless, the prevalence of non-heterosexual
8 orientation is around six percent nationwide.

9 In terms of mental health status, inmates held
10 at the Jackie Brannon Correctional Center display the
11 same distribution and levels of serious mental illness,
12 serious psychological distress, as males elsewhere;
13 around thirteen percent of them are categorized and
14 measured to be of such.

15 In terms of prior involvement in mental health
16 systems, where they are being told by a mental health
17 professional they have some disorder or being held
18 overnight in a hospital for a mental health or
19 emotional problem, they are about identical to inmates
20 being held elsewhere.

21 Finally, with respect to having experienced
22 sexual assaults in the past, about one in ten, nine

1 percent to be exact, reported such experience. As you
2 might recall, that is much lower than what we observed
3 among women. Among men nationwide, it is about ten
4 percent.

5 With all that said, I would argue the Jackie
6 Brannon Center looks about typical of the national
7 profile, so I think you need to look elsewhere, beyond
8 the risk profile, to look at issues related to
9 management and institutional climate.

10 DR. WILKINSON: We will take questions for Dr.
11 Beck first so we can excuse him, if we have any. I
12 can't help but point out the irony that both Oklahoma
13 and Florida have two institutions here represented
14 today, a high and a low incidence of sexual
15 victimization, so Dr. Beck, is there statistical
16 rationale for that? Does it just appear happenstance?

17 DR. BECK: Ultimately, institutions are
18 operated at a facility level. Leadership exists at the
19 state level, but the execution of rules and training
20 and good conduct ultimately lie with those who manage
21 the facilities directly.

22 This might reflect simply that we have strong

1 leadership and management, a positive institutional
2 climate in some institutions, and in others, there is a
3 problem. Independent of risk profiles, composition,
4 easy to manage versus hard to manage, there still is
5 that issue of management that exists.

6 DR. WILKINSON: Thank you, Dr. Beck.

7 DR. CHRISTENSEN: Warden Reddish, how are you?

8 MR. REDDISH: Good; thank you.

9 DR. CHRISTENSEN: Again, we thank you very
10 much for your testimony and to try to give us some
11 sense of what goes on in the State of Florida as a
12 whole. As you know, you were called here for being a
13 low incidence facility, and to kind of book-end, if you
14 will, your high incidence counterpart from the State of
15 Florida.

16 First, we just wanted to get your impressions
17 or your understanding of despite the fact that you all
18 operate under the same zero-tolerance policy, that
19 there is such a difference in the reporting rates
20 between your facility and Santa Rosa.

21 MR. REDDISH: I'd like to take credit for some
22 of that and say it's the administration, but I think it

1 would be false to do that. I do think it is more
2 influenced, and Warden Comerford touched on this, by
3 the type of inmates that we house.

4 At Lawtey, it has a very defined mission, and
5 parameters of what type of inmate can be there, as I
6 spoke about in the presentation, are very strict. No
7 close-management inmates are there. No mental health
8 inmates are there, only certain physical grades,
9 certain types of inmates, medium custody and below
10 inmates. Every one is ten years or below. It is very
11 specific on what type of inmate can be housed in that
12 type of facility.

13 That being said, it almost creates a naturally
14 occurring segregation status. It creates a certain
15 environment where the word gets out; certain types of
16 inmates find out about that type of facility.

17 There are two of those male facilities in
18 Florida, Wakulla Correctional Institution and Lawtey
19 Correctional Institution, that have the faith-and-
20 character-based residential program.

21 I think word gets out about that type of
22 program being available. A certain type of inmate

1 wants to be there. Again, as I stated, it is voluntary
2 to come to Lawtey and voluntary to leave. If an inmate
3 gets there and they find out this is not the program
4 for them, they can sign out and leave the facility,
5 which is contrary to what they do at a lot of other
6 facilities.

7 Sometimes they get there, they find out this
8 is not the type of facility they want to be at; they
9 want to go somewhere else; and they do certain
10 manipulative type of behaviors to enhance that type of
11 transfer.

12 It would be nice to say it is the
13 administration that is contributing to the low numbers
14 at Lawtey Correctional Institution, but that would be
15 inaccurate.

16 Again, we do follow the zero-tolerance policy,
17 the same policy Warden Comerford was speaking about,
18 but I think the real insight is the type of inmate that
19 we house versus the type of inmates he houses at his
20 facility that has contributed to these numbers.

21 DR. CHRISTENSEN: Respectfully, I think you
22 are selling yourself a little bit short. I think

1 leadership and organizational culture play a very large
2 part in the way a facility is managed. Would you agree
3 with that, in general?

4 MR. REDDISH: I'll agree; yes, sir.

5 DR. CHRISTENSEN: What implications do you
6 think that has toward the incidence of sexual
7 misconduct, number one, but then number two, how it is
8 actually followed up and addressed?

9 MR. REDDISH: I have worked at a facility very
10 similar to the one Warden Comerford works at now, so I
11 am familiar with what type of challenges those staff
12 work under at those types of facilities, managing those
13 types of inmates, versus the type of inmates managed at
14 the facility I am currently assigned to.

15 I am aware of both sides. Quite frankly, I
16 know the staff working in those environments with those
17 types of inmates, it is quite challenging; very, very
18 challenging. They deal with some very challenging
19 situations daily.

20 They deal with things there; staff there in
21 those environments deal with stuff sometimes daily that
22 staff in the facility I work at won't deal with in

1 their career if they stay there their whole career. It
2 is just totally different, more challenging for those
3 staff.

4 Again, I just think the allegations many times
5 associated with staff misconduct at those facilities is
6 as Warden Comerford pointed out, the frustration
7 associated with managing that inmate and the
8 frustration that inmate often has with the staff,
9 whether it be security or non-security staff.

10 DR. CHRISTENSEN: Just a different angle to
11 the question, I noted both in your testimony a couple
12 of times and in Secretary Crews' written testimony,
13 reference to "faith and character based programming."
14 Could you say a little more about that?

15 MR. REDDISH: Sure. Again, as I stated in the
16 opening, the institution was dedicated as a faith-and-
17 character-based institution in 2004. That is basically
18 a residential program that is designed to reduce
19 recidivism and disciplinary infractions among those
20 inmates.

21 Those inmates for our facility are required to
22 attend over a three-year period approximately 3,200

1 hours of programming.

2 To give you an example, they are actually
3 divided into seven learning domains. Some of those
4 domains have to do with their attitude, healthy
5 choices, mentoring, re-entry, faith, community
6 functioning, and in all those different domains, there
7 is a multitude of different types of programs that they
8 can attend. A lot of it will fit into their individual
9 taste and what they want to engage in as far as
10 programming.

11 A good example is in our attitude domain. One
12 of our programs has to do with teaching inmates about
13 the seven habits of highly effective people.

14 A lot of times folks get confused and they
15 think this is faith and character, you have to be a
16 certain type of faith or embrace faith at all to attend
17 a facility like that, and that is not true. You do not
18 even have to be of any certain faith to come to a
19 faith-and-character-based institution in the State of
20 Florida.

21 There are a lot of faith programs. There are
22 a lot of different kinds of faith programming there for

1 different types of faith, whether you be Christian,
2 Catholic, Muslim, whatever. There is a variety of
3 faith programming for folks to attend, but you are not
4 required to be of a certain faith to be there.

5 DR. CHRISTENSEN: If you were an atheist, you
6 could be in a program like that?

7 MR. REDDISH: Yes, sir. You can be there,
8 absolutely.

9 DR. CHRISTENSEN: You wouldn't be required or
10 mandatorily asked to participate in anything that is
11 faith based such as Alcoholics Anonymous or things like
12 that that have a faith component?

13 MR. REDDISH: No, sir. We have such a
14 variety; there is enough variety for the inmates who
15 aren't of a certain faith or atheists; they can attend
16 other types of programming.

17 DR. CHRISTENSEN: Thank you.

18 MS. SEYMOUR: I noticed you have 400 civilian
19 volunteers; you have 800 inmates. That is like two to
20 one.

21 MR. REDDISH: Extremely high.

22 MS. SEYMOUR: That is just an amazing

1 statistic.

2 MR. REDDISH: Yes, ma'am.

3 MS. SEYMOUR: Do you think that makes a
4 difference in terms of your low level? They are
5 getting a lot of attention; they are going through
6 3,200 hours of learning; you have volunteers. It
7 sounds like a lot.

8 MR. REDDISH: Absolutely. They are the
9 reasons we can exist with that type of program. We
10 don't have the funding for the staffing to run that
11 type of program or that level of programming obviously.
12 Yes, they are the backbone of our facility.

13 We have two chaplains in our Chaplaincy
14 Department that are very actively engaged in volunteer
15 recruitment, and we try to do things yearly to keep
16 those lines of communications open with our volunteers.

17 We have a faith-and-character-based advisory
18 work group that meets every quarter with the
19 administration, and that advisory work group has two
20 volunteers that are part of the work group every
21 quarter; the same two volunteers who are very, very
22 active at our facility serve on that panel. When they

1 come and sit down with us for an hour or couple of
2 hours sometimes quarterly, we give them the opportunity
3 to tell us what are we doing right, what are we doing
4 wrong, what do we need to do different.

5 We can't always meet their expectations or we
6 can't always do the things they specifically think we
7 need to do, but if we can't, we will tell them, and we
8 will advise them, hey, maybe because of a security
9 reason or a resource reason or something else, we can't
10 do that.

11 They are very understanding and it also gives
12 them a really, really good opportunity to sit down with
13 us and create that dialogue that helps us keep
14 volunteers and continue to recruit new volunteers.

15 MS. SEYMOUR: Thank you.

16 DR. WILKINSON: Warden, how does an inmate get
17 to your facility? Are they there straight, when they
18 are first sentenced, or do they earn their way there?
19 Do you cherry pick them?

20 MR. REDDISH: They apply. They apply to come
21 to Lawtey. They have to be ninety days without a
22 formal disciplinary report, and then they have to meet

1 those standards that we can only house at our facility.

2 In other words, if this is a close-custody
3 inmate or an inmate with a life sentence, something of
4 that nature, he can't be housed there. He won't meet
5 our profile. He has to be disciplinary free. He has
6 to indicate he wants to participate in the program and
7 he has to meet our profile.

8 DR. WILKINSON: Where is this facility in
9 Florida?

10 MR. REDDISH: Lawtey, Florida, about forty
11 minutes from Jacksonville.

12 DR. WILKINSON: It is probably closer to home
13 for a lot of inmates who live in the northeast part of
14 Florida.

15 MR. REDDISH: Yes, sir. We have a lot of
16 inmates who come there because they want to get close
17 to Duval County. We know that. We understand that.
18 We also make sure they understand you can be there if
19 your reason to be here is to be close to Duval County.
20 That's fine, but you still have to participate in the
21 programs.

22 DR. WILKINSON: I would imagine the standards

1 for staying there are pretty high, right?

2 MR. REDDISH: You have to continue to
3 participate in the programs. We try to push our
4 inmates to get to twenty programs a month, and that is
5 in addition to their regular job or program assignment.

6 We have 150-200 inmates who go outside of our
7 gate every day and work in the community on public
8 works squads and things of that nature. They are still
9 required to go to programming in their off hours, days
10 off, things of that nature.

11 DR. WILKINSON: There is a classification
12 committee of sorts that makes the determination that
13 Johnny can come but not Billy?

14 MR. REDDISH: If they meet those standards
15 that are in our policy of being ninety-days free and
16 meet our mission profile, they are put into the system.
17 They will be scheduled to come there and we will
18 receive them as we have vacancies.

19 DR. WILKINSON: Let me challenge you a little
20 bit on something. Gary asked you earlier about the
21 difference between Lawtey and Santa Rosa. I think you
22 gave the right answer, the standard answer for that.

1 I think it is more involved, quite frankly.
2 We have institutions across the country that meet the
3 profile of yours who aren't here because they have a
4 low incidence of sexual misconduct, and then there are
5 institutions with high security populations who aren't
6 here because they have few incidents of sexual
7 misconduct.

8 Is it really the type of inmates that you get
9 or your policies or the culture? Is it leadership?
10 What is it? I can't help but think it's more profound
11 than just the profile of the prisoners you have at
12 Lawtey.

13 MR. REDDISH: I think it is a little bit of
14 everything. You did say a word that's very key, I
15 think it's the culture that has been created there.

16 As administration, one of the things that we
17 did -- several of my administration team came there
18 about the same time I did, about fourteen months
19 ago -- we felt like there were some inmates among the
20 inmate population there that because of behavioral
21 issues and attitude issues and stuff like that, they
22 didn't need to be there.

1 We felt like that was detrimental to the
2 culture that we wanted to create and maintain in that
3 environment.

4 Some of those inmates were removed, and other
5 inmates who remained and were very dedicated to the
6 program there would speak to us later after certain
7 inmates left there and said, "You know, we just want to
8 let you know from our input, you made a good choice.
9 He didn't need to be here, he was detrimental to what
10 the rest of us were trying to do."

11 Trying to create that culture,
12 administratively, we can influence that, and I think we
13 did in a positive manner, but it is very critical.
14 Again, I can't comment to what has happened at other
15 facilities with similar missions around the nation, but
16 I know there definitely has been a culture created, and
17 it is embraced by a wide variety of that population. I
18 think that is one of the most influential factors.

19 DR. WILKINSON: If you could pick two or three
20 things that you do, that if you were the PREA Zeus, you
21 could plop down in other institutions, not just in
22 Florida, what would they be? Describe what those two

1 or three things would be that if they did what you did,
2 they would be better off.

3 MR. REDDISH: I think one of the critical
4 things is to be visible in your compound, as
5 administrators, to be out there, be among your staff
6 and your inmates both. Be approachable by your staff
7 and your inmates.

8 Obviously, it is okay in a department-head
9 meeting or something like that to talk about PREA. We
10 understand a lot of people do that, but they don't go
11 any further than that and try to reinforce that with
12 staff.

13 We try to get out and speak to our staff
14 often, "Hey, you know, has the shift supervisor been
15 around and speaking with you guys about PREA? What are
16 you hearing about PREA? What do you know about PREA?
17 What's important about PREA?" Things of that nature.

18 I think communication is a critical thing.
19 Being visible among your staff and your inmate
20 population will pay dividends, no doubt, no only in the
21 PREA area but other areas that are challenging in your
22 facility as well.

1 DR. CHRISTENSEN: You feel like each and every
2 one of the recommendations you just made apply equally
3 regardless of whether it be closed custody, a work
4 farm, whatever it is, those general leadership or
5 organizational-development principles to which you
6 referred apply to any correctional institution,
7 correct?

8 MR. REDDISH: Yes, sir.

9 DR. CHRISTENSEN: Thank you.

10 DR. WILKINSON: Any questions for us, Warden?

11 MR. REDDISH: No, sir. I'm good.

12 DR. WILKINSON: Thank you for your testimony.
13 Thank you for your advice.

14 We will recess the hearing on low incidence
15 sexual victimization until after lunch. Thank you very
16 much.

17 (Whereupon, at 12:12 p.m., a luncheon recess
18 was taken.)

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1 A F T E R N O O N S E S S I O N

2 (1:00 p.m.)

3 HEARINGS ON HIGH INCIDENCE JAIL FACILITIES

4 DR. WILKINSON: Good afternoon, everybody. We
5 will reconvene the hearings on jails with high
6 incidences of sexual victimization.

7 I do need to swear in our witnesses, if you
8 don't mind. Do you swear or affirm that the testimony
9 you are about to give is the truth, the whole truth,
10 and nothing but the truth?

11 MS. SHAY: I do.

12 MR. GONZALEZ: I do.

13 Whereupon,

14 ESTÉBAN GONZALEZ and

15 GIOVANNA E. SHAY

16 were called as witnesses and, having first been
17 duly sworn, were examined and testified as follows:

18 DR. WILKINSON: Thank you. If you could say a
19 little bit about your backgrounds when you testify,
20 that would be helpful, and then you can proceed
21 directly into your testimonies.

22 Mr. Estéban Gonzalez, appreciate your being

1 here and representing AJA. You may proceed.

2 STATEMENT OF MR. ESTÉBAN GONZALEZ,

3 PRESIDENT, AMERICAN JAIL ASSOCIATION

4 MR. GONZALEZ: Again, my name is Estéban
5 Gonzalez. I'm here on behalf of the American Jail
6 Association. I am the current President, a one-year
7 term at the American Jail Association. I am also the
8 Chief Jail Deputy of a jail in Central New York,
9 Syracuse, New York, as well.

10 The American Jail Association is a national
11 nonprofit organization that supports the professionals
12 who operate our nation's jails. It is the only
13 national association that focuses exclusively on issues
14 specific to the operations of local correctional
15 facilities.

16 We carry out our mission through educational
17 training, at conferences and workshops, through
18 publishing our award-winning magazine, *American*
19 *Jails* -- and we did just win the Apex Award for
20 Excellence in Publishing -- our weekly e-newsletter,
21 *AJAlert*, our website, webinars, and working closely
22 with our collaborative partners in the industry.

1 As an organization focused on local
2 corrections, we realize our responsibility to provide
3 the knowledge, tools, and training to jail
4 professionals to ensure their success as PREA is
5 implemented.

6 Briefly, here is how we have leveraged our
7 presence in the local corrections field to educate
8 corrections officers and jail administrators.

9 Beginning with webinars. Shortly after the
10 final rules were published, the American Jail
11 Association sponsored a free webinar to bring the field
12 up to date on the standards. More than 700
13 professionals registered for the event.

14 On Wednesday, October 9, 2013, AJA sponsored
15 another webinar focused on implementation as jails work
16 through the standards in their facilities.
17 Pre-registration neared 1,000. These are numbers that
18 are unheard of for webinars in our profession.

19 Another way we leverage our presence in the
20 industry is through the *American Jails Magazine*.
21 *American Jails Magazine* is distributed free of charge
22 to every jail in the United States, regardless of

1 whether there is a member at the facility or not.

2 This gives us tremendous reach as we work to
3 advance our mission. Since 2010, here is what has been
4 published in our magazine regarding the Prison Rape
5 Elimination Act.

6 The Executive Director's Remarks by then-
7 Executive Director Gwen Smith-Ingley that was entitled
8 "Status of PREA Standards and Data Collection
9 Activities." That was January/February of 2010.

10 Also, "AJA Responds to Proposed PREA
11 Standards," July and August 2011. Additional Executive
12 Director's remarks by Director Ingley entitled "AJA
13 Values Clear Message on PREA Standards Implementation,"
14 that also was July 2011.

15 We had a guest editorial by Michela Bowman
16 entitled "Mobilizing Against Sexual Assault" in our
17 magazine in September of 2011. Finally, we had an
18 article "What Do We Do About PREA" authored by Connie
19 Clem, and that appeared in the November/December issue
20 of *American Jails* in 2012.

21 We also have what is called the AJA Alert, and
22 that has wide distribution in the jail community. It

1 is published fifty-two times annually, and it is
2 distributed to AJA members via e-mail on Tuesday
3 afternoons. In fact, I was in my hotel room yesterday
4 afternoon when I received my AJA Alert.

5 Since January when AJA began publishing this,
6 we have had nine mentions of the PREA standards in the
7 publication. Many of the mentions are hyperlinks to
8 other resources to help corrections officers as they
9 work through implementation.

10 We also have training workshops and seminars.
11 In 2013, AJA sponsored six regional workshops on PREA,
12 the final two were on November 18 in Las Vegas and on
13 December 12 in Charleston, South Carolina. All of our
14 workshops have been strategically located to draw as
15 many jail directors and corrections officers as
16 possible.

17 DR. WILKINSON: I think Vegas would do that.

18 (Laughter.)

19 MR. GONZALEZ: It was hard keeping them in the
20 class.

21 So far, all of our training workshops have
22 been filled to capacity, location notwithstanding. In

1 2013, at the AJA annual training conference, we
2 sponsored a two-day PREA seminar in conjunction with
3 the PRC, the PREA Resource Center. We offered the
4 training at no cost to anyone wishing to attend, and
5 more than 150 officers and jail administrators
6 participated.

7 AJA.org. On our website, we have attempted to
8 provide relative and timely information to the jail
9 community as the standards are implemented. This is
10 included linking to news articles about the standards,
11 a prominent link to the PREA Resource Center on our
12 home page, and other resources on the topic.

13 In addition to all of the aforementioned AJA
14 resources that we provide for the corrections industry,
15 we have directed everyone who seeks more information to
16 the PREA Resource Center website. The PRC operated by
17 the BJA under the Department of Justice offers
18 assistance on PREA issues related to legal, policy and
19 practice, resources, news coverage, research, and
20 standards.

21 I realize as I'm reading that I am preaching
22 to the choir.

1 Collaboration. The American Jail Association
2 has been proactive in its approach to helping the
3 industry understand the standards and providing the
4 tools necessary to do so.

5 For example, the Executive Director, Bob
6 Kasabian, regularly sits in on hearings and meetings on
7 PREA and is a member of the PREA Resource Center's
8 Communications Advisory Group.

9 Finally, what was not in the document I
10 submitted ahead of time, in 2013, in the last quarter,
11 we were awarded a \$250,000 grant from the Resource
12 Center to coordinate training and technical assistance
13 over the next two years for the industry, providing
14 training and technical assistance to industry requests
15 and those that are targeted throughout the nation.

16 Two other topics that we believe are very,
17 very important are methodologies that jails should use,
18 standards of doing business that would prevent prison
19 rape and sexual abuse in our facilities.

20 The most effective way for facilities to
21 protect offenders who may have mental health problems
22 or who have a non-heterosexual sexual orientation is to

1 implement a behavior-based, objective, jail-
2 classification system. This type of system classifies
3 inmates according to the totality of risk factors
4 presented when the individual is interviewed by a
5 counselor or an officer upon intake.

6 If an inmate presents in such a way that it is
7 evident that he or she will become a victim or intended
8 target based on individual behaviors and the
9 non-conformity to acceptable behaviors for general
10 populations, that inmate will be placed in protected
11 custody and be segregated from the rest of the inmate
12 population.

13 However, it is important to note that
14 segregation in this case does not equal isolation, and
15 all of the rights and privileges afforded to the
16 general population will be afforded to an inmate in
17 protective custody.

18 In addition to initial classification,
19 reclassification at regular intervals should occur,
20 every thirty to sixty days.

21 Some of the more common objective factors that
22 a jail should take into account when they are

1 classifying an inmate for appropriate housing in a
2 facility are severity of current charges or
3 convictions, serious offense history, a history of
4 escapes from institutions, their institutional
5 disciplinary history, prior felony convictions, alcohol
6 and drug abuse, stability factors, age of the
7 individual, whether or not they are employed on the
8 outside, length of time at a residence, and likelihood
9 of victimization, or victimization in the past.

10 The AJA recommends any screening instrument
11 for inmate classification that utilizes objective
12 criteria as opposed to subjective models. Subjective
13 models tend to rely on informal criteria that often
14 lead to inconsistency and error in staff decision
15 making.

16 Conversely, objective systems depend on a
17 narrow set of well defined legal factors such as
18 severity of current offense, prior convictions, and
19 personal characteristics such as age and marital
20 status. These items are weighted and assigned
21 differential values within a well defined instrument
22 that is then used to assess an inmate's level of risk

1 or the program needs of that individual.

2 Objective systems place greater emphasis on
3 fairness, consistency, and openness in the decision-
4 making process.

5 Another effective method to protect at-risk
6 inmates is to utilize the direct-supervision inmate-
7 management system. This system places an officer
8 directly in the housing unit with the inmate
9 population, so there is a minimum chance of attack,
10 abuse, crime, or damage occurring while the officer is
11 constantly present. This is similar to community
12 policing that is done in the outside world.

13 Even if an inmate presented in a way during
14 initial classification that made him or her appropriate
15 at the time for general population, direct-supervision
16 management allows officers continual opportunities to
17 monitor behavior and to remove inmates who then are no
18 longer appropriate for the setting, depending upon a
19 change in behavior.

20 This proactive inmate management system is
21 preferable to the intermittent touring management
22 system that leaves the inmate population alone for long

1 periods of time. Also, while nothing takes the place
2 of human interaction and presence, another supplemental
3 step is the use of video- and audio-recording devices.

4 If monitored appropriately, they could be an effective
5 proactive tool for crime prevention or an effective
6 tool to bring perpetrators to justice.

7 Yet another protective measure that should be
8 considered is specialized training for staff members,
9 such as the LGBT sessions offered by the American Jail
10 Association and other organizations. Just as specialty
11 training is necessary to appropriately deal with mental
12 health inmates in a correctional setting, inmates who
13 present a non-heterosexual sexual orientation should
14 also be placed in units where the officers have
15 received this specialized training.

16 Specialized training for staff regarding
17 dealing with inmates with mental health issues must
18 include the following components: mental disorders,
19 personality disorders -- we clarify there is a
20 difference in the DSM-5 Manual for psychiatric
21 intervention that came out in May 2013; mental and
22 personality disorders are not the same thing.

1 Guidelines for effective IPC with inmates with
2 these disorders, crisis intervention techniques that
3 are adapted from the advent of CITs, crisis-
4 intervention teams in the 1980s.

5 A commonly used model currently in the United
6 States is the Memphis model. However, many variations
7 have emerged and many communities have partnered with
8 their mental health and law enforcement communities to
9 more effectively interact with individuals going
10 through crisis situations.

11 If the facility has a special management unit,
12 and many do, for inmates with disorders of this type,
13 you need to typically assign specially trained staff
14 there and keep them current with continual in-depth
15 training on mental health issues and unit-management
16 procedures.

17 Specialized training for inmates who identify
18 as other than heterosexual must include the following
19 -- this is very, very important: orientation sessions
20 that include information on the inmate's classification
21 level (why they were assessed, the classification level
22 that was given to them); the rules of the facility; the

1 referral system; how they go about asking for help in
2 the jail system; how to seek assistance in emergency
3 and non-emergency situations; and reporting mechanisms
4 for passing out information regarding victimization,
5 abuse, or assault of themselves or any other parties.

6 Orientation can be group initially but then it
7 absolutely must include a face-to-face with each
8 individual so they can be a part of the classification
9 process and ask clarifying questions regarding the
10 process, and also for them to have a private setting
11 with an officer in order to say the things they perhaps
12 would not say in a group setting.

13 Inclusion to the fullest extent possible in
14 any classes offered on men's and women's issues, mental
15 health issues, dealing with their own and other
16 inmates' emotional and intelligence levels, and
17 continuous video loop on television and any other video
18 screening device, kiosk, anything of that nature, in
19 housing areas that plays the facility-orientation video
20 that would contain information on PREA in the housing
21 units if one exists.

22 Looking forward, we realize as jails work to

1 comply with the PREA standards, unanticipated questions
2 and issues are going to surface.

3 The American Jail Association is preparing to
4 meet those challenges by sponsoring more webinars and
5 workshops in 2014. In addition, we have been
6 researching web-based tools that will enable us to
7 reach the jail community in an interactive manner. We
8 hope to be able to launch that feature this month on
9 our website. Stay tuned. Bob Kasabian is going to
10 report that to me on Friday.

11 As always, we will continue to be involved
12 with the PREA Resource Center and support its mission
13 for PREA implementation.

14 Thank you.

15 DR. WILKINSON: Thank you so much for that
16 testimony. Very impressive. We will move on to
17 Professor Shay.

18 STATEMENT OF GIOVANNA E. SHAY, PROFESSOR OF LAW

19 WESTERN NEW ENGLAND UNIVERSITY SCHOOL OF LAW

20 MS. SHAY: Thank you. Good afternoon. Thank
21 you for this opportunity to address the Review Panel on
22 the important issue of sexual victimization of jail

1 inmates, and I have been asked specifically to address
2 issues about non-heterosexual jail inmates.

3 I'm Giovanna Shay and I'm a Professor of Law
4 at Western New England University School of Law, which
5 is in Western Massachusetts, and I am also a past
6 co-chair of the Corrections Committee of the ABA
7 Criminal Justice Section.

8 I mention my affiliates only to provide a
9 context for my remarks. All the opinions that I
10 express are not necessarily shared by any organization
11 or institution with which I'm affiliated. I'm speaking
12 for myself here.

13 As we know from the Bureau of Justice
14 Statistics National Inmate Surveys, and they have
15 consistently reported this, non-heterosexual inmates
16 report a higher rate of sexual victimization than
17 straight inmates in both prison and jail settings and
18 across every subgroup measured by BJS.

19 Those figures are quite stark, and I know the
20 Review Panel is familiar with the BJS figures, but for
21 anyone in the audience who is wondering what I am
22 talking about, for jails, for inmate-on-inmate

1 assaults, eight-point-five percent of non-heterosexual
2 jail inmates reported on inmate-on-inmate victimization
3 as opposed to only one point two percent of straight
4 jail inmates.

5 With respect to staff assaults, four-point-
6 three percent of non-heterosexual jail inmates reported
7 victimization compared with one-point-seven percent of
8 straight jail inmates.

9 The figures were even more troubling for
10 inmates with serious psychological distress, and they
11 were the worse for inmates who were both
12 non-heterosexual and suffered from serious
13 psychological distress.

14 In my remarks today, I want to make three
15 points about protecting LGBT jail inmates. First, I'm
16 just going to make a preliminary point about the
17 figures from the BJS National Inmate Survey that they
18 don't really make visible, the experiences of
19 transgender individuals as a group.

20 Apparently, as I understand it, due to the
21 small number of respondents who selected transgender
22 when asked in question D-2, are you male, female or

1 transgender. Those were the options. That is the
2 first thing I will talk about.

3 Second, I'm just going to focus on the single
4 greatest tool currently at our disposal for protecting
5 all inmates, the new PREA regulations which have been
6 promulgated since the last Review Panel hearing, and
7 those regulations represent a really significant
8 investment of time and expertise by many stakeholders,
9 and I'm just going to highlight a few of the provisions
10 that I think are really key because I know the Panel is
11 very familiar with the regs.

12 Third and most critically, I want to introduce
13 implementation of the PREA regs. PREA is only as good
14 as its implementation. There may be some real
15 challenges to implementing PREA on the ground,
16 particularly in jail settings which are so challenging,
17 so one of the key questions in my view is how do we
18 create this culture change that ensures safety and
19 respect for all incarcerated people, including LGBT
20 people.

21 First, just to do the first basic point about
22 the experiences of transgender individuals and whether

1 or not they are really captured or reported in the
2 statistics. The BJS report, as you know, includes
3 statistics on non-heterosexual inmates, gay and
4 bisexual, but it does not report statistics for
5 transgender inmates as a group, as transgender inmates.

6 As I said, because my understanding is there
7 were just too few individuals who selected transgender
8 in response to the question, "Are you male, female, or
9 transgender?" for the BJS to make statistically
10 significant statements.

11 There was that question, D-2, "Are you male,
12 female, or transgender?" and then there were questions
13 about sexual orientation, gay, straight, or bisexual.

14 However, we know transgender inmates, although
15 they are a small group, are a particularly and maybe
16 uniquely vulnerable group when it comes to sexual
17 abuse. We know this through litigation, through media
18 reports, through documentaries. We know this because
19 UC Irvine researcher, Valerie Jenness, and her
20 collaborators interviewed every transgender person they
21 could identify who was incarcerated in the California
22 Department of Corrections and Rehabilitation, and they

1 reported, as you probably know, that more than
2 fifty-eight percent of transgender inmates reported
3 experiencing a sexual assault while incarcerated.

4 That reality was really acknowledged in the
5 PREA regulation process in which transgender inmates
6 were a focus of some attention in that regulation
7 process.

8 Presumably abuse experienced by transgender
9 inmates is reflected in the BJS statistics although not
10 identified as having been suffered by a transperson.

11 I guess I just have two concerns or
12 observations here, and this is not meant to be too
13 critical of BJS. I realize the survey is a huge
14 undertaking. I think it might be good to look at the
15 issue of any possible underreporting and the phrasing
16 of that question.

17 For example, is it possible that respondents
18 to question D-2 simply selected their gender identity,
19 male or female, as opposed to selecting transgender,
20 the third option.

21 I think one of the concerns is if the report
22 does not really deal in a substantive way with the

1 experiences of the transgender population in this
2 context, it could have the effect of being a sort of
3 unintentional erasure. This is an area in which it is
4 important to pay attention to the experiences of a very
5 vulnerable, albeit small, population.

6 I would just ask the BJS to consider looking
7 at the wording of that question, maybe consider
8 breaking it into two questions, one on gender identity:
9 male, female, or another identity, and another on
10 transgender status: yes or no, transgender or not.

11 If after looking at and possibly addressing
12 any of those issues it turns out there really are too
13 few transgender respondents for the BJS to make any
14 statistically significant statements about them as a
15 group, I would ask the BJS to note that in future
16 reports, at least in a more substantive and visible
17 way.

18 I couldn't find it in this most current
19 report, so maybe acknowledging it in a more visible way
20 so there really is not a gap when you read the text of
21 the report with respect to transgender respondents,
22 which I think creates maybe a little bit of a -- it

1 could create a misperception, because we have a group
2 here that is very vulnerable, albeit small. That's on
3 the transgender experience in the survey.

4 My second point is really just to focus on
5 some of the PREA regulations that I think are most
6 critical in terms of protecting non-heterosexual jail
7 inmates.

8 The good news is that the PREA Commission and
9 the DOJ's notice and comment period has concluded, and
10 we have the new PREA regulations. Many organizations,
11 including many free-world, LGBT organizations,
12 contributed to the drafting of those.

13 Here are a few things that I think are
14 important. As Mr. Gonzalez mentioned, the screening
15 for vulnerability, among the factors to be considered,
16 among the criteria to be assessed, whether the inmate
17 is or is perceived to be gay, lesbian, bisexual,
18 transgender, intersex, or gender non-conforming.
19 Obviously, very important.

20 Also very important limits on the use of
21 isolation. A facility can't simply segregate or
22 isolate an inmate in order to protect them

1 indefinitely, and involuntary segregated housing is to
2 be used only when no alternative means are available.

3 The safeguards on the use of LGBT-dedicated
4 units in the regs, under the PREA regs, separate LGBT-
5 dedicated units are not to be used unless there is a
6 consent decree, a legal settlement, or a legal judgment
7 for the purpose of protecting such inmates.

8 This provision really reflects the reality
9 that such units have sometimes been imposed in a way
10 that is stigmatizing and has not been positive, but in
11 other situations, some incarcerated people and their
12 advocates and observers have considered those units to
13 be a relatively satisfactory alternative under the
14 circumstances, and that reg sort of reflects that
15 compromise, I believe.

16 The regs on professional and respectful
17 searches, the PREA regulations forbid searches of
18 transgender intersex inmates for the sole purpose of
19 determining their genital status, and it requires all
20 searches be conducted in a professional and respectful
21 and least intrusive manner.

22 I think the emphasis on respect throughout

1 these regs is very important, and also even just the
2 discussion and inclusion of the meaning of some of
3 these terms in the regs, very important in terms of
4 public education and creating this culture.

5 Finally, I think one of the regs that has
6 gotten the most attention and maybe the biggest change
7 is the one requiring that corrections officials make a
8 case-by-case decision about whether a transgender
9 inmate will be placed in a facility designated for men
10 or women, taking into account whether the placement
11 would ensure the inmate's health and safety and whether
12 the placement would present management and security
13 problems, and very important here, an inmate's own
14 views about their safety and security are to be given
15 serious consideration.

16 As we all know, this is a big change from the
17 previous default rule, as I understand it, which was
18 essentially a default rule of housing prisoners by
19 their genital status.

20 In order to really meaningfully implement in
21 particular this regulation, jurisdictions are going to
22 need to craft policies about transgender and intersex

1 housing determinations.

2 In my written testimony, I have mentioned some
3 jurisdictions that already have adopted some more
4 detailed policies in this area: Cook County, Illinois;
5 D.C.; Cumberland County, Maine; the City and County of
6 Denver. And many of these jurisdictions are using
7 committees made up of a number of folks with different
8 expertise -- classification folks, mental health folks,
9 medical folks -- to make those housing determinations.

10 A key thing I want to emphasize here is a
11 jurisdiction should be making individualized
12 assessments, not relying solely on categorical rules.
13 A good starting point is the gender identity of the
14 inmate, where the inmate believes they will be the
15 safest. If the corrections authority is going to
16 depart from that preference, it should have a good and
17 documented reason.

18 Factors that might be considered by a
19 transgender housing committee -- and I'm really relying
20 on here many of the factors from the Cumberland County,
21 Maine policy -- an inmate's institutional history;
22 their history of prior housing placements, and that

1 could be in other institutional settings such as foster
2 care or homeless shelters; their medical and mental
3 health needs; their state of transition; and their
4 expressed feelings, as I said; and other safety and
5 security issues.

6 DR. WILKINSON: Can I ask you a clarifying
7 question?

8 MS. SHAY: Sure thing.

9 DR. WILKINSON: You mentioned the transgender
10 inmates and LGBT, are you using that interchangeably or
11 specifically when you are saying transgender --

12 MS. SHAY: When I'm saying transgender, I mean
13 transgender. For these case-by-case housing
14 determinations, we have someone whose gender identity
15 doesn't match the sex they were assigned at birth. Are
16 we putting them in a male or female designated
17 facility? Thank you for that question.

18 Moving on to the third area which I really
19 think is the hardest and the one that Mr. Gonzalez also
20 was talking about, the true test for PREA
21 implementation at this point.

22 There is reason for concern regarding PREA

1 implementation, particularly in jails. In part, that
2 is because the main incentive for achieving compliance
3 is the possible loss of five percent of federal funding
4 for a state's prisons, and as we all know, in many
5 jurisdictions, jails are local facilities that don't
6 rely heavily on federal funding, so the threat and loss
7 of federal funding may not be as strong a compliance
8 incentive as for say a state prison system in some
9 jurisdictions.

10 Also, as this Panel and Mr. Gonzalez know far
11 better than I, jails are notoriously difficult
12 institutions to administer and to monitor because of
13 the constant turnover of people.

14 In addition, there may be some specific
15 implementation concerns for PREA with respect to LGBT
16 inmates. In some jurisdictions, advocates have
17 reported getting complaints or reports of PREA being
18 used as an ostensible rationale even to harass or
19 discipline LGBT inmates for expressing affection or
20 holding hands, actions far short of sexual misconduct.

21 Under no circumstances should PREA be used as
22 a sword rather than a shield to harass LGBT

1 incarcerated people, and I think we would all agree
2 with that.

3 As I said in my written testimony, what is
4 required is a culture change but how do we achieve
5 that? In part, that was a focus of the questioning in
6 the last session before lunch with the facility from
7 Florida.

8 At a minimum, critical components include
9 referring to inmates with respect, using inmates'
10 preferred names and pronouns, creating an atmosphere in
11 which all incarcerated people feel safe and are treated
12 with dignity.

13 One major method of creating that change, as
14 we all know, is training and technical assistance,
15 which the AJA is involved with. That is the purpose of
16 the National PREA Resource Center and organizations
17 like Just Detention International. A useful resource
18 is the National Institute of Corrections' Policy Review
19 and Development Guide on *LGBT and Intersex Persons in*
20 *Custodial Settings*.

21 Beyond formal training, a multifaceted
22 approach is needed.

1 In a recent article describing how the Los
2 Angeles Police Department became more LGBT friendly,
3 L.A. Police Commissioner and USC Law Professor Robert
4 Saltzman identified a number of factors that he thought
5 were important in that transition.

6 They included civilian oversight; political
7 pressure and budget support; strong progressive
8 leadership in the Department; pressure from the DOJ and
9 the courts; and the committed, thoughtful, continued
10 involvement of the LGBT community itself.

11 What are some lessons of the LAPD experience
12 for PREA implementation? One solution is to leverage
13 the expertise of people in the LGBT community. Some
14 jurisdictions are attempting that kind of engagement.

15 For example, in its policy on transgender
16 housing placement, the City and County of Denver
17 states, the transgender housing committee can consult
18 with members of the LGBT community if it needs
19 additional expertise in making housing placements.

20 Other methods of engaging the LGBT community
21 might include inviting LGBT leaders to conduct
22 workshops or training on specific issues and involving

1 LGBT free-world community organizations in correctional
2 initiatives like volunteer opportunities, diversion
3 efforts, and re-entry programs.

4 Progressive corrections leadership is also
5 critically important. Again, as the LAPD example
6 demonstrates. For that reason, training for key
7 corrections leaders on LGBT issues is important, as
8 well as an emphasis on diversity in all forms, in
9 hiring and promotion.

10 The DOJ could also try to recognize local
11 leaders who are doing a good job on these issues,
12 whether through local events in those jurisdictions or
13 through recognition events here in D.C., and the DOJ
14 could consider funding pilot programs through the BOP
15 or providing support for other model or pilot programs
16 at a local level.

17 In conclusion, no conversation about
18 incarceration in the U.S. would be complete in my view
19 without noting that all of these problems would be
20 eased if we jailed fewer people.

21 Attorney General Eric Holder has said, "Too
22 many Americans go to too many prisons for far too long

1 and for no good law enforcement reason." He is right.

2 This is of particular concern for LGBT youth
3 who experience higher rates of juvenile and criminal
4 court involvement in part due to heightened risk of
5 family rejection and homelessness, and you may hear
6 more about that in the juvenile section tomorrow.

7 The goal cannot just be to make corrections
8 "better," to improve corrections. It also has to be to
9 end our nation's over reliance on incarceration, which
10 exacerbates the scale and intensity of all of these
11 problems.

12 Thank you again for this opportunity to speak
13 with you and for your attention and work on these
14 important issues. I would be happy to answer any
15 questions if I can.

16 DR. WILKINSON: Thank you, Professor, for your
17 testimony. Why don't we spend five minutes or so for
18 questions, and then if we have time left over, we will
19 just join in together.

20 DR. CHRISTENSEN: Estéban, you talked about
21 practice and change in jail facilities, and we all know
22 specifically with jail facilities, and the Professor

1 also spoke to the difficulty in implementation within
2 jail facilities, but what do you see based on your
3 experience in offering training as well as interfacing
4 with jail professionals throughout the country as the
5 largest barrier to effective implementation of PREA
6 among our colleagues throughout the country?

7 MR. GONZALEZ: There are a number of barriers.
8 First and foremost, with Professor Shay's comments,
9 some jails and jail administrators that I've talked to
10 in my travels have reiterated the stance that because
11 the PREA law is federally binding on federal facilities
12 -- some of the smaller outlying jails I've talked to
13 have said they are not as committed to complying with
14 all the standards as they would be if there was more
15 legal mechanisms pushing them to do so.

16 Out at the large meeting last fall and through
17 every avenue at the American Jail Association telling
18 everybody it is good corrections practice, whether in a
19 juvenile facility, a jail, prison, anywhere where
20 Americans in this United States are held in a
21 correctional facility, it is the right thing to do to
22 prevent or eliminate prison rape.

1 That is the first thing, you have to get
2 everybody on board with that, especially in jails.

3 The other issues that I see as barriers are
4 smaller facilities that have limited resources in
5 outlying jurisdictions are worried, and unnecessarily
6 so with some of the situations, but they are worried
7 about having a PREA resource coordinator on-site, how
8 they are going to get an investigator in the facility
9 to investigate allegations or actual abuse cases,
10 things of that nature.

11 To answer that, we have told them to
12 collaborate with local communities, the closest
13 municipality, to go on line, to call somebody through
14 the Association, things of that nature.

15 The bottom line is this issue for a well-run
16 jail is no different than any other at-risk population
17 in your facility, so medical inmates, mental health
18 inmates, inmates who are at risk of prison rape,
19 inmates who have Down Syndrome or autism or limited
20 English proficiency, they are all separate from the
21 general population. Our job is to classify them
22 appropriately and make sure all of them are safe,

1 including the general population.

2 If a facility does that, classifies them
3 appropriately, and watches them -- I can't state enough
4 that direct supervision is the way that all jails in
5 this country should be run.

6 It's not a secret that crime-ridden
7 neighborhoods have seen drastic drops in crime when you
8 put the police officer in the middle of that crime-
9 ridden neighborhood; because when the cop is there, the
10 criminals aren't going to act out.

11 Our crime-ridden neighborhood in jails would
12 be the housing units. Put the officer in the housing
13 unit, and the officer stays continually in that housing
14 unit, and drastically drops the chances of attacks or
15 assaults.

16 The other way is intermittent touring. It
17 doesn't take much imagination to think about what
18 happens when the officers are outside of that housing
19 area.

20 I would say the biggest things are changing
21 the methodology of inmate management to direct
22 supervision; a lack of resources in outlying

1 facilities; and the bottom line: we need to get the
2 entire jail community and the nation on board saying,
3 legal mechanisms behind them or not, it is good
4 correctional practice and the right thing to do in
5 order to comply completely with PREA.

6 DR. CHRISTENSEN: Thank you. You would agree,
7 and my next question was about direct supervision and
8 officer presence. That could be the most important
9 thing in terms of inmate management and the housing
10 unit to make sure not only do you have a well run
11 correctional institution but prevent instances of
12 sexual victimization?

13 MR. GONZALEZ: Absolutely. I'll use my
14 facility in Central New York as an example. We opened
15 up our direct supervision facility in 1995, coming up
16 on twenty years. We have not had one instance of
17 sexual assault, victimization, or rape in our facility.

18 I realize it's a jail and our average length
19 of stay is twenty-two days. The fact that the officers
20 are continually there and we have 132 cameras on every
21 corner of the jail, and no one is left alone. Right
22 off the bat, that is the first and most important step

1 in ensuring nobody is left alone, and if there is an
2 issue, the inmates are open to come up to that officer
3 in direct supervision and say whatever it is they need
4 to say.

5 If people are worried about inmates being
6 afraid in a jail setting, most direct-supervision
7 facilities that are well run also have hotlines, they
8 have referral systems where the inmate can anonymously
9 drop slips, get out of there in emergency or
10 non-emergency situations. If run appropriate, direct
11 supervision is the most effective management style in
12 order to eliminate prison rape; yes.

13 DR. CHRISTENSEN: That applies to all inmates
14 of all types?

15 MR. GONZALEZ: All inmates; yes.

16 DR. CHRISTENSEN: Thank you.

17 MS. SEYMOUR: I have just a quick question.
18 First of all, having a thousand people on a webinar is
19 pretty impressive, congratulations on that.

20 MR. GONZALEZ: Some people hung up on us.
21 That is besides the point.

22 MS. SEYMOUR: Yes, don't take that personally.

1 (Laughter.)

2 MS. SEYMOUR: Unless there was like 850
3 hanging up, you're good. My question is when you do a
4 training like that, do you evaluate and look at what
5 are the questions or concerns? I know you have
6 identified very well the concerns of smaller rural
7 jails, but other things are you hearing in terms of
8 training needs and things jails should be addressing,
9 after you do a training of that size?

10 MR. GONZALEZ: Great question. I'm sorry I
11 didn't answer it earlier. The biggest needs that came
12 out of our webinars were jails all over, regardless of
13 size, worried about the audits. Everybody is talking
14 about okay, one-third due August of 2014, a third in
15 2015, and the last third in 2016.

16 People are scrambling around the country and
17 saying do I jump into the deep end of the pool, do I
18 self-audit right now, do I wait for the first few test
19 cases and then see what happens to them.

20 People have been told, "No, you can't do
21 this," the reciprocity approach. We were told under no
22 uncertain terms, "No, you can't do that."

1 Everyone knows the standards, but the biggest
2 concern from the webinars were actually audits and how
3 to comply with the standards if there are certain
4 things that you can't comply with, and how to remain
5 compliant once the auditor leaves, and what you do in
6 the 180 days subsequent to that audit where you are on
7 notice that you have to make corrections.

8 In New York and North Carolina, I know
9 intimately well we are not going to be compliant with
10 the eighteen-year-old clause in PREA where it says in
11 an adult jail facility, eighteen-year-olds have to be
12 segregated. There is no place in our county to put the
13 eighteen-year-old adult males.

14 Inmates in our facility right now more than
15 double the capacity of the juvenile facility, and I
16 believe it is the same way in North Carolina.

17 Up to the extent possible, we are telling
18 everybody, "Do the absolute most you can, the best you
19 absolutely can, listen to the auditors, listen to what
20 everyone else is getting as a result of their audit and
21 figure out the best way forward, but in no way say, 'I
22 am not going to comply with it to the best of my

1 ability.'"

2 MS. SEYMOUR: Thank you. Good answer.

3 DR. WILKINSON: Mr. Gonzalez, thanks for
4 bringing up the audits. At the end of the day, you are
5 going to have the two experts in the country to talk
6 about what is going on with the PREA audits. If you
7 want your audit questions answered, stick around until
8 the end of the day. Sorry for the shameless commercial
9 there.

10 Do you know how many jails in the country are
11 direct versus indirect?

12 MR. GONZALEZ: It's appalling. I'm glad you
13 asked that question. There are about 3,300 plus jails
14 in the nation, and between ten and fifteen percent are
15 direct supervision, the rest are still linear,
16 intermittent-style-supervision jails, and that is
17 appalling.

18 We have done studies that show that direct
19 supervision isn't just safer, it's cheaper.

20 DR. WILKINSON: We are still building indirect
21 supervision jails?

22 MR. GONZALEZ: People are still building

1 indirect supervision, old gothic buildings.

2 MS. SEYMOUR: Why?

3 MR. GONZALEZ: Because political pressures,
4 people are not interested in changing the way they have
5 done business. They would rather keep inmates
6 segregated, in individual cells. They are not
7 interested in the community model that direct
8 supervision espouses. And to those detractors, I would
9 say where do you think these inmates are going when
10 they leave our jails? They are going back to our
11 communities. Would you like to segregate an inmate in
12 a hardened jail and not model the appropriate behavior
13 and then put that hardened criminal back on the street?
14 Or do you want to show a normalized living environment
15 like direct supervision shows, get them programming,
16 get them help, so when they get out, they have at least
17 a fighting chance to get back into society, get a job,
18 and become a productive member of society?

19 It seems like a no-brainer but I don't
20 understand it.

21 MS. SEYMOUR: You need to go fix that like
22 right now.

1 MR. GONZALEZ: I will. In fact, I'm leaving
2 right now.

3 MS. SEYMOUR: I'm holding you to it.

4 DR. WILKINSON: Related to that, you need to
5 change the term of the length of the presidency from
6 one year to at least two.

7 MR. GONZALEZ: We have talked about that. I
8 was shot down.

9 DR. WILKINSON: You are certainly a good
10 spokesperson. We appreciate it.

11 Professor, you talked a lot about jails, but
12 you can certainly extrapolate that to the prisons and
13 any other detention facilities in terms of the types of
14 things you are recommending. I'm sure Dr. Beck has
15 heard your proposed amendment to the survey rules.

16 MS. SHAY: Yes, it is more sort of something I
17 think they should look at because I couldn't really
18 say, "Oh, here's exactly how you should phrase these
19 questions or here is how you should break them down."

20 It might be something they should look at and
21 maybe try to seek some additional input, maybe the
22 Williams Institute at UCLA or talking to Valerie

1 Jenness from UC Irvine, since she has done so much
2 interviewing of transgender incarcerated people, to try
3 to think about how might we best phrase those questions
4 to ensure there is no under-counting, and to ensure it
5 is clear.

6 DR. WILKINSON: When you mentioned the survey
7 of LGBT -- I'm not sure if that was just transgender
8 inmates or LGBT.

9 MS. SHAY: You mean Valerie Jenness?

10 DR. WILKINSON: The California one.

11 MS. SHAY: That was specifically the
12 transgender inmates. That was a qualitative study,
13 interviewing.

14 DR. WILKINSON: California inmates in jails or
15 in the California Department of Corrections?

16 MS. SHAY: Throughout the Department of
17 Corrections.

18 DR. WILKINSON: A lot of the inmates of the
19 California Department of Corrections and Rehabilitation
20 are in jails.

21 MS. SHAY: I'm sorry.

22 DR. WILKINSON: Recently, there were 40,000 or

1 so, many of the California Department of Corrections
2 and Rehabilitation inmates are no longer in state-run
3 institutions, they are in county-run institutions.

4 MS. SHAY: Right. I couldn't speak to the
5 timing of Dr. Jenness' interviewing with respect to
6 realignment, but she spent a lot of time at California
7 prisons, I know. She and her graduate students drove
8 up and down the state interviewing folks.

9 DR. WILKINSON: Just another thought,
10 appreciate you bringing it up. We can resolve a lot of
11 these questions with just fewer inmates inside our
12 institutions, and we know that can be achieved.

13 We certainly know that at any given time in
14 Ohio prisons, there are 7,000 inmates out of 50,000
15 who, if they were sentenced even in a different county,
16 would not be in prison. There is a lot of work to be
17 done all the way around.

18 MS. SHAY: I couldn't agree with you more.

19 DR. WILKINSON: Your testimonies are in the
20 record and we appreciate it. Both of you are great
21 persons to represent this issue. We appreciate it.

22 I'm sorry. Gary?

1 DR. CHRISTENSEN: I just have one question. I
2 want to make sure I heard you correctly, when you were
3 talking about how PREA standards shouldn't be used as a
4 method of punishment. The one thing I heard, and I
5 just want to make sure I heard correctly because I
6 don't think it sat too well for me anyway, is about
7 LGBT inmates showing affection, how they should not be
8 punished for that. Did I hear that correctly?

9 MS. SHAY: I'm certainly not referring to
10 anything that could be described as sexual misconduct,
11 but some advocates have received reports that even just
12 interpersonal warmth or holding hands or a hug has been
13 disciplined as ostensibly under PREA as a violation of
14 the inmate disciplinary code, and some of these reports
15 have been that there has been an explanation of, "Oh,
16 PREA requires us to do this."

17 No one disputes that inmates could be
18 disciplined for sexual misconduct, but I think the
19 important point here is that PREA should not be used as
20 some kind of a rationale just to harass inmates who are
21 or who are perceived to be LGBT or gender
22 non-conforming.

1 DR. CHRISTENSEN: I agree with that, with the
2 second part of that completely. The holding hands
3 thing, I don't know. If a male and female inmate were
4 holding hands in a GED class, let's say, I don't think
5 we would tolerate that, so I would really think that
6 same standard should apply.

7 Overall, it shouldn't be used as a tool
8 against, which I certainly understand the basis for
9 your comments. I couldn't agree with that more. The
10 holding hands, I'm not too sure I would agree with.

11 MS. SHAY: I hear you.

12 DR. CHRISTENSEN: Thank you.

13 MS. SEYMOUR: I just need a clarification.
14 I'm going to apologize because it is after lunch and I
15 may just be a little slow.

16 When you talked about changing -- your
17 recommendations on the BJS Survey, why would a person
18 identify as transgender if they are asked if they are
19 male, female, or transgender? Why does it need to be
20 split into two questions?

21 MS. SHAY: Okay. The question right now, and
22 it is D-2, says, "Are you male, female, or

1 transgender?" Then the questions go on to ask about
2 sexual orientation. Gay, straight, or bisexual.

3 It's theoretically possible or it's possible
4 someone reading question D-2, "Are you male, female, or
5 transgender?" would choose their gender identity, how
6 they feel about their gender. So, male or female. It
7 is not quite parallel. Transgender is a status, you
8 are transgender or cisgender. Your mental gender
9 identity aligns with your sex assigned at birth or it
10 doesn't.

11 The question is sort of about -- I think it is
12 trying to get at gender identity, but it is including
13 gender identity and transgender status.

14 My suggestion would be to consider and to talk
15 with sociologists and others who develop these
16 interviewing instruments more for this population,
17 because it is tricky and it is not entirely evident,
18 but my thought would be to investigate the possibility
19 of having the question about gender identity split from
20 the question about transgender status.

21 MS. SEYMOUR: What would the two questions be?
22 Are you male, female?

1 MS. SHAY: Do you identify as male or female?
2 Are you transgender, yes or no? Imagine an
3 incarcerated transgender woman faced with the question
4 are you male, female, or transgender.

5 MS. SEYMOUR: You could say I'm male and
6 transgender.

7 MS. SHAY: Someone might circle their gender
8 identity, and then we wouldn't know, was the person who
9 responded to this a born woman or a transgender woman.
10 We wouldn't necessarily know.

11 MS. SEYMOUR: If you separated the questions,
12 and I said, "I'm female and transgender." Is that
13 confusing to you?

14 MS. SHAY: I guess the point I'm making --

15 MS. SEYMOUR: I'm sorry. It's confusing to
16 me. I'm just being honest.

17 MS. SHAY: The point I'm making is the way the
18 question is now ("Are you male, female or
19 transgender?") it may not capture all of the
20 transgender respondents. As a result, that could
21 contribute to the BJS' not feeling there were not
22 enough respondents to make statistically significant

1 statements, and the bigger reason why I think that is
2 important is I don't want the transgender piece to
3 completely fall out of the reports because it is such a
4 vulnerable population.

5 MS. SEYMOUR: Thank you.

6 DR. WILKINSON: One last thought, Professor.
7 Can you tell me what the American Bar Association
8 Corrections Committee does?

9 MS. SHAY: What the Corrections Committee
10 does?

11 DR. WILKINSON: It is not suing us, is it?
12 (Laughter.)

13 MS. SHAY: Well, I can tell you I was a
14 co-chair from 2011 to 2013. I'm still involved as a
15 member. We contributed comments during the notice and
16 comment period. That is specifically what we did with
17 respect to PREA.

18 I am happy to say that many of those comments
19 appeared to have an influence, as did many of the other
20 comments from other organizations that were
21 stakeholders during that notice-and-comment period.

22 Prior to that, the ABA had promulgated

1 standards on the treatment of prisoners, and I believe
2 in 2011. I may be off on that year, but prior to the
3 final promulgation of the PREA regs. Those standards
4 were very consistent with many of the provisions that
5 were ultimately adopted in the DOJ PREA regs, and they
6 also emphasized a need for respect and dignity and an
7 atmosphere that is free from harassment for all
8 incarcerated people.

9 DR. WILKINSON: I would like to know more
10 about what the committee works on.

11 MS. SHAY: We try to pass resolutions about
12 corrections that can then be used in advocacy or for
13 legislative purposes, and those standards that the ABA
14 Corrections Committee worked on were intended to
15 provide a model and guide and resource for different
16 jurisdictions.

17 DR. WILKINSON: Thank you both, appreciate
18 your testimonies.

19 MS. SHAY: Thank you.

20 MR. GONZALEZ: Thank you.

21 DR. WILKINSON: If your name appears as part
22 of the next panel, we would invite you up. Good

1 afternoon, gentlemen. What I would like to do now is
2 swear you all in, if that is okay.

3 Do you swear or affirm that the testimonies
4 you are able to give is the truth, the whole truth, and
5 nothing but the truth?

6 Whereupon,

7 LOUIS GIORLA, TERENCE CLARK,

8 ADRIAN GARCIA, and GREGG HERSHBERGER,

9 were called as witnesses and, having first been
10 duly sworn, were examined and testified as follows:

11 DR. WILKINSON: Thank you; appreciate it. We
12 kind of caucused on how to best handle a larger group
13 like this. What I think we will do is to take
14 testimonies from each agency individually and then have
15 some questions for that agency, and then we will move
16 on to the next agency and have some questions, et
17 cetera.

18 Again, if there is time left over, we will
19 just kind of have a discussion session with all of you.

20 If we could start with the Philadelphia Prison
21 System. Welcome, Commissioner Giorla. Commissioner?

22 //

1 STATEMENT OF MR. LOUIS GIORLA, COMMISSIONER,
2 PHILADELPHIA PRISON SYSTEM

3 MR. GIORLA: Good afternoon, Dr. Wilkinson,
4 Ms. Seymour, Dr. Christensen. I'm Lou Giorla,
5 commissioner of the Philadelphia Prison System. I'm
6 accompanied today by Terence Clark, the warden at
7 Riverside Correctional Facility.

8 I'm here today to testify in regard to the
9 findings of the 2011/2012 Inmate Sexual Victimization
10 Survey conducted by the Bureau of Justice Statistics.

11 Riverside was identified in the survey as one
12 of nine jails having the highest record of inmate
13 victimization.

14 The facility characteristics of Riverside. It
15 is an exclusively female facility, and it was opened in
16 2004 with the capacity of 768 beds. The average daily
17 population today is approximately 800.

18 The facility is the primary female intake
19 facility of the Philadelphia Prison System. Inmates in
20 community, minimum, medium, and close-custody
21 classifications are housed there in separate housing
22 units.

1 The population is comprised of pre-trial
2 detainees and inmates serving sentences of one day up
3 to two years. Female juvenile inmates who have been
4 charged with crimes and are being adjudicated as adults
5 are housed there for pre-trial confinement. As of this
6 writing, RCF houses one juvenile female.

7 The seriously mentally ill comprise twelve
8 percent of Riverside's inmates while nearly thirty
9 percent are on behavioral health caseloads.

10 Riverside is operated under a direct-
11 supervision model. Security staffing consists of 205
12 officers, eighteen sergeants, eight lieutenants, three
13 captains, two deputy wardens, and a warden.

14 Riverside has a complement of seven social
15 work service managers and two social work supervisors.
16 I might add a psychologist and chaplain.

17 Food service, medical, and behavioral health
18 services are privately contracted. An array of
19 therapeutic, vocational, and faith-based programs are
20 offered through the prisons as well as through contract
21 and volunteer services.

22 During the calendar year 2011 and 2012, 11,476

1 inmates were admitted to Riverside. During the same
2 period, the Riverside facility received twenty-five
3 reports of sexual assaults on twenty individual
4 inmates. These complaints were received by a variety
5 of sources, including health care staff, self-reports,
6 the facility grievance system, and security
7 staff -- and community complaints.

8 Five of the reports were listed as having
9 occurred prior to admission and were complaints against
10 other law enforcement or admitting law enforcement
11 agencies.

12 Twelve allegations were made against staff and
13 seven against inmates. One complaint failed to clearly
14 identify the perpetrator. Eighteen of the twenty
15 alleged inmate victims were carried on the behavioral
16 health caseload prior to the report. All cases were
17 referred to the Philadelphia Police Department's
18 Special Victims Unit for criminal investigation.

19 In the ensuing investigations, one
20 correctional officer was dismissed from service. No
21 one was criminally prosecuted in those cases.

22 In addition to the assault complaints, three

1 correctional officers were disciplined for
2 fraternization with inmates. Two of the three staff
3 members were dismissed, and a third was reprimanded and
4 assigned to another facility.

5 Contributing factors. While the physical
6 plant and operational practices at Riverside do not
7 lend themselves to sexual abuse, the survey indicated
8 factors common in jails that report higher on average
9 rates of victimization.

10 The reported rates were found to be higher
11 among female inmates, those in psychological distress,
12 and among violent offenders.

13 During the survey period, the number of
14 inmates held for violent offenses at Riverside
15 increased significantly, and the percentage of inmates
16 experiencing a serious mental illness increased by more
17 than one-third.

18 Since the opening of Riverside in 2004, the
19 facility has been equipped with extensive video
20 surveillance in all housing areas; with the exception
21 of cells and showers, there is no area that is not
22 subject to video monitoring.

1 Officers must tour housing areas within a
2 period of thirty minutes, and they are located directly
3 on the housing area at a console and in the day room.
4 Housing unit officers are required to keep all cells
5 locked to avoid the possibility of unauthorized cell
6 visitors, acknowledging the fact that a number of these
7 assaults occur in the cells of inmates.

8 Housing area staffing is scheduled so a male
9 officer is not required to work a housing area without
10 a female partner. Female staff make up over half of
11 the supervisory complement in this facility.

12 As with all Philadelphia prison facilities,
13 sexual acts between inmates or by inmates with visitors
14 or staff is strictly prohibited. Undue familiarity,
15 fraternization, is also not permissible, unless contact
16 between the inmate and the staff member is approved by
17 the warden.

18 Inmates with diagnosed mental illness are
19 monitored closely by the behavioral health providers.
20 Each facility, including this facility, has a treatment
21 team that monitors, prepares, supervises, and enforces
22 a treatment plan that is reviewed every thirty days for

1 all seriously mentally ill inmates.

2 The facility includes a behavioral health
3 transition unit, which is a step down from our
4 inpatient licensed mental health unit located at
5 another facility.

6 An interdisciplinary treatment team reviews
7 and adjusts continuous treatment plans for all
8 seriously mentally ill inmates monthly. Group and
9 individual therapy is provided as needed.

10 Suspicious or allegations of mistreatment,
11 physical or sexual, are reported to the shift commander
12 by the treatment provider, and an institutional
13 investigation report is completed.

14 Non-heterosexual inmates are not segregated
15 without cause, such as a disciplinary infraction or if
16 the inmate becomes endangered or becomes disruptive.

17 Transgender inmates and those who express
18 gender non-conformance are ordinarily housed by the
19 indication on the booking documents. Our jails are not
20 a booking agency. The Philadelphia Police complete
21 booking. We merely admit and house.

22 In the event there is a conflict in gender

1 identification, a facility psychologist or other
2 clinical personnel will interview the individual inmate
3 before housing is assigned. Operational safety and
4 welfare of the inmate determine the final decision.

5 No services are denied or programs curtailed
6 due to sexual preference or gender expression.

7 While the Philadelphia Prison System and
8 Riverside are not fully compliant with PREA, compliance
9 with the standards has been implemented.

10 I would like to say that after the passing of
11 PREA in 2003, in 2004, the Philadelphia prisons began
12 keeping statistics on sexual assaults. In 2005, we
13 developed a zero-tolerance policy for sexual contact
14 with inmates by staff. We have always had a
15 fraternization policy.

16 Our chief counsel for a long time served as
17 our PREA coordinator for the system, up until this
18 year, when our policy and audit division manager was
19 appointed the PREA coordinator, and we are now seeking
20 a full-time PREA coordinator.

21 All sexual assault complaints are referred for
22 criminal investigation regardless of whether or not

1 they are deemed frivolous or actually appear to be
2 genuine.

3 Sexual assault nurse examiners have been
4 trained and on duty or on call at all times as of
5 approximately March 2013. All inmate victims are
6 referred for follow-up mental health treatment.

7 Our mental health treatment consists of an
8 emergency referral, where a practicing clinician, a
9 licensed clinical social worker, or a psychologist or
10 psychiatrist has to see the inmate within four hours.
11 During that four hours, and because the risk of suicide
12 came up during earlier testimony, the inmate is placed
13 under constant one-on-one supervision.

14 Community organizations who assist
15 non-heterosexual inmates are partnering with PPS for
16 in-house and post-release assistance. We are currently
17 referring inmates to two community organizations who
18 assist with transition and re-entry of transgender and
19 LGBT inmates, one serves those who are Latino, a faith-
20 based organization, and a partnership that has existed
21 for about fifteen years with an organization who does
22 AIDS-awareness training and referrals for those who are

1 afflicted with AIDS in the community.

2 All policies and procedures are being amended
3 to include language which complies with the standards.
4 I have to say this is probably one of the most
5 difficult areas of implementation, as discussed
6 earlier. Not speaking for other agencies, but we have
7 well over 260 policies, and the less recognized
8 policies are the ones where we are catching up --
9 contract language for our contract providers;
10 volunteers, background investigations for volunteers;
11 et cetera. We have always rejected those who had
12 felony convictions or sexual assault convictions, but
13 now we are codifying that in policy, and trying to
14 implement all that training on policy has become
15 difficult.

16 Newly conformed contracts for inmate services
17 with outside providers will include PREA compliant
18 language. Our contracts are on a fiscal year cycle.
19 All new contracts begin in July. Existing contracts
20 are being amended.

21 Our Office of Professional Compliance, which
22 includes our Internal Affairs Unit investigators, are

1 being trained to conduct sexual assault investigations
2 in order to assist our local Police.

3 Philadelphia Prisons do not employ persons who
4 are convicted of sex offenses or who have been
5 dismissed from employment for sexual misconduct.

6 Background checks are conducted on all new
7 hires and extends to our volunteer service providers.

8 Although steps have been taken for regulatory
9 compliance and to lessen the incidence of assaults,
10 this survey indicates that additional measures are
11 necessary. Means must be found to reduce the average
12 daily population.

13 Riverside is now far below capacity. As of
14 today, there are 696 inmates. Up until this point, we
15 have had to confine some inmates who were detained in
16 portable beds in cells. We had triple cells that were
17 intended for two.

18 Means must be found to reduce the average
19 daily population; so in cases where vulnerable or
20 predatory inmates are clearly identified, they can be
21 housed in cells that are not in segregation or
22 protective custody.

1 Additional treatment supports must be created
2 to treat perpetrators as well as victims. Disciplinary
3 action and prosecution will not be enough to adequately
4 reduce or eliminate predatory behavior by those who
5 remain in custody after such incidents.

6 An internal process for interviewing inmates
7 may be necessary to determine progress.

8 Thank you for providing us an invitation to
9 testify before the Panel today. I will be glad to
10 answer any questions you might have.

11 DR. WILKINSON: Thank you. Warden Clark, did
12 you have some opening thoughts as well? You can defer
13 to the Commissioner if you want.

14 STATEMENT OF MR. TERENCE CLARK, WARDEN
15 PHILADELPHIA CITY RIVERSIDE CORRECTIONAL FACILITY

16 MR. CLARK: Basically, I just want to thank
17 everybody, thank the Panel for allowing me to
18 participate in this process.

19 In addition to the Commissioner's statements,
20 I would just like to say that at the facility level, we
21 have put in place since my taking command in September
22 2012, well after the survey -- we placed a greater

1 emphasis or large emphasis on supervisory visibility in
2 the housing area, which I believe will go a far way to
3 lessen all types of victimization, including sexual
4 victimization.

5 I just want to say thank you for allowing me
6 to speak.

7 DR. WILKINSON: Thank you.

8 MS. SEYMOUR: Thank you both for your
9 testimony. You made a comment, Commissioner, eighteen
10 of the twenty alleged inmate victims were carried on
11 the facility's behavioral health caseload prior to the
12 report.

13 Can you tell me what it means when an inmate
14 is carried on this caseload and what conclusions do you
15 draw from the significant number of inmates who are
16 alleging sexual assault charges who are indeed on that
17 caseload?

18 MR. GIORLA: As part of our intake and
19 interview process, inmates are interviewed at three
20 levels. One, by a correctional officer for
21 classification, security and housing purposes. Second
22 by a social worker within seventy-two hours to

1 determine a service plan and needs, to begin a
2 discharge plan. The third is by mental health
3 personnel to determine their psychological state,
4 unless there are some indicators upon admission that
5 they need emergency treatment.

6 If they are found -- by far, I am not the
7 clinician -- to have drug-induced psychosis, some type
8 of inability to cope during any of those interviews,
9 they are referred and placed on the behavioral health
10 caseload initially.

11 During the course of their incarceration, at
12 various times, their file is reviewed. For instance,
13 if they improve or the effects of drug abuse wane, they
14 are removed. They may be stepped up to a seriously
15 mentally ill classification to where they are under a
16 little more intense scrutiny and a little more
17 involvement with the behavioral health professionals,
18 treatment plans, group engagements, et cetera. And
19 they may be housed either in our inpatient program or
20 in Riverside, on the Behavioral Health Transition Unit
21 or our F Unit.

22 The other significant thing is all these

1 inmates on the behavioral health caseload at Riverside
2 are housed together. When we take a look at incidents,
3 that is the primary area we have to investigate and
4 concentrate our efforts, like the Warden said, for
5 increased supervision, the conduct of officers, the
6 interaction between inmates, et cetera.

7 MS. SEYMOUR: Physical areas as well as the
8 fact they are all on this caseload?

9 MR. GIORLA: Yes, ma'am.

10 MS. SEYMOUR: That actually makes sense.
11 Earlier today when Joyce Lukima from the Pennsylvania
12 Coalition Against Rape testified about the wonderful
13 partnerships that are being promoted particularly in
14 the Commonwealth of Pennsylvania but nationwide. Are
15 you working with your local rape-crisis centers in
16 terms of being able to respond to survivors of sexual
17 assault and rape who are in custody?

18 Obviously, you have a good re-entry program,
19 returning to the community.

20 MR. GIORLA: We don't work with the
21 Pennsylvania Coalition. We work with the Pennsylvania
22 Prison Society, which is the nation's oldest prison

1 reform organization. They have a cluster of volunteer
2 and agency services called the Incarcerated Women's
3 Working Group.

4 It includes community legal services, some
5 other providers in the community. They come in and do
6 presentations to the inmates on a regular basis, just
7 engage them in services that are available in the
8 community.

9 MS. SEYMOUR: Are these people who sort of
10 understand rape trauma and rape related post-traumatic
11 distress disorders, depression, and the short- and
12 long- term impacts of sexual assault?

13 MR. GIORLA: I don't know how extensive their
14 training or experience might be. Each facility,
15 including Riverside, has a staff psychologist that is
16 assigned. Our psychologist, Dr. Rosenthal, conducts
17 trauma groups based on referrals from our social
18 workers and our mental health providers.

19 DR. WILKINSON: Always intrigued with the name
20 of your department, the Philadelphia Prison System, not
21 to be confused with the Department of Corrections, and
22 not to be confused with the county prisons throughout

1 the commonwealth.

2 Are all your inmates sentenced?

3 MR. GIORLA: No. About seventy-two percent
4 are pre-trial. The other twenty-eight are sentenced.
5 Inmates can serve a sentence of up to one day less than
6 two years in our custody.

7 DR. WILKINSON: Which is different than a lot
8 of jails across the country. You can keep them a lot
9 longer than a lot of jails.

10 MR. GIORLA: Until 2008, our local jails could
11 commit individuals to our custody for up to five years.
12 In limited cases, even longer.

13 DR. WILKINSON: You don't do booking.

14 MR. GIORLA: No, we don't, the Philadelphia
15 Police Department and the Philadelphia Sheriff's
16 Department, which are independent agencies. It's a
17 remnant of our 300-year-old government in the city. We
18 are separate entities. They do booking. We just
19 import their records.

20 DR. WILKINSON: There is no separate detention
21 facility for those people awaiting -- who have just
22 been booked?

1 MR. GIORLA: The Philadelphia Police have a
2 Detention Unit which holds charged individuals up to
3 ten hours.

4 DR. WILKINSON: They have a holding cell
5 before they transfer them to you?

6 MR. GIORLA: Yes, they do.

7 DR. WILKINSON: It is not a separate jail
8 system for them?

9 MR. GIORLA: No.

10 DR. WILKINSON: Are you all currently under a
11 consent decree for anything?

12 MR. GIORLA: Not at the moment. We are the
13 subject of two overcrowding lawsuits in federal court
14 at this time.

15 DR. WILKINSON: You have had quite a few over
16 the years.

17 MR. GIORLA: We were under court supervision
18 from 1971 to 2003 at the federal level and state level.
19 It was initiated with a state lawsuit, I believe, in
20 1971, after a disturbance at one of our facilities, the
21 Holmesburg Prison.

22 The federal courts joined the lawsuit in 1983,

1 I believe.

2 DR. WILKINSON: Do you feel confident that the
3 Philadelphia Prison System has a good handle on all the
4 things PREA?

5 MR. GIORLA: I feel confident the
6 implementation may take a little longer than we intend,
7 but as President Gonzalez spoke about earlier, the
8 communication I have with my staff is this is, more or
9 less, the state-of-the-art inmate treatment, you know,
10 preserving dignity, assessing their needs, placing them
11 in situations where they are safe along with our staff.
12 This is state of the art.

13 Eventually, these standards are going to
14 become the practice of the American Correctional
15 Association and the American Jail Association, the
16 NCCHC, and other regulatory organizations.

17 If we get ahead of the curve and we are able
18 to implement these things and do them in a cost-
19 effective manner because I know from our experience
20 with court supervision, you eventually do it, but it
21 doubles or triples the cost going down the road, and it
22 creates a lot of friction and distrust among local

1 agencies.

2 DR. WILKINSON: Warden, how do unions fit into
3 all this? Are they on board with this? I just
4 participated in a training for the ASCME Union. They
5 were still pretty hesitant about what all this means
6 for them. Can you talk a little bit about that?

7 MR. CLARK: I can say our union is probably
8 equally as hesitant as the one you were talking about.
9 Primarily, when it is going to affect post assignments,
10 like recently we just had a shift change at my
11 facility, and the ratio of male to female staff on my
12 overnight staff has become such that I'm going to have
13 to have -- with the Commissioner's help -- some of my
14 male officers transferred out and some female officers
15 transferred in.

16 That will at some point be a concern for the
17 union because that will draw complaints and grievances.

18 Other than that, no more than any other
19 resistance. Our union is pretty resistant.

20 DR. CHRISTENSEN: We also note another
21 facility in the Philadelphia Prison System, the
22 Philadelphia City Industrial Correctional Center, has

1 particularly high rates of staff-on-inmate. Riverside
2 is here for inmate-on-inmate, and the other is for
3 staff-on-inmate.

4 Can you comment on that?

5 MR. GIORLA: I don't know if this is unique to
6 Philadelphia or in common with other jails. Because we
7 are located in a small geographical area, the
8 individuals that we hire must be city residents.

9 A lot of the staff that we hire and retain are
10 either socially or sometimes related to inmates. That
11 creates an uncomfortable situation, not only for them,
12 and in some cases, they overstep the bounds.

13 When you come to work and you look at a
14 holding cell at people who came in overnight and one of
15 those individuals may be the person who stole your car
16 or somebody you went to high school with or somebody
17 you even dated, it creates an uncomfortable situation
18 for the officer. Sometimes it places them in an area
19 of temptation that we don't like to acknowledge, and of
20 course, our regulations prohibit.

21 You know, where we take a no-nonsense view and
22 wherever necessary, we will dismiss staff who overstep

1 their bounds. We encourage and require them to inform
2 their superiors when situations like that happen, and I
3 think that is the root of a lot of these staff sexual
4 misconduct complaints.

5 In the Philadelphia Industrial Correctional
6 Center, the entire population is close custody. They
7 are some of the more predatory and dangerous offenders
8 in our community, some very high profile drug and gang
9 members who have a lot of influence in the community
10 and tend to be very manipulative of the staff.

11 We caution against it and we train against it,
12 and of course, we discipline. I think that is a large
13 contributor to those numbers.

14 On the other hand, in the survey, we have two
15 other facilities: a primary male intake facility,
16 which fell somewhere in between low and high levels,
17 and the Alternative and Special Detention Division,
18 which is 800 inmates, male and female, low custody,
19 work release, all sentenced. That jail virtually had
20 no incidents of staff sexual or inmate-on-inmate sexual
21 assault.

22 We have to look at not only the composition of

1 the population, but the way the staff reacts to it and
2 handles it.

3 DR. CHRISTENSEN: So, I can take it from your
4 comments and the fact you have facilities that cover
5 the whole spectrum in terms of sexual victimization,
6 that you do not dispute the findings of BJS, and you
7 are taking actions consistent with those
8 recommendations by facility as needed?

9 MR. GIORLA: The findings in the survey -- I
10 know this concerns a lot of correctional administrators
11 and may lead to their reticence to accept the
12 facts -- even though it is an inmate survey, we can't
13 drill down.

14 I'm sure the Panel knows in corrections, we
15 like to get to the roots of things. We like to go down
16 and open the cell, search the cell. We want to get to
17 the bottom of things.

18 With anonymous surveys, it is difficult to
19 determine or acquire a target that you can correct
20 quickly. It just requires a lot more diligence on our
21 part to go down and get it.

22 We are taking whatever steps. We want to

1 regard this as instances that we don't want to happen
2 in our facility.

3 Our primary obligation is not only custody but
4 control. We control the environment, or let me say we
5 are obligated to control the environment, and if anyone
6 is in danger, then it is a problem we have to address.

7 DR. CHRISTENSEN: Thank you. Warden, that
8 would lead me to my next question which is you
9 referenced you came on in September 2012.

10 MR. CLARK: Yes.

11 DR. CHRISTENSEN: When you came on, you
12 instituted policies of more direct supervision of the
13 supervisory staff, which leads one to believe the other
14 side of that is before you came in, there was
15 inadequate supervision of the supervisory staff.

16 MR. CLARK: In our facility, we work with any
17 combination of five supervisors. We have three floors.
18 One of those supervisors will be the shift commander,
19 usually a captain; then there is a lieutenant and three
20 sergeants, ideally, for the 7:00 to 3:00 shift and the
21 3:00 to 11:00 shift.

22 Depending on who comes to work on a particular

1 day, we may have more higher-ranking supervisors than
2 sergeants. Prior to my coming on, what I would notice
3 was if there were two lieutenants on and a captain and
4 only two sergeants, the one sergeant I would find was
5 running all the floors, and the lieutenants were kind
6 of pulling rank.

7 What I did was I made the lieutenants take a
8 floor so that there would be more supervisory coverage
9 in the housing area. I just made them more responsible
10 for touring.

11 In addition to that, myself, the deputy
12 wardens, we all tour very frequently. Everybody in the
13 facility knows who all of us are, and they have access
14 to us, both inmates and staff. I figure if I give them
15 access to me, and I'm the highest ranking officer in
16 the facility, then nobody else should have a problem
17 with me.

18 DR. CHRISTENSEN: I couldn't applaud that more
19 despite the fact that I'm sure that didn't make you the
20 most popular guy with the lieutenants.

21 (Laughter.)

22 MR. CLARK: No, it didn't.

1 DR. CHRISTENSEN: Been there.

2 DR. WILKINSON: Just one last question. Do
3 you all have any kind of training for gender-specific
4 topics or trauma informed processes, anything like
5 that?

6 MR. GIORLA: We have a local agency called
7 Family Training and Advocacy Center that does mental
8 health training for pre-service, and for officers and
9 supervisors. We are in the process of reviewing that
10 training, just to see it meets the standards.

11 Like I said, we have had a transgender policy
12 since 2007, which we recently revised with the final
13 release of the standards. We felt we were
14 substantially compliant.

15 However, there are a lot of specifics in the
16 standards that we have not yet addressed in policies.

17 The Pennsylvania Department of Corrections
18 offers us training as well as what we conduct in our
19 Academy. They are offering the crisis-intervention
20 team training, which we will take advantage of. Our
21 Internal Affairs investigators have gone through
22 training with that department to determine how

1 internally we are going to handle the sexual assault
2 investigations in conjunction with the police.

3 As these opportunities become available, we
4 will take advantage of them.

5 DR. WILKINSON: Thanks. All right, we must
6 move on to Harris County. Thank you for being here,
7 Sheriff Garcia and Chief Brown. Sheriff, would you
8 like to provide your testimony at this time?

9 STATEMENT OF MR. ADRIAN GARCIA, SHERIFF

10 MR. FREDERICK BROWN, CHIEF, DETENTION BUREAU

11 HARRIS COUNTY SHERIFF'S OFFICE

12 MR. GARCIA: Thank you so much for allowing me
13 the opportunity to provide some testimony on behalf of
14 the Harris County Sheriff's Office.

15 Before I continue, let me quickly introduce
16 some of the experts in my Department that are here with
17 me to help answer any questions you may have.

18 As you already know, we have Chief Brown. He
19 is the chief deputy that oversees our entire jail
20 command. Dr. Michael Seals, executive director of
21 Health Services, who is also the medical expert on the
22 Texas Commission of Jail Standards. Jim Leitner,

1 general counsel, an assistant district attorney, and
2 long time criminal defense attorney.

3 Major Debra Schmidt, a key jail commander who
4 drafted our new nationally recognized LGBTI policies.
5 Captain Ronnie Taylor of our jail command who
6 specializes in regulatory compliance initiatives and
7 designated the HCSO, PREA coordinator, and to be
8 trained as a PREA auditor.

9 Lieutenant Walter Bailey, our inmate
10 classifications supervisor, and Katrina Camacho, our
11 PREA manager. Alan Bernstein, our director of Public
12 Affairs, a former journalist for one of the nation's
13 tenth largest newspapers who reported on results of
14 hundreds of public surveys.

15 As a sheriff of Harris County, I am
16 responsible for the challenges and the opportunities
17 that the third largest county jail can provide. The
18 commitment of my staff and I to ensure that we adhere
19 to all local, state, and federal obligations for the
20 care, custody, and control of our diverse inmate
21 population, in my opinion, are second to none.

22 A well-run county jail system not only

1 enhances public safety but also enhances public
2 confidence when it is operated under a philosophy of
3 transparency and accountability by which I have worked
4 since I began my administration in 2009.

5 I have also recognized the fact that many of
6 the inmates in my custody are not necessarily hardened
7 criminals or dangerous to our society but rather are
8 persons who are ill. That is why I place a great deal
9 of emphasis on programs and services that are focused
10 towards helping the people with mental illness.

11 In addition, I understand that individuals who
12 are from the LGBTI community could be the most
13 vulnerable within a correctional setting like a county
14 jail, which is why we have worked extensively to
15 develop what I believe to be some of the most
16 comprehensive policies in the country.

17 As an example, my policies are mentioned in a
18 recent *Huffington Post* article as being amongst the top
19 ten transgender wins of 2013. It is also important to
20 mention that our LGBTI policy is highlighted by the
21 National Institute of Corrections as a recognized best
22 practice policy, and it is published on their website.

1 My staff and I are here today because we
2 believe we have an incredible story of progress that
3 illustrates our commitment to running a professional,
4 contemporary correctional system.

5 To that end, in my written testimony dated
6 November 8, 2013, I did take exception to the results
7 of your study at one of our jail facilities.

8 However, my goal today is not to debate the
9 study or the results themselves because all such
10 studies, I believe, are opportunities to evaluate
11 operations, policies, and processes, which brings me to
12 my second goal for the day.

13 I believe that my testimony, as well as the
14 testimony of my staff today, will demonstrate forward-
15 thinking commitment towards improvement, and the
16 willingness to lead in an otherwise uncharted
17 territory for jails and prisons.

18 Even before the conclusion of today's hearing,
19 I hope our commitment towards improvement is
20 demonstrated by the fact that Captain Taylor, who I
21 mentioned earlier, is on his way to becoming a PREA
22 national auditor. In addition, I understand my staff

1 had a very positive and constructive meeting with
2 members of the PREA Resource Center this morning.

3 When I became sheriff of Harris County, I knew
4 the job was going to be more than catching people who
5 committed crimes and caused harm to the citizens of our
6 community.

7 It is also about protecting those who are in
8 our custody as well. I'm proud of our work and excited
9 about making further progress.

10 I will now provide a comprehensive overview of
11 the work our office is carrying out on PREA related
12 matters.

13 To begin, I would like to introduce you to the
14 Harris County Sheriff's Office and County Jail System.
15 The Sheriff's Office is made up of a workforce of
16 approximately 4,400 employees and is the third largest
17 sheriff's office serving the third most populous county
18 in the United States.

19 The sheriff's jurisdiction encompasses
20 approximately 1,729 square miles, including most of the
21 City of Houston, thirty-four other municipalities,
22 villages, and unincorporated areas and has a population

1 of over four million residents. We have an
2 international airport, soon to add a second one, a
3 major deep water port, all within driving distance of
4 Mexico.

5 Harris County is an international destination
6 with a very diverse population.

7 In addition to performing law enforcement
8 functions, the Harris County Sheriff's Office operates
9 the third largest county jail system in the nation.
10 The total designed housing capacity of the Harris
11 County Jail System is approximately 9,434 inmates. As
12 of January of this year, there were 8,527 inmates
13 housed in the Harris County Jail System.

14 The jail population includes inmates ranging
15 from seventeen to seventy-eight.

16 DR. WILKINSON: Do you mean per year? How
17 many people come in and out?

18 MR. GARCIA: Over 120,000.

19 MS. SEYMOUR: A year?

20 MR. GARCIA: A year. Let me also say when I
21 took office in 2009, we were on the verge of 12,000
22 inmates that we had in our custody.

1 In Texas, offenders younger than seventeen
2 years of age are not held in Harris County Jail.
3 Instead, they are held in the Harris County Juvenile
4 Detention Center.

5 As a result, it's important to mention that my
6 legal counsel and staff successfully moved to vacate a
7 district court order, which mandated the transfer of
8 sixteen-year-old juveniles certified to stand trial as
9 an adult from the Harris County Detention Center into
10 the Harris County Jail.

11 We urged, among other things, that the court-
12 ordered transfer of the sixteen-year-old would violate
13 Department of Justice sight, sound, physical contact,
14 supervision, isolation, exercise, education, work, and
15 other program-related standards issued in accordance
16 with the Prison Rape Elimination Act.

17 As a jail, we are regulated by state and
18 federal laws, court orders, administrative agencies,
19 state and national accrediting agencies. We must
20 continuously work with these organizations, supply them
21 with information, and review all feedback from them.

22 The Harris County Jail facilities consist of

1 four temporary lock-ups in the patrol districts, a
2 downtown inmate processing center, and four downtown
3 housing locations: the 1307 Baker Street Jail, the 701
4 N. San Jacinto Street Jail, the 711 N. San Jacinto
5 Street Jail, and the 1200 Baker Street Jail.

6 With the exception of the 1307 Baker Street
7 Jail, all of the downtown facilities are connected by a
8 secure tunnel system, which also connects the jails to
9 the Harris County Criminal Courts Building.

10 All of the large jails provide basic inmate
11 service components, including, for example, a medical
12 clinic, library, commissary, recreational areas,
13 chaplaincy services, law library, visitation areas,
14 kitchen, re-entry programs, and all qualified inmates
15 have access to educational programs, vocational
16 training, and inmate jobs.

17 The Harris County Jail System was built on the
18 podular design which facilitates direct 24/7 staff
19 observation into the inmate housing cell blocks.

20 For the purpose of this hearing, let me walk
21 you through out intake process and jail operations.
22 The process begins at the Harris County Inmate

1 Processing Center and Central Work Center.

2 The IPC was built in 1991 and is designed to
3 process prisoners into the Harris County Prison System.

4 Last November, Harris County voters approved
5 the construction of an Inmate Processing Center. This
6 new facility will enable the Harris County Sheriff's
7 Office to implement contemporary best practices, such
8 as jail diversion, open booking, direct supervision,
9 re-entry, and other components with an emphasis on PREA
10 compliance.

11 Since January of 2009, the Harris County
12 Sheriff's Office has received and processed over a half
13 a million prisoners in its jail facilities, averaging
14 approximately 120,000 per year.

15 In general, the intake process includes a
16 suicide screening, search, property inventory,
17 receiving, automated fingerprint identification system,
18 photograph, pre-trial interview, probable cause
19 hearing, booking, dress out, and a health assessment by
20 a medical professional including a chest x-ray for TB
21 screening.

22 The Harris County Sheriff's Office has

1 recently added full body x-ray scanners for its intake
2 process, which should dramatically reduce the need for
3 more intrusive body searches.

4 Inmates requiring extensive medical or mental
5 health services is escorted to the 1200 Baker Street
6 Jail Clinic prior to classification and housing.

7 Another challenge regarding this large intake
8 volume is the fact that inmates are usually held for
9 short periods of time in the Harris County Jail
10 facilities before release or transfer to other
11 facilities.

12 As an example, in 2012, thirty-six percent of
13 the intake volume was released within twenty-four
14 hours; fifty percent was released within seventy-two
15 hours. The Harris County Sheriff's Office facilities
16 house pre-trial detainees who are arrested by the
17 Harris County Sheriff's Office and approximately one
18 hundred other law enforcement agencies that function
19 within the borders of the Harris County community.

20 The Harris County Sheriff's Office has a
21 robust system to identify inmates with mental health
22 and other health issues that begins in the booking

1 process. The process of screening inmates for mental
2 health issues begins at the very beginning of intake.

3 Deputies trained in crisis-intervention
4 training initially screen incoming inmates with a
5 questionnaire as well as personal observation.

6 There are three licensed nurses assigned on a
7 24/7 basis at the booking area. The intake staff uses
8 the nursing resources to begin the fast-track booking
9 process designed to expedite care for inmates suffering
10 from significant health issues, to include mental
11 and/or emotional problems.

12 These inmates are escorted directly without
13 waiting in line to the 1200 Baker Street Jail medical
14 section where they are evaluated by a medical physician
15 and/or psychologist.

16 The Harris County Sheriff's Office system is
17 designed so that physicians may recommend specialized
18 housing either in the medical infirmary or in the
19 Inpatient Mental Health Unit prior to classification.

20 The Harris County Sheriff's Office also
21 performs routine mental health and health screening
22 during the booking process. The screening is conducted

1 by a registered nurse who screens for medical and/or
2 mental health issues. Any affirmative findings cause
3 the inmate to be referred to the 1200 Baker Street Jail
4 facility medical/mental health clinic, which is staffed
5 on a 24/7-, 365-day basis by both medical physicians
6 and psychiatrists.

7 Detainees with medical and/or mental health
8 needs are evaluated by physicians before undergoing the
9 classification and housing process.

10 Now that I've summarized our intake process,
11 I'd like to provide an overview of our facilities. Our
12 facilities are designed and built to house inmates of
13 all custody levels and provide for their appropriate
14 care.

15 Our 1307 Baker Street Jail is a minimum-
16 security-related design to house 1,072 inmates. The
17 facility is primarily used to house male general
18 population inmates and inmates participating in work or
19 educational programs.

20 A limited number of females are also housed in
21 this facility. Many of these inmates are bussed to
22 other locations each day to perform work or to take

1 advantage of educational programs.

2 Next, our 701 N. San Jacinto Jail facility is
3 a seven-story, maximum-security-rated facility and
4 designed to house 3,965 inmates. The facility was
5 opened in 1991. It is primarily used to house medium
6 and maximum security male inmates. While most of the
7 inmates are housed in general population, this building
8 does include some educational programs, work programs,
9 and administrative separation housing cells.

10 Third, our 711 N. San Jacinto Jail is adjacent
11 to the 701 Jail and is designed to house up to 144
12 minimum security inmates. It is currently used to
13 house inmates participating in the outside work
14 programs.

15 Lastly, our testimony today concerns our 1200
16 Baker Street Jail facility. I will focus on that
17 facility. The 1200 Baker Street Jail is a six-story
18 maximum-security-rated facility and is designed to
19 house up to 4,253 inmates. This facility was opened in
20 2003 and is primarily used to house male and female
21 prisoners with special needs.

22 This includes most of our inmates who have

1 significant medical or mental health issues,
2 administrative separation, substance abuse programs,
3 and inmates in need of protective housing. For
4 example, high publicity cases, non-heterosexuals, child
5 sex offenders, et cetera.

6 Most of the female prisoner population is also
7 housed at 1200 Baker Street Jail. Inmates with special
8 needs are housed at the 1200 Baker Street Jail in order
9 to facilitate their access to medical and mental health
10 services, treatment programs, and other centralized
11 areas.

12 This Jail includes the main clinic which is
13 staffed with six full-time employee positions and seven
14 full-time equivalent positions working under contract
15 with temporary agencies plus five full-time nurse
16 practitioners, thirteen psychiatrists, and over 400
17 health service staff. There are also contracts with
18 the local mental health/mental retardation authority to
19 provide mental health care in competency evaluations.

20 The Harris County Sheriff's Office also has a
21 quality control coordinator who acts as a go between to
22 facilitate communication, to ensure all aspects of

1 mental health care run smoothly between the Harris
2 County Sheriff's Office Mental Health Unit, security in
3 the Mental Health Unit, and medical personnel.

4 The Harris County Jail has been referred to as
5 the largest psychiatric facility in the State of Texas,
6 not a distinction I'm proud of. More than 2,000
7 inmates incarcerated in the Harris County Jail are on
8 psychotropic medications on a daily basis. Harris
9 County leads the nation in correctional mental health
10 treatment as a result.

11 At the 1200 Baker Street Jail, the Harris
12 County Sheriff's Office operates a one-hundred-bed
13 medical infirmary.

14 DR. WILKINSON: Sheriff, can I interrupt you
15 for one second. We only have about twelve-point-five
16 minutes left for the whole of Harris County, and we
17 want to get to the sexual victimization stuff.

18 MR. GARCIA: I've got quite a story to tell
19 but let me just close with some bullet points. With
20 all the challenges that we have, the opportunities we
21 look for, my dedicated men and women at the Sheriff's
22 Office truly want to protect and serve our inmate

1 community as well as our entire community.

2 Our office stands ready to implement
3 additional innovative ideas that will further the
4 safety and security of all concerned, just as we
5 implemented the crisis-intervention response teams.

6 Let me emphasize actions taken since 2009 to
7 protect our inmate population. Creation of the Harris
8 County Sheriff's Office Mental Health Advisory, chaired
9 by defense attorney George Parnham. The Harris County
10 Sheriff's Office proposed enhancements to the
11 classification instruments that were later adopted by
12 the Texas Commission on Jail Standards.

13 These modifications allowed the Harris County
14 Sheriff's Office to safely identify several hundred
15 more minimum-security inmates, which made them eligible
16 for additional programs such as educational,
17 vocational, and re-entry.

18 Creation of an orientation video tape for
19 inmates which plays in the inmate processing center.
20 This video addresses among other things the issues of
21 inmate sexual activity and sexual assaults, and
22 explains, among other things, sexual conduct between

1 inmates is strictly prohibited.

2 The Harris County Sheriff's Office will
3 investigate all allegations of sexual misconduct. If
4 you feel you are a victim of sexual harassment or
5 sexual assault, you should immediately bring it to the
6 attention of any staff member.

7 Creation of a new-hire orientation DVD that
8 has a PREA disclaimer. For example, this helps the
9 Harris County Sheriff's Office create a culture of PREA
10 awareness before employees even begin employment.

11 It is important to note that the Harris County
12 Sheriff's Office strictly prohibits fraternization and
13 socialization with inmates. It is also the policy of
14 the Sheriff's Office to comply with all standards set
15 by the Prison Rape Elimination Act to prevent, respond,
16 educate, screen, and report sexual misconduct in all of
17 its facilities.

18 Creation and implementation of the staff
19 sexual misconduct policy, D-115. Creation and
20 implementation of the PREA policy, D-116. Presentation
21 of a two-hour PREA overview in new-hire training
22 program, requiring all new detention officers to sign a

1 PREA acknowledgement form. Creation of a toll-free
2 telephone line for Harris County Jail inmates to report
3 sexual abuse. Installation of additional inmate
4 surveillance cameras in the laundry, commissary, and
5 kitchen areas. Amendment of the Harris County
6 Sheriff's policy to require more frequent security
7 rounds in administrative and separation cell blocks.

8 Since January of 2012, the Harris County
9 Sheriff's Office has hired, trained, and employed more
10 than 800 new detention officers in Harris County Jail
11 facilities.

12 The Harris County Sheriff's Office PREA
13 assault-hotline flyers have been placed in every cell
14 block at all Harris County Jail facilities in English
15 and in Spanish.

16 The newest Harris County Sheriff's Office PREA
17 poster is displayed throughout public areas, visitation
18 areas, lobby areas, and bonding. PREA flyers are being
19 placed inside commissary bags before delivery.

20 Harris County Sheriff's Office has established
21 a PREA compliance committee. The PREA compliance
22 committee will meet once a month to help the Harris

1 County Sheriff's Office transition into full
2 implementation and compliance with PREA standards.

3 Revisions made in March of the *2013 Harris*
4 *County Jail Inmate Handbook* to add a section addressing
5 the topic of sexual assault to include inmate rights,
6 safety, criminal consequences, reporting an incident,
7 and available health services.

8 The Texas Commission on Jail Standards
9 conducts a comprehensive inspection of the jail
10 facilities on an annual basis at irregular intervals.

11 Development and implementation of the LGBTI
12 policy, No. 413, within the Harris County Sheriff's
13 Office. Most recently, the Harris County Sheriff's
14 Office was awarded a PREA grant in the amount of
15 \$237,000, which the Harris County Sheriff's Office will
16 match.

17 This funding will allow the Sheriff's Office
18 to collect data for a process-and-outcome evaluation of
19 PREA policy compliance and sexual victimization. The
20 grant will also be used to fund victim advocates and
21 LGBTI counseling.

22 Lastly, contracted consultation services at

1 \$48,000 to create and implement an LGBTI sensitivity-
2 training class for all Harris County Sheriff's Office
3 employees.

4 There is a lot more to say. I'm trying to cut
5 it short. Thank you for allowing us to be here. We
6 are happy to answer any questions.

7 DR. WILKINSON: Thank you.

8 DR. CHRISTENSEN: Thank you, Sheriff, for an
9 explanation of everything that is going on in Houston
10 and Harris County, Texas, or at least partially what's
11 going on. I don't think we got the whole story.

12 MR. GARCIA: You didn't.

13 DR. CHRISTENSEN: We can get that at another
14 time.

15 While it might be uncomfortable, we are here
16 to talk about the 1200 Baker Street facility, and you
17 are on record here, both here and in your written
18 testimony, taking exception to the BJS standards,
19 despite the fact that we have heard a lot of testimony
20 regarding the validity of the BJS standards, and you
21 referenced your own analysis which led you to believe
22 those were faulty.

1 Perhaps you could explain or share with us
2 what that analysis was.

3 MR. GARCIA: First of all, there were
4 particular thresholds that were not met when the survey
5 was done. Secondly -- I will read these out.

6 BJS decided how many inmates would be offered
7 surveys with the assumption that at least sixty-five
8 percent would participate. That is page thirty-five.
9 Participation at the 1200 Baker Street Jail was
10 fifty-eight point three percent, leaving room for
11 skewed results. The report said the responses had to
12 be weighted to provide imagined feedback from
13 non-respondents.

14 Again, there is much more we can go into in
15 this regard, but we are here. I think we are taking
16 the results of the survey at face value. We have a
17 story to tell. We are working in a very progressive
18 direction. That is really what we want to spend our
19 time sharing with the Panel.

20 DR. CHRISTENSEN: It is also important for us
21 to understand because a lot of what we do is based upon
22 the BJS findings and they provide a basis for which all

1 of us throughout the field of corrections can move
2 forward. It is also important for us to understand
3 your perspective.

4 MR. GARCIA: I can submit this to you.

5 DR. CHRISTENSEN: That would be great. On
6 that point, because there were two percent less
7 respondents, you feel --

8 MR. GARCIA: Not two percent, approximately
9 seven percent.

10 DR. CHRISTENSEN: How much?

11 MR. GARCIA: Seven percent.

12 DR. CHRISTENSEN: Do you feel there is any
13 degree of increased sexual victimization in the 1200
14 Baker Street facility over the other facilities in
15 Harris County Jail? Do you feel there is any validity
16 to those standards at all?

17 Could they just be off? What is your feeling
18 on that based upon your analysis?

19 MR. GARCIA: Once again, the way the survey
20 was done and the fact that we investigate aggressively
21 everything that comes to our attention -- in fact, let
22 me share with you something that just came in this

1 morning.

2 Keep in mind the population at our 1200
3 facility is the population most likely to make claims
4 of sexual assaults. That population at 1200 is our
5 mental health and many of our female prisoners.

6 Just today, we get a report of an inmate who
7 says that he's waking up with his pants down by his
8 legs, feels he has been assaulted, and yet this report,
9 which I will submit to you as well, really explains
10 that we listen actively to all these complaints, and we
11 respond to them aggressively. We do not turn anything
12 away, even as vague as the allegation is. There is no
13 one being identified as the aggressor; there is no
14 suspect description, no time of day, no particular day,
15 just this person woke up feeling this way.

16 I think that is part of the dynamic that we
17 want to make sure is reflected in those surveys.

18 DR. CHRISTENSEN: At the same time, we also
19 have to recognize you said there is a high prevalence
20 of mental illness in that facility. We also recognize
21 that mental illness is one of the highest indicators of
22 this type of thing, so we have to grade the two out,

1 right?

2 MR. GARCIA: Correct.

3 DR. CHRISTENSEN: Just follow up on that one,
4 what do you do with that?

5 MR. GARCIA: I'll read it verbatim for you.

6 DR. CHRISTENSEN: No, you don't have to read
7 it verbatim. What do you do about it?

8 MR. GARCIA: Our supervisory staff has
9 responded to this. We have referred the case to be
10 investigated as a sexual assault. We are pulling out
11 all the stops.

12 DR. CHRISTENSEN: Is there video of that area?

13 MR. GARCIA: There may be, which will be part
14 of the investigation. This happened today.

15 DR. CHRISTENSEN: I know you know those areas.
16 Are there video's throughout the Jail where a video
17 would be in that area?

18 MR. GARCIA: I can't tell you on this
19 particular unit. I'm sure there is, but again, this
20 will be handled very extensively. We take great care
21 in acknowledging the circumstances as they come to our
22 attention.

1 DR. CHRISTENSEN: Chief, did you want to add
2 something?

3 MR. BROWN: Yes, I was going to add that in
4 that particular area, there are some cameras, but we
5 don't know if these cameras would have caught that
6 incident. By the way, the Sheriff didn't get an
7 opportunity to say we are also starting an \$800,000
8 project to install more cameras in that facility.

9 DR. CHRISTENSEN: To get better coverage?

10 MR. BROWN: To get better coverage, yes.

11 DR. CHRISTENSEN: Great. In your response to
12 the request of the staff here, you referenced that you
13 completed an investigation that revealed several jail
14 staff members had engaged in inappropriate sexual
15 conduct with female inmates in a laundry area at the
16 1200 Baker Street facility.

17 You noted that as a result of the
18 investigation, five correctional officers were fired,
19 two resigned, and one resulted in an indictment.
20 Obviously, we don't want names or faces or anything
21 like that. We would like to hear some background about
22 how the Office of Inspector General came to investigate

1 this matter. What was the process?

2 MR. GARCIA: The process was that our
3 grievance system worked. An inmate brought up the
4 issue that another inmate was getting preferred
5 treatment. Our supervisory staff got wind of the
6 complaint and made a fast track to his supervisor, to
7 the Office of Inspector General, and then the results
8 are as you know.

9 DR. CHRISTENSEN: Were there other incidents
10 that were investigated? You referenced that particular
11 one -- of either staff on inmate or inmate on inmate
12 sexual misconduct of note?

13 MR. GARCIA: Let me make sure I clarify or
14 make the point that when we are talking about sexual
15 misconduct, there is not sexual assaults, more
16 effectively described as unprofessional conduct.

17 There have been in the past, but as you heard
18 from the Commissioner, we take all these issues
19 seriously, and if we find these violations, we don't
20 waste time cutting heads off.

21 DR. CHRISTENSEN: Give me an example of what
22 you are talking about, that doesn't quite meet the

1 assault threshold but is inappropriate and what an
2 action might be.

3 MR. GARCIA: It may have been taking a picture
4 with an employee's cell phone.

5 DR. CHRISTENSEN: That shouldn't have been in
6 the jail?

7 MR. GARCIA: Exactly.

8 MR. BROWN: If I may add, it could be
9 something like writing letters, having correspondence
10 with inmates, which falls under fraternization also.

11 DR. CHRISTENSEN: Your response to that is?

12 MR. GARCIA: No, we have policies against
13 that.

14 DR. CHRISTENSEN: So, what do you do?

15 MR. BROWN: They're adjudicated. They go
16 through a process. We have due process also for
17 employees and everyone else. They go through the
18 process. It is adjudicated through what we call our
19 Administrative Disciplinary Committee. If they are
20 found to be guilty of fraternization, their punishment
21 ranges from termination to time off.

22 DR. CHRISTENSEN: How often does something

1 like that happen?

2 MR. BROWN: In the 2012 year, we probably had
3 a handful of incidents.

4 DR. CHRISTENSEN: All related to 1200 Baker
5 Street?

6 MR. BROWN: No.

7 MR. GARCIA: Throughout the operations.

8 DR. WILKINSON: Just one question. Have you
9 sought the assistance of any of the national efforts,
10 with the PREA Resource Center, the National Institute
11 of Corrections, who has online training. Are you using
12 those? You heard the testimony from the American Jail
13 Association. There are a lot of resources out there.

14 MR. GARCIA: There is.

15 DR. WILKINSON: Are you taking advantage of
16 those?

17 MR. GARCIA: I'll ask the Chief to fill in on
18 a couple of things. We did reach out to the PREA
19 Resource Center early on. That was during
20 sequestration so some of the things we were hoping for
21 didn't manifest, but we did get a lot of material, and
22 our staff is working with that material.

1 DR. WILKINSON: Tool kits and all those kinds
2 of things are free.

3 MR. GARCIA: Yes, we're hungry for it, and we
4 want to see it.

5 MS. SEYMOUR: I have two quick questions.
6 When an inmate wants to report and call the hotline,
7 who answers the hotline phone number?

8 MR. BROWN: Our PREA coordinator.

9 MS. SEYMOUR: Someone internally.

10 DR. WILKINSON: Is it a recorded line?

11 MR. BROWN: I'm not sure -- it's recorded,
12 yes.

13 MS. SEYMOUR: You say you are trying to
14 identify an approved outside victim-advocacy group to
15 work with. Are you familiar with the Houston Area
16 Women's Center?

17 MR. BROWN: Very much.

18 MS. SEYMOUR: Can I just make your search
19 really short? They are so incredible, and they are so
20 expert on all aspects of sexual violence. It just
21 seems like a really good partner.

22 MR. GARCIA: We do have a very good

1 relationship with the Houston Area Women's Center. We
2 worked with their previous executive director and the
3 current one as well. They are a good partner for us,
4 and we look to them often on many cases.

5 MS. SEYMOUR: I'm so glad to hear that. Thank
6 you so much for your testimony.

7 DR. WILKINSON: I know you have a whole cadre
8 of staff here. I understand you met with the Resource
9 Center people today. I didn't put two and two together
10 when I asked that question, but I'm glad you did that.
11 We appreciate you taking advantage of this opportunity.

12 MR. GARCIA: Thank you. Like I said earlier,
13 we are a big operation. We want to be transparent. We
14 want to be the best. We are eager to share ideas and
15 have good dialogue and see where that collective
16 discussion takes us.

17 DR. WILKINSON: All right. We are going to
18 move to Maryland. Thank you, Sheriff, for your
19 testimony, and Chief Brown, as well.

20 We have Gregg Hershberger, who I have known
21 for a long time, Acting Secretary, Maryland Department
22 of Public Safety and Correctional Services, and Rick

1 Foxwell, Acting Jail Administrator, Baltimore City
2 Detention Center.

3 If you have testimony you would like to
4 provide now, we'd love to hear it. By the way, we are
5 going to extend the session for about five minutes or
6 so into the break.

7 STATEMENT OF MR. GREGG HERSHBERGER, SECRETARY,
8 MARYLAND DEPARTMENT OF PUBLIC SAFETY AND
9 CORRECTIONAL SERVICES, AND MR. RICKY FOXWELL, JAIL
10 ADMINISTRATOR, BALTIMORE CITY DETENTION CENTER

11 MR. HERSHBERGER: Thank you, Mr. Chairman,
12 members of the Committee.

13 MS. SEYMOUR: We can't hear you.

14 MR. HERSHBERGER: Thank you, Mr. Chairman,
15 members of the Committee. I don't think it is on.

16 Once again, thank you, Mr. Chairman, members
17 of the Committee. Thank you for inviting us here
18 today. My name is Gregg Hershberger. I am the current
19 Secretary for Public Safety as of a month ago. I have
20 been in the position one month.

21 DR. WILKINSON: You're permanent now, no
22 longer acting?

1 MR. HERSHBERGER: I'm permanent now.

2 DR. WILKINSON: Congratulations.

3 MR. HERSHBERGER: I have with me Jail
4 Administrator Rick Foxwell. He is the Administrator at
5 the Baltimore City Detention Center, commonly known as
6 BCDC. I also have with me today Chief of Staff Rhea
7 Harris, from the Secretary's Office. She is also our
8 statewide PREA coordinator. Mark Carter, our IIU
9 director, who oversees our newly formed IIU statewide
10 for the Department of Public Safety.

11 I want to begin by letting you know that
12 sexual assault and rape inside the prisons is not new.
13 Maryland is a little bit different than everybody else
14 here today. We run the Baltimore City Detention
15 Center, the state runs it. PREA is throughout our
16 prison system statewide.

17 The Department does not tolerate any type of
18 sexual contact between staff, detainees, and inmates in
19 our custody. It is for this reason we are concerned
20 with the survey's report of the prevalence of staff-on-
21 inmate sexual assaults at the Baltimore City Detention
22 Center.

1 To provide a bit of background, the Baltimore
2 City Detention Center has the capacity to house
3 approximately 3,000 detainees and local inmates. The
4 majority of detainees are male. It is the eighteenth
5 largest jail in the United States, by average daily
6 population, and is unique in it is the only major
7 metropolitan jail that is run by a state agency rather
8 than a county or city.

9 The core of the facility was built in 1859,
10 received some remodeling in 1950, and then again in
11 1970. However, the fundamental design of the facility
12 is based on the 19th Century prison philosophy.

13 Approximately 600 correctional officers and
14 staff are employed at the facility.

15 As already stated, the report indicates
16 detainees housed at BCDC reported a higher rate of
17 sexual assault by staff members when compared to other
18 facilities surveyed. While we cannot extrapolate
19 figures of the prevalence of reported assaults from the
20 survey, we do know that our internal investigative unit
21 received reports of six sexual assaults between
22 calendar years 2011 and 2012 during the same time

1 period.

2 Of these reported incidents, only two involved
3 staff assault, and only one report was sustained for
4 sexual assault. The others could not be sustained for
5 sexual assault but received an administrative finding
6 for fraternization. Sexual assault cannot be sustained
7 because most parties are not willing to admit their
8 sexual relationship.

9 The remaining four incidents investigated were
10 inmate-on-inmate assaults. Of these, two were
11 unsubstantiated, and two were found unfounded.

12 Obviously, the large disparity between the
13 survey's reported figures and the internal reported
14 figures suggest this is not the entire picture.
15 Inmates may not feel they have adequate resources to
16 report sexual assault to the Department for
17 investigation.

18 In response to the required PREA standards,
19 the Department created a PREA hotline for inmates to
20 call. Inmates can record a discrete message. Hotline
21 messages are being monitored by an external agency, a
22 rape-crisis center, which reports calls regarding

1 sexual assaults.

2 The PREA hotline began in June 2013, and as of
3 December 2, 2013, 112 calls have been received. Please
4 note this updates the prior reported figures in our
5 October testimony submitted to the Panel.

6 Most of the calls do not involve actual
7 allegations of any type of sexual assault but are
8 generalized grievances about the conditions of
9 confinement. An overwhelming number of calls came from
10 the Maryland Correctional Institution for Women, the
11 only large facility for women in the state, but a few
12 came from the detention facilities.

13 Some of the calls from the detention
14 facilities have led to seizures of contraband, tobacco,
15 cell phones, et cetera.

16 Any report of alleged sexual assault by a
17 staff member or inmate, including consensual sex
18 between staff and an inmate, is investigated by our
19 internal investigation unit. Our IIU is comprised of
20 certified police officers and as such, have all been
21 trained on procedures and how to respond to sexual
22 assaults.

1 Today, all new IIU detectives receive specific
2 PREA training as part of their initial training and
3 have continued on-the-job training.

4 Each investigation, regardless of whether it
5 involves an inmate or staff sexual assault, involves a
6 thorough investigation. It can involve a sexual
7 assault examination of the victim; interviews of the
8 victim; examination of clothing, linens, property in
9 evidence, which is collected and analyzed as
10 appropriate; any witnesses interviewed; review of
11 institutional reports, including serious incident
12 reports; review of video evidence if available;
13 interviews of suspects; DNA collection where
14 applicable.

15 Each investigation ends in a report. If an
16 allegation is substantiated by the investigation,
17 criminal charges will be filed in addition to
18 administrative charges by the Department against staff
19 or an inmate.

20 PREA compliance. The Department also
21 continues to make progress in implementing the PREA
22 standards. By our own internal assessment, we have

1 achieved compliance with the majority of PREA standards
2 issued in 2012. The PREA coordinator and compliance
3 managers for each facility have worked towards
4 implementing policies and procedures for zero
5 tolerance.

6 We have developed a testing and screening tool
7 for victimization. This screening will be used in our
8 six direct intake facilities across the state.

9 The Department sent three of our auditors to
10 the U.S. Department of Justice audit training in
11 November. These trained auditors will be made
12 available with the other four other states and District
13 of Columbia in our agreement to assist each other.

14 The other states being considered are
15 Virginia, Delaware, West Virginia, and Pennsylvania.
16 The Department is taking the lead on negotiating this
17 agreement. This agreement will help defray the costs
18 of auditing for each of the states.

19 As you know, the PREA standards require that
20 we audit one-third of our facilities by August 2015.
21 We are vigorously implementing and tracking compliance
22 to new policies and procedures in preparation of

1 pre-audit in the spring. By March 2014, we expect to
2 begin pre-audits of our facilities for PREA compliance.

3 By this time, we expect all policies and
4 standards to be fully in place and operational.

5 Governor O'Malley is to make a statement about
6 the state's compliance later this month.

7 As to BCDC specifically, the Baltimore City
8 Detention Center has been in the news, as everybody
9 knows, for the indictment of thirty-two correctional
10 officers, as part of a long-standing investigation of
11 corruption by the Maryland Prison Task Force. That is
12 a collaboration between the Department, the U.S.
13 Attorney for the District of Maryland, the FBI,
14 Maryland State Police, Baltimore Police, and numerous
15 other federal, state and local partners.

16 The Task Force was formed as a direct result
17 of our efforts to combat gangs within the Maryland
18 prison system. Since the original indictment, the
19 Department has taken steps to significantly improve the
20 security of the facility and crack down on corruption.

21 We have repaired and replaced the camera
22 system, upgrading it to provide forty-five or more days

1 of recording in high definition digital surveillance in
2 the facility. We now have over 280 cameras monitoring
3 the facility.

4 We did complete this week the installation of
5 managed-access technology which will prevent contraband
6 cell phones from being used within the facility.

7 We now perform additional random searches on
8 thirty staff and thirty random cells daily. We have
9 streamlined our intelligence and combined it with
10 investigation under the management of Mr. Carter.

11 We are rotating front entrance staff between
12 institutions to search staff as they come in to avoid
13 familiarity with each other.

14 Other changes include new leadership, which is
15 Mr. Foxwell to my left. We now have live-scan
16 fingerprint devices to scan all visitors, which will ID
17 them and let us know if there are any warrants,
18 background of the visitors.

19 As a result of these changes, BCDC is a better
20 facility than it was last April. We continue to make
21 changes including legislation that the Department will
22 introduce in the upcoming legislative session.

1 Thank you for giving us this opportunity.

2 DR. WILKINSON: Thank you, Secretary
3 Hershberger. It has been a tough year in Maryland.
4 Can you tell us a little bit about the incident at the
5 Baltimore City Jail, the scandal that has been
6 reported, in terms of what you are doing to abate such
7 a thing in the future?

8 MR. HERSHBERGER: A lot of what I just read
9 are changes we have made. We knew we had a problem,
10 and when it came out it, sounded like it was just all
11 of a sudden, but that was actually the combination of
12 an ongoing investigation which extended at least a year
13 before.

14 We have made a lot of changes. One of the
15 bills we have in this year is to allow us to make an
16 exception, to allow us to polygraph all new employees.

17 DR. WILKINSON: I was going to ask you about
18 that. You know who you are going to get next time, so
19 your background checks are going to be more intrusive.

20 MR. HERSHBERGER: Right. One of the problems
21 we have encountered is the same as Philadelphia, BCDC
22 is right in downtown Baltimore. A lot of our staff are

1 very familiar with a lot of the detainees. That is an
2 issue we are trying to address. They were hiring gang
3 members. They came in without any type of record. We
4 are doing a better job, hopefully with the polygraph,
5 too, of keeping known gang members from coming in as
6 correctional officers.

7 DR. WILKINSON: You have unions as well in
8 Maryland, right?

9 MR. HERSHBERGER: Yes.

10 DR. WILKINSON: How did they react to the
11 polygraph possibility?

12 MR. HERSHBERGER: I just met with the
13 statewide AFSCME representatives, and they didn't
14 mention it at all. I can ask Mr. Foxwell if he has
15 experienced anything recently.

16 MR. FOXWELL: First of all, when this all took
17 place back in April when indictments came out, they
18 kind of laid down a little bit. When I first got
19 there, a lot of things we were trying to do, like
20 search employees coming in, they kicked against that.
21 We were always battling on that issue with them.

22 Once these indictments came out, they kind of

1 backed off a little bit. It has gotten a little easier
2 to get things done.

3 DR. WILKINSON: Mr. Secretary, you pointed out
4 how different the Maryland system is from the other
5 state jurisdictions. Baltimore is the jail, but you
6 have Jessup and a bunch of other places to worry about.
7 How do you take what you have learned in Baltimore and
8 extrapolate that to what is going on throughout the
9 entire system?

10 MR. HERSHBERGER: Actually, it has helped
11 because one of the problems we had at the Baltimore
12 City Detention Center, for employees entered, they
13 weren't under the same regulations that we were doing
14 at the state prisons, so now we have a uniform policy.

15 DR. WILKINSON: Are Baltimore City state
16 employees or city employees?

17 MR. HERSHBERGER: They are state employees
18 now.

19 DR. WILKINSON: They weren't before?

20 MR. HERSHBERGER: They were, but there were
21 two different regulations based on the union.

22 MR. FOXWELL: There were two different unions.

1 The city had its own, and the union out in the state
2 was run by different people. There was a period of
3 time, and I think it was approximately four years, they
4 were hiring eighteen-year-olds.

5 My own Division of Corrections did it maybe
6 for a couple of years and found out it didn't work. It
7 was just too much for an eighteen-year-old to take on,
8 but the city kept on with that program because they
9 just couldn't get people hired. A lot of females that
10 were indicted, female staff, a lot of them started when
11 they were eighteen. That was a bad site.

12 DR. WILKINSON: I know the Maryland
13 legislature has fought ACA accreditation for many years
14 there. Has that changed? I remember testifying at the
15 Maryland legislature when Marian Salo was there. You
16 have to have some sort of standards or something to
17 comply with, whether it is ACA or not. If they are
18 against ACA, I'm sure they are going to be against the
19 PREA standards, unless the culture has changed.

20 MR. HERSHBERGER: It changed. It passed last
21 year. We have four institutions on board to be ACA
22 certified this year. We are moving forward to have the

1 whole state certified. We already have WCI and ECI
2 certified. The Chesapeake Detention Center, which is
3 state, but housing Federal employees, just received one
4 hundred percent ACA certification last month. We are
5 moving in that direction.

6 As far as PREA, we are firmly behind PREA. We
7 have already instituted the PREA standards in all the
8 institutions. We have a statewide PREA coordinator, we
9 have PREA managers at each institution. We have
10 already taken the necessary steps, and I think we will
11 be fine when the audits come.

12 DR. WILKINSON: Congratulations on that. I
13 think that is a big deal. There are reasons for that.
14 Obviously, people listened. Good job.

15 To ask about gender-specific and trauma-
16 informed training, is that part of your in-service
17 training?

18 MR. HERSHBERGER: Yes, it's being instituted
19 in our in-service. Our internal investigation units
20 receive special training. It is becoming part of
21 in-service and ironically, this year we are going to
22 the forty-hour in-service training as part of the ACA

1 certification. It fits in. Before, we had three days,
2 and we can fill in with the additional time part of the
3 PREA training.

4 DR. WILKINSON: Thanks.

5 MS. SEYMOUR: To me, a jail that was built in
6 1859 -- did I read that correctly or was that a typo?

7 MR. HERSHBERGER: Yes, 1859.

8 MS. SEYMOUR: Is that the bones of the jail, a
9 footprint, or the entire facility? To me, that is one
10 of the biggest challenges you all face.

11 MR. HERSHBERGER: It has been built in pieces.
12 We have a plan now to replace it.

13 MS. SEYMOUR: That was my next question.

14 MR. HERSHBERGER: It is a five-year plan.
15 What we are up against is because it is in the city, we
16 don't have a lot of space. The plan calls for
17 systematically demolishing parts of it and rebuilding
18 on site. It is going to be quite a task because we are
19 going to have to move inmates out and find other places
20 for them as we demolish and rebuild.

21 MS. SEYMOUR: Good luck with that. It is
22 really important.

1 DR. WILKINSON: Gary?

2 DR. CHRISTENSEN: You referenced that you both
3 have come on recently or been appointed recently. My
4 question would be is when you came in and recognized
5 what was going on in the detention facility, what were
6 some of the first and most important changes that you
7 made to bring yourself at least into compliance
8 somewhat with the PREA standards?

9 MR. FOXWELL: First of all, when I came on as
10 the jail administrator in April, the jail population
11 was around 3,000. We had minimum, maximum, medium, and
12 sentenced inmates all housed together. There was no
13 differentiation nowhere.

14 First, we moved everybody around. We
15 separated maximum, medium, minimum. We also have a
16 building of females, 300; and we keep juveniles
17 sentenced as adults the average population, twelve to
18 fifteen. We keep them separated and housed in another
19 area.

20 Since PREA, we have installed PREA hotline
21 signs in all housing units and common areas for
22 detainees and the general public to see. Detainees and

1 inmates who self-identify or report PREA to an
2 uniformed staff member or through the hotline, the
3 facility's PREA coordinator notifies the regional PREA
4 coordinator who notifies the medical and mental health
5 vendors.

6 The alleged victim is taken to a medical unit
7 for a medical triage exam which includes medical and
8 mental health counseling. Uniformed supervisory staff
9 go to the site and collect all evidence for IIU until
10 they come.

11 The medical vendor prepares a transport order
12 for the alleged victim to be transported to the nearest
13 hospital, which for us is Mercy. Follow up counseling
14 is provided and made available to alleged victims at
15 Mercy Medical Center, the rape-crisis center, and
16 medical/mental health vendors are on site there.

17 Alleged sexual assault victims are relocated,
18 transferred to protective custody, and the incident is
19 investigated, and a serious incident report is
20 conducted for any alleged PREA assaults.

21 DR. CHRISTENSEN: All these things were
22 instituted during the last year?

1 MR. FOXWELL: Yes. We are doing that now.

2 MR. HERSHBERGER: We are also educating the
3 inmate populations about PREA.

4 DR. CHRISTENSEN: That is great. Because you
5 said medium, minimum, maximum, I assume you had some
6 kind of classification system. Is it an objective
7 classification system?

8 MR. FOXWELL: Yes, inmates are taken to
9 Central Booking, they are housed there for
10 approximately twenty-four to forty-eight hours, to see
11 if they make bail or not. Once it is determined they
12 are not going to make bail or they are not given bail,
13 they come across the bridge to us, to our case
14 management, and we classify them.

15 DR. CHRISTENSEN: It is an objective
16 classification system?

17 MR. FOXWELL: Yes.

18 DR. CHRISTENSEN: Are some of the findings
19 that we know consistent with highly victimized
20 populations or PREA populations, are those taken into
21 account as part of the objective classification?

22 MR. FOXWELL: I'm not sure about that.

1 MR. HERSHBERGER: It is an objective
2 classification system with the ability to override with
3 rationale.

4 DR. CHRISTENSEN: The rationale would include?

5 MR. HERSHBERGER: If somebody scores for
6 minimum or pre-release but we feel they are vulnerable,
7 we can upgrade them to a more secure level.

8 DR. CHRISTENSEN: Is there any thought about
9 rather than relying on somebody's perception about what
10 they might be vulnerable to, to actually putting some
11 kind of checklist out about things we know make people
12 vulnerable when they come into a correctional facility?

13 MR. HERSHBERGER: That is part of the PREA
14 assessment when they come in.

15 DR. CHRISTENSEN: Okay, thank you.

16 DR. WILKINSON: Mr. Secretary, tell us a
17 little bit about your background.

18 MR. HERSHBERGER: My background?

19 DR. WILKINSON: Yes.

20 MR. HERSHBERGER: Okay. I started in 1976 in
21 a county jail in Pennsylvania, then moved to the State
22 of Maryland as a correctional officer in 1982. I went

1 from a correctional officer to a case manager serving
2 in a variety of capacities and ran a work-release
3 center from 1991 to 2001, was promoted to case-
4 management supervisor for four years.

5 I became a facility administrator in charge of
6 a pre-release center in Hagerstown. From there, to
7 assistant warden at MCTC and transferred to assistant
8 warden at RCI, mainly I was put in charge of developing
9 programs and putting self-help and cognitive programs
10 in place in the facilities, and I was promoted to
11 warden at RCI in July of 2009.

12 Since then, I have had kind of a whirlwind.
13 In October -- Maryland is divided into three sections:
14 the North Region, which is Hagerstown and Cumberland;
15 Central Region, which is Baltimore; and the South
16 Region, which is Jessup and ECI area.

17 I was executive director for approximately
18 three weeks, and he wanted to be closer to his family,
19 so he came back and took my position at RCI as warden,
20 so I became deputy director of operations for the
21 state. I was in there three weeks and Governor
22 O'Malley invited me to his house and said Secretary

1 Maynard was retiring, would I take over the position of
2 Secretary of Public Safety.

3 DR. WILKINSON: You obviously have enough time
4 to retire, right?

5 MR. HERSHBERGER: Yes, I have thirty-two
6 years.

7 DR. WILKINSON: Are you going to stick around
8 for a little while longer?

9 MS. SEYMOUR: More than three weeks, right?

10 MR. HERSHBERGER: My response was I will stick
11 around until they get tired of me or I get tired of
12 them.

13 (Laughter.)

14 MR. HERSHBERGER: I'm a firm believer in what
15 Governor O'Malley is doing, having thirty-two years in.
16 He has taken a real initiative in re-entry and trying
17 to help inmates, not only while they are
18 incarcerated -- we have combined Community Supervision,
19 which used to be Probation and Parole, with
20 Corrections. We are working on making that a
21 streamlined process.

22 DR. WILKINSON: Pennsylvania has been trying

1 that for a long time but hasn't gotten there yet.

2 There is another Hershberger that worked in Bureau of
3 Prisons.

4 MR. HERSHBERGER: I've heard that many times.
5 It is not a relative.

6 DR. WILKINSON: He was a warden at the
7 Florence facility and regional director for the BOP.
8 Joyce knows him, obviously.

9 We know these things are tough. Dealing with
10 something like what happened last April can happen
11 anywhere. We just need to make sure we are doing all
12 the right things to prevent it from happening again,
13 and we know you are.

14 We have all the confidence in the world, and
15 we appreciate all that you have testified to that you
16 are working on and what you are going to do. We
17 appreciate you being here today.

18 MR. HERSHBERGER: One of the big changes, we
19 have integrated our investigative, IIU, and
20 intelligence into one unit, which is also helping with
21 the flow of information, and we are combining with
22 State Police and Baltimore City Police to further

1 enhance our flow. As everybody knows, I'm sure
2 Philadelphia is the same, gangs are one of our biggest
3 problems.

4 DR. WILKINSON: Yes. Thank you so much for
5 being here.

6 MS. SEYMOUR: Thank you.

7 DR. WILKINSON: The Panel concludes its
8 hearings on jails with high incidence of sexual
9 victimization. The Panel reserves the right, however,
10 to accept additional materials and testimony to
11 supplement the record.

12 We will convene in a few moments on the
13 Panel's hearings on jails with low incidence of sexual
14 victimization.

15 Ten minute break.

16 (Recess.)

17 HEARINGS ON LOW INCIDENCE JAIL FACILITIES

18 DR. WILKINSON: We are going to convene our
19 hearings on low incidences in jail facilities, with
20 Gary Gittins and Patricia Mundell.

21 Prior to swearing our panelists in, I do need
22 to read a statement for the record on Cameron County

1 Sheriff's Office.

2 The Review Panel on Prison Rape selected a
3 jail facility operated by the Cameron County, Texas,
4 Sheriff's Office to participate in its hearing on low
5 sexual victimization in jails. Cameron County
6 Carrizales-Rucker Detention Center was identified by
7 the Bureau of Justice Statistics as having a low
8 prevalence of sexual victimization.

9 While the representatives from the Cameron
10 County Sheriff's Office initially stated they would
11 attend the hearings, the Panel learned only recently
12 that the Sheriff changed his position and will not
13 appear today at the hearing.

14 Although we are disappointed that
15 representatives will not appear at these hearings, the
16 Panel is in communication with the Sheriff to obtain
17 sworn testimony regarding operation of the Cameron
18 County Carrizales-Rucker Detention Center.

19 We will continue to work with CCSO in good
20 faith to develop a hearing record that explores why its
21 jails have a low prevalence of sexual victimization.
22 In addition, during the hearings today, Dr. Allen Beck

1 from BJS will provide testimony to the Panel on the
2 National Inmate Survey results regarding this facility.

3 The Panel will also recess rather than adjourn
4 its hearings on low incidence jails. By recessing the
5 hearing, the Panel preserves its ability to supplement
6 the hearing record with additional evidence of sworn
7 testimony from CCSO representatives and others who can
8 discuss the CCSO and the Cameron County
9 Carrizales-Rucker Detention Center.

10 With that, I want to swear in our new
11 witnesses. Do you swear or affirm that the testimony
12 you are about to give is the truth, the whole truth,
13 and nothing but the truth?

14 MS. MUNDELL: I do.

15 MR. GITTINS: I do.

16 Whereupon,

17 PATRICIA MUNDELL and GARY GITTINS

18 were called as witnesses and, having first been
19 duly sworn, were examined and testified as follows:

20 DR. WILKINSON: We will begin with Patricia
21 Mundell, who is the Chief of Detention Services
22 Division, Jefferson County Sheriff's Office.

1 STATEMENT OF MS. PATRICIA MUNDELL, CHIEF, DETENTION
2 SERVICES DIVISION, AND MR. GARY GITTINS, CAPTAIN,
3 DETENTION SERVICES DIVISION,
4 JEFFERSON COUNTY SHERIFF'S OFFICE

5 MS. MUNDELL: Good afternoon. On behalf of
6 Sheriff Ted Mink and the citizens of Jefferson County,
7 Colorado, I am Detention Service Division's Chief Patsy
8 Mundell.

9 First of all, I'd like to thank you for the
10 opportunity to speak to you about the results of the
11 2012 National Inmate Survey on sexual violence.

12 I will start by saying that the Jefferson
13 County Sheriff's Office, like our colleagues in other
14 jails and prisons, have a zero tolerance for inmate
15 sexual assault; sexual violence; sexual misconduct;
16 sexual contact by inmates, staff, or other non-inmate
17 persons.

18 As such, we treat all observed or reported
19 allegations with the utmost seriousness and
20 professionalism.

21 We realize there is no perfect solution to
22 this problem, that we will ensure that these behaviors

1 will never occur in our facility. However, our
2 policies and procedures does ensure that the number of
3 incidents are kept to a minimum.

4 The Jefferson County Sheriff's Office
5 Detention facility is a mixture of both direct
6 supervision and the older modular-style housing. Our
7 detention facility has a fixed bed capacity of 1,326,
8 and the capability of adding an additional 284
9 temporary sled beds, for a total of 1,610 maximum
10 capacity.

11 During the calendar year 2012, the average
12 daily inmate population was approximately 1,250. The
13 facility is operated with an authorized staff of 371
14 personnel, consisting of both sworn and non-sworn.

15 In 2012, the Jefferson County Sheriff's Office
16 Detention facility had five reported allegations of
17 inmate-on-inmate non-consensual sexual acts. As a
18 result of our thorough investigations, three of the
19 cases were unfounded. The event was determined to have
20 not occurred, and two were unsubstantiated. Evidence
21 was insufficient to make a final determination that the
22 event had occurred.

1 During the same time, we had two allegations
2 of inmate-on-inmate abusive sexual contact. Again, as
3 a result of the investigation into these reports, one
4 case was substantiated -- the event was investigated
5 and determined to have occurred -- and one case
6 unfounded, the event was determined to not have
7 occurred.

8 We did not have a single allegation of staff
9 sexual misconduct or sexual harassment.

10 The Jefferson County Sheriff's Office has
11 always viewed sexual misconduct in our jail as
12 unacceptable. In 2007, we updated and revised our
13 policies and procedures to ensure that we were in
14 compliance with the Prison Rape Elimination Act of
15 2003.

16 The following portion of the statement is a
17 brief overview of the policies and practices of the
18 Jefferson County Sheriff's Office as it pertains to the
19 prevention, reporting, and investigation of conduct.

20 Zero-tolerance statement. In accordance with
21 Colorado State revised statutes, American Correctional
22 Association's expected practices, and the mandates of

1 the Prison Rape Elimination Act of 2003, the Jefferson
2 County Sheriff's Office is committed to the
3 establishment of a zero-tolerance standard of inmate
4 sexual assault; sexual violence; sexual misconduct; and
5 sexual contact by other inmates, staff, or other
6 non-inmate persons.

7 All substantiated violations of state statutes
8 pertaining to sexual crimes will be aggressively
9 pursued for prosecution. All established
10 administrative sanctions will also be pursued for
11 violators as appropriate.

12 This commitment will include efforts to
13 provide a safe environment and a staff that is prepared
14 to respond to all allegations of inmate-on-inmate
15 sexual assault, sexual violence, sexual misconduct, and
16 sexual contact.

17 It will be the practice of the Jefferson
18 County Sheriff's Office to provide appropriate
19 treatment and counseling for any victims of sexual
20 assault.

21 It will be strictly forbidden for any JCSO
22 employee, volunteer, contractor, vendor; other

1 government employee; or any other non-inmate person who
2 has access to the detention facility or inmates in an
3 official capacity to engage in any act with an inmate
4 that constitutes sexual assault, violence, misconduct,
5 or contact.

6 Inmate orientation, screening, and education.

7 Upon arrival at the Jefferson County Detention
8 facility, all inmates including new arrestees,
9 transferees, writs, contract and courtesy holds will be
10 provided with a verbal orientation regarding JCSO
11 policies and procedures pertaining to the prevention
12 and reporting of sexual assault, sexual violence,
13 sexual misconduct, or sexual contact on inmates. This
14 orientation will be provided by our jail counselors
15 during the intake process.

16 All inmates will be provided with a copy of
17 the *Jefferson County Detention Inmate Handbook* with
18 specific instructions to direct inmates to the section
19 in the handbook that outlines reporting processes and
20 options and that address sexual assault, violence,
21 misconduct, and contact on inmates.

22 Mandatory reporting responsibilities. It is

1 recognized that effective prevention of sexual assault,
2 violence, misconduct, and contact against an inmate
3 must include effective reporting requirements. To this
4 end, all suspected or reported acts of sexual assault,
5 violence, misconduct, and contact alleged to be
6 perpetrated by another inmate, an employee, or any
7 other person, will be immediately reported to an on-
8 duty Detention Services Division supervisor. The
9 supervisor will then immediately notify the responsible
10 Detention Services watch commander.

11 Sanctions for failure to report. Failure on
12 the part of any JCSO employee to immediately report any
13 knowledge of perpetrated or threatened sexual assault,
14 violence, misconduct, or contact upon an inmate will
15 subject such employee to disciplinary action.

16 Victim reporting procedures. All allegations
17 or reports of actual or threatened sexual assault,
18 sexual violence, sexual misconduct, or sexual contact
19 incidents on an inmate will be taken seriously and
20 immediately addressed and investigated.

21 The protection of victims, potential victims,
22 witnesses, and items of evidence, including the crime

1 scene itself, will be of paramount importance when
2 considering immediate responsive actions.

3 Inmates will be made to feel free to
4 immediately report any act or threatened act of sexual
5 assault, violence, misconduct, or contact to any JCSO
6 staff member, contractor, vendor, other county
7 employee, or JCSO volunteer.

8 In an effort to provide inmates with several
9 reporting options, including options that would protect
10 the reporting party's identity from being revealed to
11 other inmates, the following specific reporting options
12 will be afforded: direct verbal report to any JCSO
13 staff member, contractor, vendor, other county
14 employee, or JCSO volunteer; direct written report to
15 any staff member, contractor, vendor, other county
16 employee, or volunteer may be completed through the
17 U.S. mail, notes, grievance, or any other written
18 method, or through the inmate telephone system using
19 our tip line.

20 Investigative procedures. All suspected,
21 threatened or reported acts of sexual assault, sexual
22 violence, sexual misconduct, or sexual contact that

1 occur in the detention facility, or any other location
2 where inmates are housed, work, or are providing
3 services, will be investigated in accordance with
4 established Jefferson County Sheriff's Office
5 investigative standards and protocols, as dictated by
6 the Criminal Investigations Division duty supervisor
7 and case investigator.

8 Crime scene and evidence protection. All
9 Jefferson County Sheriff's Office employees will adhere
10 to established policies and procedures to ensure that
11 any and all crime scenes and any and all items of
12 evidence are protected from contamination.

13 Victim and witness considerations. Inmate
14 victims are entitled to the same level of statutory
15 victim-advocacy services as any other victim. For this
16 reason, any perpetrated act that violates Colorado
17 revised statutes where a victim is identified, the on-
18 duty Detention Division supervisor will immediately
19 notify our victim advocate supervisor and provide
20 information to the supervisor on all identified victims
21 of each incident.

22 Training and orientation. All newly hired

1 JCSO Detention Service Division employees will attend a
2 training session specific to the issues surrounding
3 sexual assault, sexual violence, sexual misconduct, and
4 sexual contact, at least once per calendar year. All
5 Detention Service Division employees, to include all
6 contractors, vendors, and volunteers, will be provided
7 with a minimum of one hour of in-service training that
8 presents attendees with refresher training on the
9 topics presented for newly hired employees.

10 We have a forty-hour minimum for our sworn
11 officers and twenty- to thirty-hour for our civilians
12 that we offer on in-service training each year
13 annually.

14 Compliance procedures. In each case of
15 suspected, reported, threatened, or perpetrated
16 incident of sexual assault, sexual violence, sexual
17 misconduct, or sexual contact on any inmate, there will
18 be an administrative review conducted to determine
19 proper policy and procedure adherence.

20 In conclusion, I hope I have provided you with
21 useful information about how the Jefferson County
22 Sheriff's Office approaches the prevention,

1 investigation, and reporting of all sexual misconduct
2 in our facility.

3 We are very committed to our zero-tolerance
4 policy in this matter. We will continue to review and
5 improve our policies and practices to ensure that we
6 continue to provide a safe and secure environment for
7 the inmates housed in our facility and our staff as
8 well.

9 I'd like to thank the members for this
10 opportunity. Thank you.

11 DR. WILKINSON: Thank you, Chief Mundell.
12 Captain Gittins, do you have anything to add?

13 MR. GITTINS: No, sir. I can answer any
14 questions you might have.

15 DR. WILKINSON: All right, good.

16 MS. SEYMOUR: Thank you for your testimony.
17 It is a breath of fresh air. When I read it over the
18 last couple of days, it just made me feel really proud
19 of you all and the work you are doing. I have to say
20 when I was looking at how you do things, you have a
21 really good orientation program that is provided by
22 counselors and a good screening process. Whenever

1 there is a report, you have the involvement of a victim
2 advocate supervisor, which is within your Sheriff's
3 Office, which is also unique.

4 The layer on top of that is when you talk
5 about crime-victim rights and services and talk about
6 Colorado. They are like considered the Zeus of victim
7 rights and services in the entire country. Your state
8 is known for that.

9 That is kind of what I read into your
10 testimony. Is there anything I am missing on why you
11 have low incidence and why things seem to be going
12 quite well in terms of compliance with your department?

13 MS. MUNDELL: I appreciate your comments. I
14 can only attribute it to the staff that we have working
15 there. We do take training very seriously. I
16 mentioned in my testimony we are an accredited agency.
17 We are also accredited on our law enforcement side; our
18 medical unit inside the jail is NCCHC accredited; our
19 lab is accredited. We are just finishing up getting
20 our communication dispatch center. We are a full-
21 service sheriff's office.

22 When it comes to audits, checks and balances,

1 policies and procedures, we do a very good job,
2 although no one is perfect. We certainly are not. We
3 have had our challenges. It does force us, I guess, to
4 ensure that our policies are up to date.

5 When we first instituted the PREA policies, we
6 revised them in 2010, didn't change a lot of things,
7 but there were a few things that we had seen as changes
8 came during all the PREA discussions. We tried to keep
9 up.

10 We take very seriously our in-service
11 training; due to our national accreditation, we have
12 to. I think it makes staff much more comfortable as
13 well.

14 MS. SEYMOUR: Thank you for that. You also
15 said in your testimony that you did have one case of
16 inmate-on-inmate sexual victimization that was
17 substantiated. Would you mind just giving us a little
18 overview of the outcome of this case? Did it result in
19 discipline or prosecution, anything to that degree?

20 MR. GITTINS: It did. It was founded to be an
21 unwanted touching sort of situation between two
22 inmates. They were obviously separated immediately.

1 It was thoroughly investigated and found to be a crime
2 had occurred.

3 They were separated and put into segregation
4 housing, and then criminal prosecution had to be
5 delayed because the suspect in the case was a contract
6 hold, a federal marshal inmate, and their protocol is
7 we can't add a new charge until their federal charge is
8 done.

9 This particular inmate went to a disciplinary
10 hearing internally, and there was internal discipline,
11 but for the criminal part of it, that inmate is still
12 in a facility, a federal facility in Texas waiting for
13 that. There is a warrant in the State of Colorado for
14 this charge.

15 MS. SEYMOUR: Will that go on his federal
16 record across jurisdictions, that this was
17 investigated? How does that work?

18 MR. GITTINS: The Marshals Service would make
19 him aware of what's going on. Sometimes they frown
20 upon us charging, but we do that anyhow because it is a
21 crime in Colorado.

22 MS. SEYMOUR: Good for you.

1 MR. GITTINS: It was actually females, suspect
2 and victim.

3 MS. SEYMOUR: My last question, were there any
4 reported claims of staff sexual misconduct at the
5 detention facility in 2011/2012 that were
6 substantiated, prosecuted?

7 MS. MUNDELL: None.

8 MS. SEYMOUR: Wow.

9 DR. CHRISTENSEN: Are you all a direct-
10 supervision facility?

11 MS. MUNDELL: We are both. We have a direct-
12 supervision facility, and we also have a
13 maximum/minimum lock-down facility as well.

14 DR. CHRISTENSEN: Linear, podular?

15 MS. MUNDELL: Pod.

16 DR. CHRISTENSEN: Officer in the control room,
17 another making tours, that kind of thing?

18 MR. GITTINS: Correct.

19 MS. MUNDELL: Correct.

20 DR. CHRISTENSEN: Do you see any difference
21 between the management of those two types of
22 supervision?

1 MS. MUNDELL: There is a difference between
2 a --

3 DR. CHRISTENSEN: Other than the obvious
4 physical. I'm talking in terms of being able to follow
5 up and make sure PREA standards are met, things like
6 that.

7 MS. MUNDELL: No, I think across the board, it
8 is relatively the same. The supervisors are very
9 diligent about doing walk-throughs; lieutenants are
10 diligent. I have two captains, and I have lieutenants
11 and managers. One of the things that I am proud of is
12 they do get in there, and they have communication with
13 the inmates on both sides, the modular side and the
14 direct supervision side. They are pretty successful.

15 Our counselors are always -- each inmate is
16 assigned a counselor. They are pretty much in tune
17 with wanting to see counselors. We have over one
18 hundred volunteers that come in as well and provide
19 numerous services, clergy, AA, NA, father classes,
20 domestic violence, all kinds of things.

21 There are plenty of outlets for them to reach
22 out to.

1 DR. CHRISTENSEN: If you could attribute one
2 thing to why you have such a low incidence of sexual
3 victimization within your jail, what would it be? One
4 specific practice.

5 MS. MUNDELL: Education and training, staff
6 and inmates. Mainly because we actually hit the
7 inmates the minute they come into the booking process.
8 Obviously, it's short term. We book in roughly 25,000
9 a year.

10 Through every booking process, we take care of
11 the complete process, medical, counseling, everything
12 in one area of our booking unit. We are not moving
13 them throughout the jail until everything is finished
14 there, try to get appropriate housing identified as
15 quickly, within seventy-two hours.

16 We have pamphlets that we give out to each
17 inmate that is also handed out, and we have the
18 orientation books that we give them.

19 DR. CHRISTENSEN: Thank you.

20 DR. WILKINSON: We are struggling here to find
21 tough questions to ask you. You have covered just
22 about everything.

1 MS. SEYMOUR: Are any of your staff trying to
2 help out with like the PREA Resource Center, maybe
3 looking to work on audits, things like that, to spread
4 your goodwill to others?

5 MS. MUNDELL: One of our lieutenants is a PREA
6 instructor for the Colorado Sheriff's Association. She
7 goes to all their annual training, for either new
8 sheriffs or retraining, and trains them, and therefore,
9 she trains us. We do have people involved in that.

10 MS. SEYMOUR: Thank you.

11 DR. WILKINSON: My notion is the two of you
12 are so non-assuming, there has to be a bigger story to
13 tell about your success. I think that is what Anne was
14 trying to get at, how to share it.

15 Doing a story with American Jail Association's
16 award winning magazine or something that would tend to
17 make sense.

18 You live in one of the most beautiful counties
19 on the planet and have one of the best tasting beers on
20 the planet as well, with Coors being headquartered
21 there.

22 MS. SEYMOUR: I didn't know that.

1 (Laughter.)

2 DR. WILKINSON: Nevertheless, it sounds like
3 you are really on top of all this, and if there are
4 some trade secrets, at some point we would love to know
5 more about it.

6 MS. MUNDELL: Okay, I appreciate that.

7 MS. SEYMOUR: We appreciate your testimony.

8 MS. MUNDELL: Thank you.

9 DR. WILKINSON: Thank you so much for being
10 here.

11 Dr. Beck, back to you again. Thank you so
12 much for being patient with us.

13 STATEMENT OF DR. ALLEN BECK,
14 BUREAU OF JUSTICE STATISTICS, ON CAMERON
15 COUNTY CARRIZALES-RUCKER DETENTION CENTER

16 DR. BECK: A remarkable achievement,
17 particularly for such a large facility.

18 I'm here to talk about another facility with
19 the same level of achievement, and that is the Cameron
20 County Carrizales-Rucker Detention Center, an even
21 larger facility than yours, 1,518 adults in that
22 facility when we were there.

1 Let me say that it is a facility that perhaps
2 is the largest facility housing Hispanic inmates, over
3 ninety percent of the inmates at that facility are of
4 Hispanic origin. It is a unique facility to understand
5 victimization for minority populations, perhaps not a
6 minority population in Brownsville, Texas, but
7 nevertheless in the course of jails across the country.

8 The Cameron County Detention facility is in
9 Brownsville, Texas, the southern-most tip of Texas. It
10 is a big city. It has some of the same issues related
11 to some of the facilities we heard from today, turn
12 over, fifteen to twenty times; the flow through the
13 facility is substantial as a jail, as a detention
14 center.

15 We know that the one-day count doesn't fully
16 represent the challenge of managing a facility that has
17 such an intake and flow through and the complexities of
18 managing that intake.

19 Obviously, it is a local facility, a county
20 facility, and necessarily getting staff from the
21 community. Drawing staff from the community doesn't
22 necessarily mean that the staff you have are proximate

1 to the inmates that are being supervised, that it
2 causes inherent problems.

3 It is interesting to note such a large
4 facility coming out among the facilities with the
5 lowest rates. We had thirty-four facilities that
6 actually reported no incidents and identified four that
7 we could identify statistically as uniquely low.

8 Those thirty-two other facilities with no
9 incidents, if we had done the sample, a survey again,
10 we had a chance of obtaining incidents being reported,
11 that our precision wasn't sufficient to rule out the
12 possibility of a higher rate should we survey again.

13 The confidence intervals around those with
14 zero incidents would have been too large to distinguish
15 uniquely from other jails. In the case of these four,
16 we were able to do that.

17 We were in 350 jails, four of them that we
18 could identify as uniquely low. We conducted 262
19 interviews in the Cameron County facility representing
20 about a seventy-two percent response rate, better than
21 the national average.

22 We found one inmate who made an allegation of

1 inmate-on-inmate abusive sexual contact, one out of the
2 262 completed interviews.

3 It would be a great opportunity to understand
4 from the Sheriff's Office how that facility is managed
5 and how they achieve such a low rate. I hope by
6 leaving the record open, that will be possible.

7 As for the characteristics of the Cameron
8 County facility as compared to facilities elsewhere, I
9 mentioned over ninety-two percent of the inmates held
10 were Hispanic, in comparison to twenty-two percent
11 nationwide. We had very few White or Black, seven
12 percent in combination, compared to sixty-eight percent
13 nationwide. It is a very homogeneous population. It
14 is a less-educated population than we would see in
15 other jails, almost two-thirds of inmates held there
16 had not completed high school.

17 It is a slightly younger population than we
18 find in other facilities, over a third of inmates are
19 twenty-four years of age or younger, as compared to
20 about a quarter of inmates in other facilities.
21 Slightly younger, consequently lower representation of
22 the older ages.

1 Few individuals being held at this facility
2 are considered violent offenders, and that is, eleven
3 percent were considered violent in comparison to about
4 twenty-two percent nationwide in local jails.

5 Obviously, the proportion of violent in jails
6 is much lower than the proportions of violent in
7 prisons for quite obvious reasons.

8 What we have in the Cameron County facility is
9 a facility that is largely holding property offenders
10 and public-order offenders. Public-order offenders are
11 the things that often times jails encounter, the DWIs,
12 DUIs, public misconduct, vagrancy, a variety of
13 violations against the public order as opposed to
14 violations against people, against individual victims.

15 The drug population is not particularly large
16 relative to other jails. It is about a quarter of the
17 jail population being held for drug law violations.
18 That is about the same as in jails on average
19 nationwide.

20 Truly, it is about property offenders,
21 burglars, auto thieves, and public-order offenders
22 being held.

1 We see in that facility that about two-thirds
2 are being held as sentenced inmates. That is, they
3 actually are serving time for an offense. Nationwide,
4 it is almost the reverse. If you talk to inmates, it
5 is about 50/50. That is, half are there serving time
6 in a jail on a sentence; the other half are awaiting
7 trial.

8 If you look at administrative records, it is
9 skewed slightly, more towards pre-trial detention and
10 non-sentenced inmates.

11 Very low set of factors related to prior
12 assaults, as I mentioned before. Men report relatively
13 low rates of prior sexual assaults in jails. That is
14 the case in Cameron County. Six percent of them had
15 experienced some sexual assault in their past.

16 Two-thirds of them had been previously
17 incarcerated. Jail populations house inmates that come
18 through, kind of circle through. It is not surprising
19 here that the Cameron County Jail had about two-thirds
20 reporting some prior incarceration, whereas in jails
21 nationwide, it is about seventy percent.

22 Finally, with respect to mental health status,

1 there is nothing remarkable about Cameron County Jail.
2 That is, they don't necessarily have lower prevalence
3 rates of mentally ill or mentally distressed inmates.
4 It is about the same.

5 We do see lower rates of inmates reporting
6 having received from a mental health professional a
7 diagnosis or suggestion they had some emotional or
8 mental disorder; about a quarter of them were
9 reflecting such past experiences.

10 I think what we have here is a unique
11 population and I think it is a great opportunity to
12 learn from it, and I hope the Panel is successful in
13 obtaining more information.

14 DR. WILKINSON: Thanks, Dr. Beck. Any
15 questions?

16 DR. CHRISTENSEN: No.

17 DR. WILKINSON: Thanks to all our panelists.
18 We appreciate your testimonies today.

19 At this time, we want to conclude today's
20 session on the hearings on jails with low incidence of
21 sexual victimization, and it now stands in recess.

22 We will continue shortly with the hearing on

1 high incidence prisons. Thank you so much.

2 We can invite Mr. Delaney and Ms. Trovillion
3 up.

4 HEARINGS ON HIGH INCIDENCE PRISON FACILITIES -
5 IMPLEMENTATION OF PREA NATIONAL STANDARDS

6 DR. WILKINSON: The Panel reconvenes its
7 hearings on prisons with high incidence of sexual
8 victimization, and we will swear in our witnesses.

9 Do you swear or affirm that the testimony you
10 are about to give is the truth, the whole truth, and
11 nothing but the truth?

12 MR. DELANEY: I do.

13 MS. TROVILLION: Yes.

14 Whereupon,

15 JOSHUA DELANEY and JENNI TROVILLION

16 were called as witnesses and, having first been
17 duly sworn, were examined and testified as follows:

18 DR. WILKINSON: Thank you. Mr. Delaney, you
19 are up. We appreciate the two of you. I wasn't being
20 facetious earlier when I said you all have all the
21 PREA-audit answers. I know you both have a long
22 history of helping to make sure the audits happen and

1 happen smoothly, and training the auditors.

2 Mr. Delaney is a senior trial attorney, Civil
3 Rights Division, U.S. Department of Justice. Ms.
4 Trovillion is co-director, National PREA Resource
5 Center.

6 Thanks very much.

7 STATEMENT OF MR. JOSHUA DELANEY,
8 SENIOR TRIAL ATTORNEY, CIVIL RIGHTS
9 DIVISION, U.S. DEPARTMENT OF JUSTICE

10 MR. DELANEY: Thank you, Mr. Chairman. Thank
11 you, panelists. First of all, thank you for the
12 opportunity to testify before you today.

13 There were a couple of factual misstatements
14 on the content of the standards that I'd like to
15 quickly clarify. One of the witnesses indicated that
16 the first year of the first audit cycle concludes in
17 2015, when in fact it concludes on August 19, 2014, of
18 this year.

19 The second one, and Eliza Romsey from JJDP
20 brought this to my attention -- another witness
21 indicated that the youthful inmate standard required
22 that inmates eighteen-years old be separated from the

1 rest of the population. I'm sure that was just a
2 verbal oversight. As we know, the separation
3 requirements are eighteen and over from seventeen and
4 younger.

5 As you indicated, Mr. Chair, I'm a senior
6 trial attorney with the Department of Justice's Civil
7 Rights Division. I was a vice-chair of the Attorney
8 General's PREA Working Group, the DOJ entity under the
9 leadership of the Office of the Deputy Attorney General
10 that drafted recommendations to the Attorney General
11 regarding the final PREA standards.

12 As part of my role in that group, I was a
13 primary drafter of the final PREA auditing standards
14 and proposed internal auditing process.

15 I'd like to provide a bit of additional
16 context for my other DOJ activities that are relevant
17 to PREA. Prior to my involvement in developing the
18 final PREA standards, I worked exclusively on ensuring
19 lawful conditions of confinement in adult and juvenile
20 confinement facilities, and initiated a number of
21 investigations involving allegations of a pattern or
22 practice of custodial sexual misconduct under the Civil

1 Rights Act, the Civil Rights of Institutionalized
2 Persons Act, also known as CRIPA, and the Violent Crime
3 Control in Law Enforcement Act of 1994.

4 As an aside, the Civil Rights Division's
5 activities indicate that jurisdictions across the
6 country continue to struggle with issues relating to
7 pervasive sexual misconduct.

8 The Division has brought a considerable number
9 of cases against troubled facilities and has a number
10 of additional pending investigations.

11 In just two investigations we initiated,
12 sixteen staff had been charged with crimes relating to
13 sexual abuse of confined girls ages thirteen through
14 sixteen. Of the sixteen indicted staff, three were
15 supervisors, including one facility superintendent, one
16 night shift lieutenant, and one sergeant.

17 The combined seventy-three criminal counts
18 involved charges of molestation, indecent behavior,
19 unlawful lewd behavior, criminal malfeasance, and
20 obstruction of justice.

21 If the PREA standards had been finalized and
22 in place at these facilities, I am confident that most

1 if not all of these incidents would not have occurred.

2 Since the standards were initially published
3 on May 17, 2012, I've been deeply involved in
4 implementing the standards. My duties have included
5 among other things developing interpretative guidance,
6 clarifying various aspects of the standards and
7 applying the standards to a variety of fact-specific
8 real-life scenario's.

9 In addition, I've been involved in outreach,
10 training, and presenting to dozens of national and
11 regional stakeholder conferences and webinars.

12 Finally, I have participated in the
13 development of the PREA auditing process, including the
14 auditor-certification process.

15 In the latter role, I have participated in the
16 development of the audit methodology, the audit
17 instrument, and the DOJ auditor-certification process.
18 I participated in a number of PREA auditing beta tests
19 in various jurisdictions and have observed a number of
20 actual PREA audits. I have also participated as a lead
21 faculty in every PREA auditor training class.

22 I have been asked to testify before you today

1 regarding three things, the development and
2 implementation of the PREA auditing standards; two,
3 current activities of the PREA Working Group; and
4 three, the DOJ's ongoing role in enforcing compliance
5 with the final standards.

6 In developing the auditing process, we
7 incorporated several driving principles. I've
8 highlighted six of these as key principles that were
9 kind of overarching and we considered very important.

10 The first is the Department of Justice retains
11 strong oversight of both the audit function and the
12 audit-certification process. The Department does not
13 have resources or staff or authority to send its staff
14 into facilities to ensure compliance. What the
15 Department has done is retained the ability to decide
16 who gets to be an auditor and who doesn't.

17 To put it succinctly, the Department holds the
18 license for the DOJ-certified auditors and the DOJ can
19 take that license away if there is good cause found.

20 Under the strong DOJ oversight function is the
21 auditor's requirement to obtain and maintain
22 certification. As I indicated, the Department of

1 Justice holds the license of the auditor. The auditors
2 must comply with the exact uniform auditing methodology
3 created by the PREA Resource Center and the Department
4 of Justice.

5 We have also created and retained within the
6 auditing standards and the audit methodology an ability
7 to audit the auditor and to audit audits.

8 The practical implications there are if we
9 receive, for example, a complaint that an audit was
10 conducted unfairly or substantiating/deviating
11 significantly from the prescribed methodology, or it
12 was unfair or unethical in some way, the DOJ has the
13 ability to audit the audit or a peer review, where we
14 basically look at what the auditor did and make an
15 independent determination about whether the auditor
16 acted appropriately.

17 Some of the standards for audit-the-auditor
18 function are the auditor is required to obtain copies
19 of any relevant documents during the course of the
20 audit and to keep and retain any documentation relied
21 upon in making the auditor's determination. That
22 includes interview notes, any relevant underlying

1 documentation, including electronic media or other
2 types of information.

3 We can then contract with or hire another
4 auditor or a DOJ contractor to use that information to
5 do a thorough kind of reconstruction of that audit.

6 I believe, as I indicated, the DOJ retains the
7 ability to de-certify the auditor for cause. Auditors
8 must be re-certified every three years. Auditors are
9 subject to random peer review as well as for-cause peer
10 review or peer review in the face of complaints by
11 agencies that have contracted for the audit.

12 The second of the six principles that were
13 high on the list is auditor independence. We know by
14 the standards that the auditor must be external to the
15 agency being audited, outside of, and external to.
16 That there is a prohibition on any financial
17 compensation received by the auditor in the three-year
18 period prior to the conduct of the audit and the three-
19 year period following the conduct of the audit, except
20 for compensation received for the conduct of other PREA
21 audits.

22 I think there was some discussion earlier on

1 circular audits. There is a relationship between
2 circular or reciprocal audits which I would be happy to
3 explain at any point.

4 The Department has issued guidance
5 specifically restricting a certified auditor from one
6 confinement agency conducting an audit of a facility at
7 another confinement agency when there is direct
8 reciprocity. That is, the second agency then sends one
9 of its auditors back to Agency A.

10 The reason that was put in place is because
11 obviously we wanted to minimize the potential for quid-
12 pro-quo-type relationships.

13 DR. WILKINSON: You can do a circular audit
14 but not a linear audit?

15 MR. DELANEY: Essentially correct. In fact,
16 there is not a complete prohibition on reciprocal
17 audits. They just have to be separated in time by one
18 year.

19 Agency A auditor audits Agency B, then Agency
20 B would have to wait one year before sending one of its
21 auditors to go back and do an audit of Agency A.

22 With the circular auditing, which I think has

1 been expressly approved by the Department, an auditor
2 for Agency A may audit a facility at Agency B. An
3 auditor from Agency B may conduct an audit of a
4 facility from Agency C, and an auditor from Agency C
5 may do an audit of Agency A.

6 While still posing the possibility for some
7 type of conflict of interest, we thought that was
8 sufficiently attenuated to minimize that type of quid-
9 pro-quo relationship, and certainly we had to draw the
10 line somewhere.

11 Certainly, there are cost considerations and a
12 desire to minimize burdens on agencies for the conduct
13 of the audits.

14 My understanding is currently there are a
15 number of states that have developed consortiums which
16 intend to engage in this type of circular auditing.
17 Even local governments, sister governments, if you
18 will, would be permitted to engage in the same type of
19 circular auditing.

20 The final point under auditor independence is
21 the Department has issued guidance that agency-
22 affiliated auditors may not conduct a PREA audit of a

1 contract facility, where that agency holds inmates.

2 There is often a great reliance on contract
3 facilities to hold inmates, and in many cases, there
4 would be pressure to retain that ability to send
5 inmates to a particular facility. There is kind of a
6 built in disincentive to find problems with that
7 facility.

8 The third key principle that we incorporated
9 is the comprehensiveness and thoroughness of the audits
10 and the auditor review, which encompasses complete
11 facility access. We are talking about access to the
12 entire grounds. We are talking about access to any
13 staff at the facility level, any management, clinical
14 staff, agency staff, agency investigators, agency PREA
15 coordinators and the like.

16 The auditor can ask for any documents and is
17 entitled to anything relevant to the conduct of their
18 duties.

19 Another key point is the auditor gets to
20 select the sampling of the documents and the inmates
21 they wish to interview. This is different than some
22 audit methodologies where an agency may provide

1 examples of compliance or may self-select, do agency
2 self-selected sampling's that they provide to the
3 auditor. No, the auditor gets to decide which
4 sampling's to use and they pick the samplings.

5 There is also an ability within the standards
6 for auditors to have private communications with
7 inmates, both while at the facility doing in-person
8 interviews, as well as an implied requirement that a
9 facility post notice there is an upcoming audit, the
10 name of the auditor and contact information.

11 Inmates must have the ability to communicate
12 through correspondence confidentially with the auditor
13 prior to the actual on-site portion of the audit.

14 Auditors are also required to attempt to
15 engage local advocacy communities or victim-rights
16 organizations who may have relevant information
17 regarding conditions at the facility relating to sexual
18 abuse.

19 The final key element under comprehensiveness
20 is that the standards specifically place the burden on
21 the agency to demonstrate compliance with the
22 standards, not on the auditor to prove the agency is

1 not complying.

2 The significant thing here is, as we all know,
3 it is impossible to prove a negative, or very difficult
4 in any event. This prevents the auditor being put in a
5 situation where they are required to demonstrate that
6 an agency is not complying with the standards in the
7 face of a complete absence of information, documents,
8 or information provided by the agency.

9 Audits are not primarily a means of shaming an
10 agency for not complying with the standards, rather the
11 audits are about making compliance a goal of the audit
12 process.

13 Important to that is if at the conclusion of
14 the on-site audit and issuance of the initial audit
15 report there are identified deficiencies by the
16 auditor, there begins an automatic 180-day corrective
17 action period, where the auditor and the agency jointly
18 develop a corrective-action plan which is detailed,
19 which provides for specific remedial measures designed
20 to get the agency into compliance and various time
21 lines for deliverables to the auditor.

22 The auditor has up to 180 days to demonstrate

1 compliance with those standards or the auditor has up
2 to 180 days to verify that the agency has completed the
3 remedial measures in order to come into compliance.

4 At some point by the conclusion of that 180-
5 day period, the auditor finalizes the audit report,
6 updating any additional areas of compliance, and that
7 report becomes final, and then only at that point is
8 the agency required to publish the audit report on the
9 agency's website.

10 Fifth, the architecture of the standards
11 include a term I call substantive incorporation of
12 audits. The audit standards are every bit in our view
13 as substantive as the specific standards that proceed
14 it.

15 A facility may not hold itself out to be PREA-
16 compliant if they don't subject themselves to external
17 scrutiny under the audit process. In other words, a
18 facility can't say, "Well, we're completely PREA
19 compliant; we just choose not to be audited." That is
20 not one of the possibilities. There is substantive
21 incorporation.

22 Lastly, transparency. The first aspect is the

1 PREA Resource Center and the Department of Justice has
2 developed audit methodology that is currently publicly
3 available, and this includes -- I think Ms. Trovillion
4 will talk a little more in-depth about what the audit
5 methodology includes.

6 Essentially, you can go on to the PREA
7 Resource Center's website right now; you can see an
8 audit map; audit instructions to the auditor; model
9 interview questions for inmates, for specialized
10 categories of inmates, for staff, specialized
11 categories of staff, for the PREA compliance manager,
12 for the superintendent or warden, et cetera.

13 There is no reason an agency should be
14 surprised when an auditor shows up at the facility and
15 starts asking for particular documents.

16 Transparency on the back end, in that the
17 final audit reports must be published on the agency's
18 website if they have one, and if not, they must be made
19 available through other means.

20 By way of reference, I'll provide a quick
21 overview of the practical mechanics of the actual audit
22 process. The PREA Resource Center maintains a list of

1 all currently certified PREA auditors on its website,
2 including their certification types and locations.

3 Agencies requiring an audit contacts one or
4 more of the listed auditors. After contacting,
5 interviewing, and negotiating the terms of the audit
6 contract, an agency engages an auditor for one or more
7 facility audits. A time line is then developed for
8 each audit benchmark, including the on-site portion of
9 the audit.

10 The agency posts notice of the upcoming audit
11 as well as auditor contact information, as I described,
12 in housing units and other areas where inmates may
13 access that information.

14 Inmates are permitted -- required to be
15 permitted to send correspondence to the auditor in a
16 confidential manner to the same extent they could send
17 to their attorney.

18 In addition, the auditor sends the agency a
19 pre-audit questionnaire and an advanced document
20 request. There is a lot of work that gets done before
21 the auditor ever shows up at the facility.

22 In addition, the auditor spends a number of

1 days at the facility touring the inmate areas,
2 interviewing staff and inmates, requesting and
3 reviewing additional documentation and information, and
4 providing a preliminary exit overview at the on-site
5 conclusion.

6 The auditor follows up with the agency to
7 obtain any additional information or documents or
8 conduct any additional required interviews, makes
9 initial audit determinations, and submits an audit
10 report to the agency, which is generally within thirty
11 days of the on-site portion.

12 If the agency meets or exceeds all PREA
13 standards, the report is final and is published by the
14 agency on its website.

15 As we discussed, if the report indicates
16 deficiencies, that is when the automatic 180-day
17 corrective-action period kicks in.

18 I will now provide a brief overview of the
19 current PREA Working Group status and activities. On
20 August 27, 2013, the Department of Justice established
21 a new PREA Management Office within the Office of
22 Justice Programs and specifically within the Bureau of

1 Justice Assistance.

2 The office is managed by internal PREA Manager
3 Thurston Bryant, and Associate Deputy Director Ruby
4 Qazilbash. Both Mr. Bryant and Ms. Qazilbash have been
5 very diligent and talented in assuming these new
6 duties.

7 The office is also overseen by BJA Director
8 Denise O'Donnell, OJP Principal Deputy Assistant
9 Attorney General Mary Lou Leary, and OJP Assistant
10 Attorney General Karol Mason.

11 All five individuals have demonstrated
12 thoughtfulness and a deep commitment in successfully
13 implementing all aspects of PREA.

14 The PREA Management Office is now responsible
15 for, among other things, implementing the auditor-
16 certification process, convening a PREA Working Group
17 for issues of interpretative guidance that required
18 deliberation, and of course, managing the state
19 compliance-certification process, the potential state
20 grant-reduction process, and the PREA Resource Center
21 cooperative agreement and subgrants.

22 As with the prior iteration of the PREA

1 Working Group, the current working group is comprised
2 of representatives of various stakeholder components
3 within DOJ, and I am the primary representative of the
4 Civil Rights Division within the working group.

5 Since the new structure went into effect, the
6 office has convened two working group meetings,
7 consulted with the Civil Rights Division and other
8 stakeholder components on several occasions, and has
9 resolved an additional five interpretative issues,
10 expanding the knowledge base maintained on the PREA
11 Resource Center's website and in particular their FAQ
12 section.

13 These items include resolving issues regarding
14 the governor's certification and the conduct of audits.

15 In the aggregate, the DOJ has issued forty-one
16 official statements of interpretative guidance since
17 the standards were published, as well as hundreds of
18 fact-specific, informal interpretative inquiries.

19 Additional FAQ items are pending and expected
20 to be finalized in the near term. However, much work
21 needs to be done to address additional pressing issues
22 of interpretative guidance.

1 Future working group meetings are expected to
2 occur at a minimum of a monthly basis going forward,
3 and I believe in the near term, on a bi-monthly basis
4 going forward.

5 Finally, I will discuss DOJ's role in
6 enforcing compliance with the PREA standards. While
7 the PREA standards are applicable to facilities
8 operated by or on behalf of the Department of Justice
9 and state and local governments, the DOJ has varying
10 roles with respect to each level of government.

11 As we know, the standards were immediately
12 binding on Federal Bureau of Prisons. As a component
13 of the Department of Justice, the Attorney General has
14 inherent authority to assure compliance within the
15 Bureau. The BOP has been proactive in implementing the
16 PREA standards and was the first agency to contract for
17 and be subject to facility audits.

18 To date, twelve Bureau facilities, including
19 two complexes with multiple facilities, have completed
20 the onsite portion of audits, all by external DOJ-
21 certified auditors as required by the standards.

22 With respect to state-operated facilities or

1 private facilities operated on behalf of a state, the
2 DOJ has a number of obligations set forth in the PREA
3 statute.

4 First, the DOJ is responsible for
5 administering a potential five percent annual reduction
6 in any DOJ grant funds that may be used for prison
7 purposes within a state.

8 The DOJ is required to impose the reduction if
9 a governor fails to submit either a certification that
10 the state agencies are in full compliance with the
11 standards or an assurance that the potential funding
12 reduction will be used to achieve full compliance in
13 future years.

14 Second, the DOJ is required to publish an
15 annual report listing each state that is not in full
16 compliance with the standards, and the statutory
17 deadline for that to happen is September 30 of each
18 year.

19 With respect to facilities operated by or on
20 behalf of local governments, the DOJ provides resources
21 to all agencies, including local agencies, that are
22 attempting to comply with the standards.

1 For example, the DOJ-funded PREA Resource
2 Center provides free technical assistance to agencies
3 for PREA implementation purposes.

4 In addition, the DOJ and the PREA Resource
5 Center have provided limited grant funding for local
6 agencies attempting to come into compliance with one or
7 more of the standards.

8 While the DOJ has no direct authority to
9 enforce compliance with the standards at the local
10 level, the standards themselves incorporate many of
11 these facilities pursuant to the contracting standard.

12 Specifically, the standards require that any
13 public agency, DOJ, state or local, that contracts with
14 other public or private agencies for the confinement of
15 its inmates must include in any new contract or
16 contract renewal (1) a requirement that the contracted
17 agency comply with the PREA standards, and (2) a
18 requirement that the contracting agency be permitted to
19 conduct contract monitoring to ensure compliance with
20 the standards.

21 Because many DOJ and state agencies contract
22 with local and private agencies for bed space, these

1 local facilities must ultimately be PREA compliant or
2 risk losing its contracts. Conversely, DOJ and state
3 agencies that fail to implement these contractual
4 requirements in its own contracted facilities will
5 themselves be considered out of compliance with the
6 standards.

7 Finally, the DOJ -- I said finally three
8 times, I think, already.

9 (Laughter.)

10 MR. DELANEY: The DOJ has a variety of other
11 obligations that may play a role in ensuring compliance
12 at all levels of government. For example, the DOJ is
13 responsible for managing the PREA Resource Center,
14 which has been instrumental in developing the auditing
15 process and providing technical assistance.

16 In addition, the DOJ is responsible for
17 considering audit appeals petitioned by confinement
18 agencies. The standards also permit the DOJ to send a
19 recommendation to an agency for an expedited audit when
20 the DOJ has reason to believe that a particular
21 facility may be experiencing problems relating to
22 sexual abuse.

1 While the recommendations for an expedited
2 audit are not enforceable by the DOJ, such a
3 recommendation will at a minimum alert the confinement
4 agency and perhaps other key stakeholders, that a
5 facility may be experiencing pervasive problems
6 relating to sexual abuse.

7 I would note also the various DOJ divisions,
8 offices, and components enforce laws that protect the
9 federal rights of inmates.

10 Within the Civil Rights Division alone, the
11 Special Litigation Section, the Criminal Section, the
12 Disability Rights Section, and the Federal Coordination
13 and Compliance Section all enforce statutes that
14 substantively overlap with one or more aspects of the
15 PREA standards.

16 In addition, the Special Litigation Section
17 has incorporated substantive provisions of the
18 standards into minimum remedial-measures provisions in
19 findings' letters, and in remedial consent decrees and
20 settlement agreements where agencies have been found to
21 engage in a pattern or practice of unlawful conditions
22 involving sexual abuse.

1 In conclusion --

2 (Laughter.)

3 DR. WILKINSON: You only get one "in
4 conclusion."

5 MR. DELANEY: I won't do any more "in
6 conclusion," I promise. I would like to put our
7 collective efforts in combating prison rape into some
8 context. Obviously, it will take a number of years to
9 adequately gauge the effectiveness of the standards in
10 reducing sexual abuse.

11 However, extrapolating from the recently
12 released BJS reports, if we can reduce sexual abuse in
13 prisons and jails by even ten percent, 6,890 fewer
14 state and federal prison inmates will be sexually
15 abused during the next twelve months; 2,750 fewer jail
16 inmates will be sexually abused during that year; and
17 6,725 fewer children will be sexually abused during
18 that time frame.

19 These numbers do not include the potential
20 reductions in sexual abuse among detainees in lock-ups
21 and among residents in community-confinement
22 facilities.

1 If the ten percent reductions were maintained
2 for a number of years, then necessarily there will be
3 hundreds of thousands of fewer incidents of sexual
4 abuse in the years coming forward.

5 However, I am increasingly optimistic that we
6 can collectively over time reduce inmate sexual abuse
7 in confinement facilities by twenty, thirty, or even
8 fifty percent.

9 I would like to thank this distinguished Panel
10 for your interest in these critical issues, and I look
11 forward to any questions you may have.

12 DR. WILKINSON: Thank you so much, counselor.
13 We will move on to Ms. Trovillion, and then we will
14 have questions for the two of you.

15 STATEMENT OF MS. JENNI TROVILLION, CO-DIRECTOR,
16 NATIONAL PREA RESOURCE CENTER

17 MS. TROVILLION: Thank you very much. Good
18 afternoon.

19 DR. WILKINSON: Just one "finally."

20 MS. TROVILLION: Okay, I'm going to watch it.

21 Thank you for the opportunity to testify
22 today, especially for a great hearing today and your

1 attention and dedication for what I know has been a
2 long day.

3 The National PREA Resource Center or PRC is
4 managed through a cooperative agreement between the
5 Bureau of Justice Assistance within the Department of
6 Justice and the National Council on Crime and
7 Delinquency or NCCD.

8 I'm an associate director with NCCD and serve
9 as the co-director of PRC, along side Michela Bowman,
10 who was unable to participate today. I'd like to
11 recognize Tara Graham is in the room today, and she is
12 a key PRC staff member and runs our targeted training
13 and technical assistance program, as well as an auditor
14 faculty trainer.

15 As a cooperative agreement partner, the PRC
16 works very closely with BJA staff, and I would first
17 like to thank BJA Director Denise O'Donnell, as well as
18 Ruby Qazilbash, Thurston Bryant, and the leadership of
19 the Office of Justice Programs for both their
20 collective dedication to PREA and their ongoing
21 supporting guidance in this endeavor.

22 The mission of the PRC is to assist state,

1 local, and tribal confinement facilities nationwide in
2 their efforts to eliminate sexual abuse by increasing
3 the capacity for prevention, detection, and responses
4 to incidents of sexual abuse, including services to
5 victims and their families.

6 The PRC serves as the central repository for
7 the research in the field on trends, prevention
8 strategies, as well as best practices in corrections.

9 Training and technical assistance resources
10 are available through the PRC's coordinated efforts
11 with our federal and other partners, and the PRC is
12 working to support the field in their implementation of
13 the national PREA standards.

14 The release of the final PREA standards in May
15 of 2012 initiated a tremendous level of activity from
16 the PRC. Since that time, the PREA has been entrenched
17 in providing assistance to the field, meeting urgent
18 needs, and increasing attention to the standards.

19 As requested, let me offer a few highlights of
20 the types and volumes of training and technical
21 assistance activities over the past eighteen months.

22 Before I get into that, let me also recognize

1 that there are two of PRC's training and technical
2 assistance provider partners in the room today, Andy
3 Moss from the Moss Group, and Bob Dumond representing
4 Just Detention International.

5 We have a number of other training and
6 technical assistance partners/providers who are very
7 important, but since they are in the room, I'd like to
8 at least point out they get a lot of the credit for the
9 work I am about to highlight.

10 Since the PRC website launched in May of 2012,
11 we have had over 180,000 total visits, nearly half of
12 those unique. We have offered fifty-one webinars. We
13 had more than 5,700 participants during the live
14 broadcast, and archives' views were over 13,000.

15 The topics focused on areas that were
16 determined to be priority areas in the comprehensive
17 needs-assessment done in early 2012, and the areas that
18 the webinars have focused on so far have included legal
19 liability, victim services, the role of victim
20 advocates, inmate education, LGBTI adults and youth,
21 the PREA toolkits, gender-responsive strategies, and
22 also the role of prosecutors, pre-trial motions, and

1 offender-focused trial strategies.

2 We have also offered twenty-six regional
3 training events. Agencies and facilities from all
4 fifty states plus the District of Columbia have
5 participated in at least one event, with several
6 jurisdictions participating in multiple offerings, and
7 nearly 370 separate entities were impacted through
8 these regional trainings.

9 The topics covered similar issues from our
10 needs-assessment, but the audit instrument, inmate
11 education, human resources and legal liability, gender
12 responsive strategies, victim services, investigations,
13 also investigation training for trainers, impact of
14 PREA on trial detention, and also specialized training
15 for medical and mental health care staff.

16 Building on these regional trainings, the PRC
17 has released comprehensive training curricula for
18 specialized investigations and the specialized medical
19 and mental health care staff, as well as the tribal.
20 We have curricula forthcoming on all the other regional
21 training areas that I mentioned as well as curriculum
22 for employee training that is targeted to meet the

1 employee-training standard, and human resources.

2 In early 2014, we have resources forthcoming
3 that include videos on cross-gender pat searches and
4 inmate education, a number of graphic novels, a
5 prosecutor's resource guide, confidentiality resources,
6 including a fifty-state survey, and a third-party
7 reporting fact sheet.

8 Beyond these targeted resources that are meant
9 to address the needs that we know are common across
10 jurisdictions, we also deliver training and technical
11 assistance at the request of jurisdictions. PRC has
12 received and responded to over 590 specific requests
13 for training and technical assistance, and more than
14 1,000 additional inquiries.

15 The top three requests focused on standards
16 implementation, policy assessments, and investigator
17 training. I should note in our protocol, we prioritize
18 facilities that have been identified through the BJS
19 surveys as having a high incidence.

20 The PRC also works to track standards
21 questions received from the field and informs BJA of
22 interpretative guidance needed from the DOJ PREA

1 Working Group and then expands our FAQ on the website
2 as that guidance becomes available.

3 The PRC also provides coaching to now near
4 fifty BJA PREA demonstration sites around the country.

5 In addition to the TTA activities, as Josh
6 mentioned, the PRC has provided forty-three grant
7 awards to locally operated entities, totaling nearly
8 five million in funds.

9 Those grants focus on improving leadership and
10 organizational culture, policy review and revision,
11 inmate education, establishment of victim-support
12 services, and data collection.

13 Another robust area of PRC contribution is in
14 supporting the Department's efforts to establish the
15 PREA audit, which Josh made reference to in his
16 testimony. The PRC and its audit work-group partners,
17 which include the American Correctional Association,
18 ACT Associates, and the National Commission on
19 Correctional Health Care, as well as other DOJ
20 representatives, including Josh Delaney and some
21 others, worked to develop four audit instruments to be
22 used by DOJ certified auditors.

1 The instruments for adult prisons and jails,
2 juvenile facilities, and community-confinement
3 facilities were all beta tested and are awaiting final
4 BJA approval. As Josh said, the instrument is
5 available on our website.

6 The audit instrument for lock-ups was beta
7 tested in December 2013 and is currently undergoing
8 final revisions.

9 The PRC is also developing an online audit
10 tool which will automate the completion of the facility
11 pre-audit questionnaire and the auditor's report, as
12 well as the collection, sharing, and retention of
13 documentation for both facilities and auditors. The
14 tool is in the final stage of development and is
15 currently undergoing a required security analysis at
16 the Department.

17 The PRC has developed the auditor training
18 curriculum and auditor application process. To date,
19 nearly 150 individuals have been trained. The first
20 two auditor training events were held in June and
21 November 2013. Our next training starts on Monday.

22 The PRC continues to receive and process

1 applications from perspective auditors to fill
2 subsequent auditor-training courses.

3 In 2014, with oversight from BJA, the PRC will
4 conduct six auditor trainings with the intent to train
5 600 additional DOJ-certified auditors. The PRC will
6 also provide auditor support through a help line and
7 frequent communication to keep auditors apprised of new
8 interpretative guidance from the Department.

9 Furthermore, the PRC intends to undertake
10 revisions of the audit instruments as necessary,
11 soliciting feedback from auditors and the field to
12 enhance efficiency of the audit and effectiveness.

13 Looking forward, the PRC has received
14 authorization from BJA to operate through September of
15 2016, and we are very excited about continuing the
16 opportunity to support PREA implementation efforts.

17 As part of our planning for this extension,
18 the PRC completed an analysis of incoming inquiries,
19 and it identified where our next round of resources
20 should focus. We requested input from our training and
21 technical assistance task group and providers, our
22 communications advisory group, and have contracted with

1 those entities for resources focusing on external
2 reporting and support services, cross-gender
3 supervision, implementation issues, youthful inmate
4 standard implementation, disabilities, and reducing the
5 use of protective custody.

6 We will also continue the operation of our
7 adult and juvenile PREA coordinator listservs, focus on
8 outreach to law enforcement and survivor support.

9 To secure these partnerships, the PRC released
10 a competitive solicitation and after a peer review
11 process and with concurrence from BJA, the PRC selected
12 a total of six organizations to subcontract with for
13 our ongoing training and technical assistance and
14 special projects.

15 Our collaborating organizations for TTA as of
16 January 1, 2014, include the American Jail Association;
17 the American University, Washington College of Law
18 Project on Addressing Prison Rape; the Moss Group with
19 Justice Engine International; and the Vera Institute of
20 Justice.

21 Our special-project providers include the
22 International Association of Chiefs of Police and the

1 National Association of State Mental Health Program
2 Directors.

3 Moving forward, the PRC will maintain close
4 communication with BJA to identify and meet additional
5 TTA needs from the field and provide any needed support
6 for the audit infrastructure.

7 In conclusion, I would like to offer while the
8 PRC has seen tremendous progress and movement toward
9 PREA implementation, the demand for assistance remains
10 high. Agencies and facilities are at various stages of
11 addressing sexual abuse in confinement and in
12 implementing the standards, but nearly all can benefit
13 from ongoing assistance.

14 The PREA Resource Center has the benefit of an
15 incredible and dedicated team of staff and partners
16 poised to do all we can to assist the field.

17 I look forward to answering any questions you
18 have about the PRC.

19 DR. WILKINSON: Thanks both of you. It is
20 going to be great to have that in the record so we can
21 have a document to refer to. I was not aware of
22 everything that was going on with the PREA Resource

1 Center specifically. Good stuff.

2 Mr. Delaney, do you have any information on
3 governors' certification? Has there been any Governors
4 to say they won't do a certification? What is the
5 update on how that is going?

6 MR. DELANEY: To my knowledge, there has not
7 been a survey conducted, like a state-to-state survey
8 of who plans to --

9 DR. WILKINSON: Is there a deadline?

10 MR. DELANEY: The Bureau of Justice Assistance
11 and Office of Justice Programs is in the process of
12 finalizing their audit certification forms.

13 I believe they will be sending both the
14 certification forms and kind of an explanatory letter
15 to each state indicating the deadlines by which the
16 first certification will be due. I believe that is
17 pending. I have every reason to believe it will be
18 transmitted soon.

19 My best information, although I'm not sure it
20 is the latest, is that the governor certification will
21 be due in the spring.

22 DR. WILKINSON: Again, the certification will

1 include anything that the governor has control over,
2 directly or indirectly. If there is a state inmate,
3 for example, in a county jail, that jail must comply
4 with certification?

5 MR. DELANEY: Generally, that is correct.
6 There may be some exceptions (where if, for example,
7 there is one state inmate that goes back for two days
8 for a parole-revocation hearing pursuant to some state
9 statute or something like that -- very short stays),
10 but generally, yes.

11 If that state has a contract for the local
12 facility to maintain bed space, to hold inmates for any
13 significant period of time, then yes, those facilities,
14 in order to maintain that contract, formal or informal,
15 will need to comply with the standards and provide the
16 PREA-requirement language.

17 MS. SEYMOUR: If you were going to hire an
18 auditor, what would you advise in terms of the number
19 of days it would take to do a full audit, and if you
20 were going into an institution, how many days onsite
21 average? I know you are in the early stages.

22 MR. DELANEY: My primary background on this

1 other than the several actual PREA beta tests and
2 pre-audits that I performed is I've spent hundreds of
3 days onsite, both doing kind of investigative work in
4 facilities and also compliance monitoring of facilities
5 with staff and experts, doing something more extensive
6 but somewhat similar to this process.

7 First of all, it is going to vary greatly,
8 depending on the facility size and how organized the
9 facility is in presenting the evidence to the auditor.
10 For example, a small, twenty-bed lock-up that is very
11 organized, the on-site portion of an audit might take
12 half a day or two-thirds of a day or something along
13 those lines, assuming that the auditor does their job,
14 gets the primary documents in advance, and fully
15 engages the agency prior to showing up onsite, where
16 they have the full context and they are not walking in
17 blind.

18 Yes, I think within a day. Perhaps the far
19 reaches of that are if you are talking about a 5,000 or
20 10,000 bed prison, the on-site portion could take up to
21 five days in my estimation.

22 Of course, there is time in advance of the

1 audit, in advance of the on-site portion, and then
2 there is time to follow up, do any follow up after the
3 auditor leaves the facility to draft their audit
4 report, maybe request additional documents or follow up
5 with interviews perhaps where people weren't available
6 during the on-site portion.

7 For a very large facility, a significant
8 number of days will be necessary.

9 DR. CHRISTENSEN: Just a point of clarity, you
10 mentioned the eighteen and over. We have been under
11 the understanding or I have certainly within New York,
12 there was a problem with the eighteen-year-olds. Are
13 you saying eighteen and over are treated the same, and
14 sixteen and seventeen are juveniles?

15 MR. DELANEY: New York is in almost a unique
16 position here because my understanding of New York law
17 is that eighteen and under must be separated in jails
18 from nineteen and over.

19 DR. CHRISTENSEN: Correct.

20 MR. DELANEY: The PREA standards have a
21 different requirement. The PREA standards state in
22 order to be compliant with the PREA standards, they

1 need to separate anyone that is eighteen and over from
2 anyone who is seventeen and under.

3 Technically, in order for New York jails to be
4 compliant with both the PREA standards and state law,
5 they would have to keep those eighteen year olds
6 separate from younger and older inmates, which is a
7 difficult situation.

8 I would hope through legislation or otherwise,
9 that issue can be resolved.

10 DR. CHRISTENSEN: Which obviously is not going
11 to happen, not in the county jails. They are starved
12 for classification space as it is.

13 MR. DELANEY: I understand they are in a
14 difficult situation and our Civil Rights Division is
15 involved in one or more county jails addressing this
16 particular issue in New York.

17 DR. CHRISTENSEN: While we are on the topic of
18 compliance with jails, and you heard from President
19 Gonzalez, and I'm certain you have heard it many, many
20 times, jails are least tied to this standard as far as
21 the influence that the federal government can put on
22 jails, so many say, "I'm just not doing it."

1 I'm wondering if there is any type of
2 discussion or action to make it more a standard that is
3 mandatory for all correctional facilities or any type
4 of action that would address that issue with jail
5 facilities throughout the country.

6 MR. DELANEY: I think many of us here at DOJ
7 would love to have greater enforcement powers with
8 respect to local facilities.

9 I would note there are a large number of local
10 jails that either have contracts with the Department of
11 Homeland Security or ICE, with the Bureau of Prisons,
12 with state confinement agencies, and all of those
13 arrangements will have some type of hook through either
14 the governor's certification or BOP's requirement to
15 make those agencies compliant.

16 I would say enforcement isn't kind of the only
17 incentive for facilities to comply or being subject to
18 external enforcement.

19 I think most importantly, and I believe this,
20 that the vast majority of facilities out there want to
21 do the right thing. They want to protect their inmates
22 from sexual abuse.

1 There are lots of collateral benefits I would
2 say to choosing to comply with these national
3 standards.

4 The standards first of all not only make their
5 inmates safer from sexual abuse but also make their
6 staff safer. It makes for a safer environment.

7 It also really has some collateral effects
8 that the PREA standards weren't even designed to
9 address: improved inmate reporting of perhaps other
10 forms of abuse, physical abuse or neglect,
11 inappropriate treatment, better investigations, kind of
12 a variety of additional benefits.

13 I would note also that many of these standards
14 have been considered to be solid, positive correctional
15 norms or correctional practices for a number of years.

16 In terms of kind of other consequences that
17 aren't positive, negative consequences, or consequences
18 that could go either way, certainly there is some
19 recognition that although these are not explicitly
20 constitutional minimums, which we state in the preamble
21 to the rule, full compliance with these standards may
22 place some consideration as a prophylaxis against

1 inmate lawsuits related to sexual abuse, and
2 conversely, willfully choosing not to comply with these
3 standards may increase the litigation exposure of those
4 facilities, particularly in facilities where there are
5 serious problems with sexual abuse, and they choose not
6 to implement national standards that would be
7 appropriate kind of remediation for those problems.

8 DR. CHRISTENSEN: Those are the exact
9 facilities that we are talking about as practitioners
10 in the field looking to move the field forward.
11 Because the reality is the facilities who are so
12 inclined did most of these things before PREA and the
13 PREA standards came along. And they are like, "Oh,
14 yeah, did that; did that." And they had that checklist
15 at almost all of those facilities completely covered
16 long before the PREA standards were ever even
17 promulgated.

18 It is really the whole underside, I would say,
19 of the profession, who chooses not to do these things
20 nor has ever done these things that I am asking about.

21 DR. WILKINSON: Anne has to leave and she has
22 a question for Jenni, and then we are going to conclude

1 in about three minutes.

2 MS. SEYMOUR: Thank you, Jenni. I heard you
3 speak in August. It seems like you have been super
4 busy since then. I am just really impressed with
5 everything you have put out there.

6 Mine is more of a personal request.

7 I would love to do a blast to my listserv.
8 You said the word "victim" more than anybody combined
9 today.

10 I would love to work with you on getting that
11 word out through my listserv and some other venues.

12 MS. TROVILLION: I think that would be great.
13 We would love to do that.

14 I also would acknowledge we hear from
15 corrections professionals that the implementation of
16 that standard is something they need assistance on, and
17 we hear from some of the victim advocates and victim-
18 service organizations that they are interested in
19 learning more about how to operationalize the
20 standards, what exactly is required.

21 There has been some great work in partnerships
22 that have already been done.

1 I know there are many more jurisdictions that
2 we could reach through something like that.

3 I think the interest and need is there, so
4 that would be great.

5 Thank you.

6 MS. SEYMOUR: Awesome. What is a graphic
7 novel?

8 MS. TROVILLION: Essentially like a comic
9 book.

10 MS. SEYMOUR: We wouldn't go there. Harlequin
11 romance novels.

12 MS. TROVILLION: Our partners at the American
13 University Project on Addressing Prison Rape have put
14 together some information on this.

15 In particular, for juveniles. It is a way of
16 doing education in a different media.

17 MS. SEYMOUR: That's great.

18 MR. DELANEY: Not *Fifty Shades of Gray*.

19 (Laughter.)

20 MS. SEYMOUR: Do not record that, for the
21 record.

22 DR. WILKINSON: Just one other question. Is

1 there something called an expedited audit?

2 MR. DELANEY: Yes.

3 DR. WILKINSON: If so, who does one petition
4 to get that?

5 MR. DELANEY: I think at this point, I would
6 channel that through the Bureau of Justice Assistance,
7 who is kind of managing PREA operations going forward.

8 If anyone has information relevant to problems
9 with sexual abuse in a confinement facility, you can
10 either send it to the Civil Rights Division, the Bureau
11 of Justice Assistance, and we are currently attempting
12 to coordinate the sharing of that information to inform
13 those recommendations for expedited audits.

14 DR. WILKINSON: Thanks so much to both of you
15 for your testimony, just super information.

16 With that, this Panel concludes today's
17 session of the hearings on prisons with high incidence
18 of sexual victimization and stands in recess.

19 We will begin tomorrow morning with the
20 Panel's hearings on juvenile correctional facilities.

21 Thank you so much.

22 //

1 (Whereupon, at 5:05 p.m., the hearings were
2 recessed, to reconvene the following day, Thursday,
3 January 9, 2014.)

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