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OFFICE OF JUSTICE PROGRAMS

REVIEW PANEL ON PRISON RAPE

HEARINGS ON RAPE AND STAFF
MISCONDUCT IN U.S. PRISONS

(AMENDED VERSION)

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Office of Justice Programs
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1 P R O C E E D I N G S

2 (8:31 a.m.)

3 DR. WILKINSON: Why don't we reconvene and we
4 will call the hearings for the High Prevalence
5 Facilities back to order.

6 We do have one witness this morning and we're
7 pleased that Mr. Wayne Krause is here representing the
8 Texas Civil Rights Project. I must swear you in. If
9 you'd raise your right hand?

10 Whereupon,

11 WAYNE KRAUSE

12 was called as a witness and, having been
13 first duly sworn, was examined and testified as
14 follows:

15 DR. WILKINSON: Thank you, sir. You may
16 proceed with your testimony.

17 TESTIMONY OF WAYNE KRAUSE

18 MR. KRAUSE: Thank you very much, and I want
19 to thank you for having me here this morning.

20 As you mentioned, my name is Wayne Krause.
21 I'm the Legal Director of the Texas Civil Rights
22 Project.

1 Among other things, we have a very active
2 Prisoner Rights Program throughout the State of Texas.

3 We get hundreds of reports each year from inmates in
4 TDCJ and other units, as well as jails and immigration
5 detention centers.

6 We also represent a small fraction of those
7 prisoners who write us, really probably less than one
8 percent, but one of those people happens to be a man
9 we'll call John today, who was housed in the Allred
10 Unit in September and October of 2008. That's why I'm
11 here today in part. I'm going to talk about three
12 things that will be helpful to you.

13 First, I wanted to tell you about one
14 particular guard in Allred. Then I was going to point
15 out a few of the problems we see on the ground and --

16 DR. WILKINSON: By guard, you mean correction
17 officer?

18 MR. KRAUSE: That's correct, that's correct.

19 In that, in the Allred Unit itself, and at the end,
20 I'd like to offer a few suggestions, but a few caveats
21 beforehand.

22 First of all, if you have questions along the

1 way, please let me know. I'd much rather have a
2 conversation and, secondly, I don't claim to
3 have -- I'm not an expert. I don't claim to have all
4 the answers. I probably don't even have all the right
5 questions to ask, but I have had the opportunity to
6 look in depth into a few situations here.

7 I'm also something of a faint stand-in for
8 John who, unfortunately, is still incarcerated in TDCJ
9 and couldn't be here, but if he were here today, he
10 would say that "On October 5th, 2008, the guard came to
11 my cell again. He said strip search. I begged him. I
12 don't want to do this again. I told him how
13 uncomfortable I was with what he had forced me to do
14 before. The guard threatened me."

15 "You don't want to be on my bad side. It
16 could make the difference between parole or a life
17 sentence."

18 "I didn't have any choice. It was a
19 nightmare. I got down on my knees and the guard forced
20 me to perform oral sex again."

21 I've attached these words, along with a much
22 greater description, in Document One which is a

1 redacted sworn statement from -- from John. That's his
2 sworn testimony, but although I wasn't there, there are
3 good reasons to believe John.

4 Number One: I should say in Document Number
5 two, he's backed up by a DNA match on the guard's semen
6 sample. In that same document, you'll also see that
7 the guard confessed to John, confessed to John
8 performing oral sex on him.

9 Now there are a number of sad aspects to this
10 story but perhaps the saddest is that this assault
11 didn't have to happen. When I say that, I don't mean
12 it didn't have to happen because everyone responsible
13 for running Allred already knew that it had
14 inmate-on-inmate abuse rates more than triple the
15 national average or that they knew, already knew before
16 this that they had one of the highest rates of sexual
17 victimization by guards on inmates or that more than
18 one in twenty prisoners in Allred reported being a
19 victim of sexual misconduct by prison employees.

20 What I mean is that days before, John had
21 told the Safe Prison Program Officer at Allred Unit
22 that the same guard had sexually assaulted him twice

1 before and that officer did nothing to protect him. If
2 that's true, then systemically TDCJ failed to protect
3 John when it was their responsibility. Worse, they
4 failed to protect Jane, too.

5 The very same correctional officer found a
6 new victim in the Allred Unit right after he had
7 finished with John. According to Jane Doe, the guard
8 repeatedly assaulted her sexually in exactly the same
9 manner, using the same techniques as -- as he did John
10 before, and, once again, don't take my word for it.

11 Document Three is a redacted sworn statement
12 from Jane, as well.

13 I want to talk a little bit about problems.
14 Why was this allowed to happen and why is it happening
15 so often at Allred?

16 While not perfect, TDCJ, Texas Department of
17 Correctional Justice, has some good policies. On
18 paper, this shouldn't happen. First -- the first
19 problem, I think, is that the practice doesn't meet the
20 policies. In this example, you take the Safe Prisons
21 Program. Are the officers actually committed to it?

22 Yesterday, we heard from administrators at a

1 low-incidence facility and they talked about programs
2 that people can count on. I don't think that John
3 feels that he can count on the Safe Prisons Program at
4 Allred. When he went to that Safe Programs sergeant,
5 she refuted his allegations without investigation.
6 Compare that to Bridgeport yesterday where it was
7 unequivocally stated it's not for staff to assume an
8 allegation is true or false.

9 When you look at it in more in-depth -- the
10 Document One -- you'll see he claims he gave her a
11 semen sample, and when he did, she threatened him right
12 there. "If this doesn't belong to the guard, I'm
13 warning you I'm going to charge you with assault with
14 bodily fluids on me." She warned him not to file
15 another grievance, and he didn't until he was
16 transferred from that unit. That's not the kind
17 of -- while the policy in the Safe Prisons Program is
18 probably a positive thing, that's not the kind of
19 follow-through you want on that sort of policy.

20 Secondly, a culture that blames and punishes
21 the victim. It seems that there are those who believe
22 that sexual abuse of inmates is -- is inevitable.

1 Institutionally, TDCJ seems to believe that its inmates
2 can be considered as consenting to have sex with its
3 officers.

4 I've attached as Document Number Six comments
5 by TDCJ to the National Proposed PREA Standards, and
6 this is a small example, but I thought it was just
7 something useful to think about.

8 In those comments, TDCJ makes the quote:
9 "Note that TDCJ does not discipline an offender for
10 consensual sex with a staff member but will discipline
11 an offender for an inappropriate relationship with a
12 staff member regardless of whether there is sexual
13 contact."

14 I think that's the wrong way of looking at
15 things in two ways. First, it's a felony for a staff
16 member to have sex with an inmate. I don't think that
17 seeing that in any way, shape, or form as consensual is
18 the right way of looking at it.

19 Secondly, if I'm reading this right, it seems
20 like it's possible that TDCJ could discipline the
21 inmates, even though it's the officers who are
22 committing the felony. So I think that the

1 way -- that's -- that may be a small but important
2 example of punishing the victim.

3 How this culture played out in -- in
4 the -- in John's situation, for example, when the guard
5 was presented with evidence, the DNA evidence that
6 sexual assault had occurred, he seemed -- he -- he made
7 that confession, but he seemed to think he was going to
8 be in the clear and I'm trying to read through the
9 lines here, but because he said, "Well, I never used
10 force or threat," and I just don't think that's
11 possible, and the fact that that's not clear to him
12 indicates to me that the policy is not reaching the
13 ears of the people who have to enforce it.

14 Third, the grievance system is flawed and
15 inappropriate for sexual assaults. There is a
16 fifteen-day limitation period to file a grievance in
17 the Texas Department of Criminal Justice. At that
18 stage, I don't think John realized, or at least he was
19 having problems processing, that he had been sexually
20 assaulted.

21 Moreover, I've had communications with him,
22 quite a few, since then, and he's actually been

1 sexually assaulted by one of his cellmates after this
2 happened, and what he described to me screamed out in
3 my mind: "sexual assault". In his mind, it was I have
4 to live here, so I'm just going to try and find a new
5 cellmate. It didn't click, and I think that that's the
6 sort of thing -- a fifteen-day grievance period,
7 compare that to, say, the -- the criminal sexual
8 assault statute of limitations in most states, five
9 years or more, and we all know from clergy sex-abuse
10 scandals that sometimes it takes victims decades to
11 actually become comfortable with what's happening.

12 Fourth, a general lack of services for
13 victims and excluding prisoners from services. A lot
14 of prisoners are -- don't have an opportunity to access
15 things that other survivors would, were they in the
16 free world, and, moreover, there has been very public
17 debates in Texas about slashing of budgets there and
18 there has -- there have been a number of legislators
19 that have outright said we're not going to pay for
20 health and safety services anymore for inmates. That's
21 a lot of inmates and with the numbers of sexual
22 assaults, if true, that we're seeing at Allred and

1 other units, that's a scary thing that folks won't have
2 any recourse or may lose even some of the things there.

3 In this sense, I'm not -- you know, this
4 isn't necessarily the fault of people at TDCJ or the
5 Allred Unit. They have to work with what they have,
6 but -- but they could have less to work with very soon.

7 And a final -- a final problem I wanted to
8 highlight was a blind devotion to rules at the -- at
9 the expense of people. One other document I attached
10 was Number Seven to your -- to your materials.

11 We had the opportunity to get sworn testimony
12 from an official at the Texas Department of Criminal
13 Justice. This woman was in charge of censorship
14 of -- of books at -- at the department. We -- we took
15 the transcript of an investigation by the Philadelphia
16 District Attorney into prison rape in a -- in a jail,
17 as well as testimony from PREA hearings in Austin,
18 Texas, a few years ago, and we asked her would you
19 censor this testimony? Would you stop -- would you ban
20 this from -- from a prisoner seeing it in TDCJ? She
21 said, "Yeah, this is too graphic. They would not be
22 able to see this testimony."

1 I appreciate the reasons why she might want
2 to do that, but the fact -- but I think that's throwing
3 the baby out with the bath water. It seems to elevate
4 blind rote rules over a greater purpose of actually
5 educating inmates about sexual assault.

6 I've been talking for awhile here. I have a
7 few thoughts on solutions, too, but I wanted to stop
8 just for a second and see if anybody had any questions.

9 DR. WILKINSON: Proceed with your solutions.

10 MR. KRAUSE: Thank you. And I don't want to
11 seem to be picking on TDCJ too much. We had -- we get
12 reports from all around the state and we have seen
13 arguably worse things from Corrections Corporation of
14 America and GEO, as well. So I'm not -- you know, I
15 don't necessarily think that private versus public is
16 the answer here.

17 Likewise, there are some units on this issue
18 that are better than Allred, as well, but at the same
19 time, I'm wondering if that's not a problem in and of
20 itself. When -- when we heard from the folks at
21 Bridgeport yesterday, they talked about having all the
22 leaders together in a training -- in one big training

1 atmosphere where everybody was on the same page, and
2 from communications with John, the fact that he can go
3 from unit to unit and see such an entirely different
4 atmosphere, he talks about them as being different
5 worlds, is worrisome.

6 That's why the Number One solution, I think,
7 is simple but important: consistent, uniform best
8 practices, training, and education, and not just
9 necessarily for officials and officers, as well, but
10 for inmates, too. John is just as confused about what
11 is sexual assault as his assaulter was, and, of course,
12 when you talk about -- when you talk about the officer
13 who perpetrated this, why is it that he thought it was
14 okay, so long as he didn't use threat or force, for
15 this to happen?

16 One thing at Allred Unit I don't think you'll
17 hear about is PREA fatigue, but I think it's something
18 that they should strive for.

19 Secondly, they need to take every complaint
20 seriously. A truly disturbing aspect of this case is
21 letting a disbelief of the accusation in the first
22 place trump protection measures in the beginning. It

1 may be inconvenient, but wouldn't immediate measures to
2 put John in a safe situation instead of leaving him in
3 the same isolated cell be worth avoiding yet another
4 sexual assault?

5 Third, collaboration with outside
6 organizations. The more help you can get the better,
7 and there are some good folks out there who care and
8 can do some good things, if you allow them to help.

9 Fourth, the PREA ombudsman. Right now, TDCJ
10 has -- has a gentleman who is assigned to be an
11 ombudsman for PREA enforcement. We think it's a
12 sincere effort and a good thing, but it's one guy and
13 one assistant for him. He's way understaffed.

14 Secondly, with regard to the ombudsman, it's
15 a one-way street, and it should be -- it should be
16 something more. When John reported -- eventually
17 reported the assault, he never -- he lived for years in
18 fear because he didn't know that the guard had been
19 removed from the unit and indicted, and if -- if you
20 were a victim of sexual assault in the free world,
21 that's something -- that's something that you would
22 have been told immediately. People would have

1 been -- people would have been saying, "You don't have
2 to worry any more, this person's gone."

3 In this case, the ombudsman didn't feel
4 comfortable telling John that, and, in fact, he didn't
5 feel comfortable telling me that, that sort of
6 information, so I couldn't even convey it to him. It
7 wasn't until I finally got ahold of the prosecutor that
8 I could find out that the guard had even been indicted.

9 So that two-way sharing of information would
10 be much more helpful to victims.

11 DR. WILKINSON: Was the correctional officer
12 convicted?

13 MR. KRAUSE: That's -- that has not been
14 determined yet. The -- he's been indicted but there's
15 been no result.

16 Finally, giving vulnerable populations more
17 protection, and I'll talk about a few of them.

18 LGBT inmates. John was a gay inmate and Jane
19 was transgender. Homophobia is a very serious problem
20 that leads to prison officials ignoring sexual assault,
21 and at Allred, there seems to be considerable sentiment
22 that when you're gay, you can't be raped.

1 Second, inmates with mental disabilities and
2 illnesses. Many, if not most, of the sexual assault
3 victims that we get have some -- some degree of mental
4 disability. Mental illnesses make inmates more
5 vulnerable to sexual victimization, and I'll tell you
6 we've had more than one client who, after the sexual
7 assault, committed suicide as a direct result of the
8 trauma that they -- they experienced. So it's not just
9 the vulnerability to being attacked, but it's the
10 frailty once the attack occurs.

11 Third, youths. TDCJ does have -- does house
12 some juvenile prisoners, those who have been tried and
13 sentenced as adults. I've attached very brief
14 materials about the Texas Youth Commission. I'm not
15 sure if you're familiar, but a few years ago we
16 represented a number of youths who were abused,
17 sexually and otherwise, in the Texas Youth Commission.
18 It was a tragedy, rampant sexual abuse.

19 There were some problems that were identified
20 and corrected there, open bay dorms, too few officers
21 to supervise, and no video surveillance. There are no
22 longer any open bay dorms. There's a twelve-to-one

1 officer-to-inmate ratio or officer-to-youth ratio, I
2 should say, in the -- in the Texas Youth Commission,
3 and video cameras are now everywhere. These
4 are -- these are helpful solutions that can be
5 implemented in TDCJ as well.

6 And finally, immigrants, and I know that -- I
7 know that PREA -- I think it's a mistake to exclude
8 immigrants from PREA. The same problems that you'll
9 see in Allred crop up in immigration detention centers
10 as well.

11 The language barrier is often absolutely
12 stilting. It creates -- it's more than a barrier.
13 It's an absolute wall in situations like this, both
14 culturally and in terms of communication, and, worse,
15 there -- we often see complaints in immigration
16 detention centers and other -- and other facilities of
17 sexual assault.

18 Before investigations can get started, the
19 wheels start turning and these people -- and these
20 immigrants are transferred, and deportation proceedings
21 begin or are sped along. So even those -- we know that
22 there aren't enough folks who can be brave and strong

1 and stand up and report, you know, citizens in an
2 ordinary jail or prison, but even those that we find in
3 immigration detention facilities who are immigrants end
4 up being deported beforehand. So we never get a chance
5 to hear about many of the things, even though -- and I
6 did attach Documents Nine and Ten, some -- some
7 problems and reports of sexual abuse in the detention
8 centers.

9 I wanted to close, before answering any
10 questions that you all had, actually on a positive note
11 instead of a negative because I've raised so many
12 negative issues here.

13 I want to talk about one positive thing that
14 I heard about from another group in Texas that I
15 thought was innovative and addressed a lot of these
16 issues. I heard about the Family Crisis Center in
17 Harlingen and they're very -- they're relatively close,
18 very close to the border to actually the Immigration
19 and Customs Enforcement Detention Center in
20 Raymondville.

21 What happens there -- and this is a totally
22 informal program. You won't find this in writing or

1 anything like that, but there are quite a few -- every
2 week, there's more than one -- at least one report of
3 sexual assault there.

4 What ICE will do there is it will actually
5 take the immigrant who's made the allegation outside
6 the detention center to the Family Crisis Center. The
7 Family Crisis Center treats people there as any other
8 survivor who's come with a report of sexual
9 victimization. The full -- the full spectrum of
10 resources available -- is available to the people that
11 make the allegations. They can get counseling, and,
12 you know, it's a federal facility, and yet they've
13 managed to accomplish this without formal protocols for
14 more than half a decade.

15 I think in one small move, it addresses a lot
16 of the problems and solutions that I've talked about.
17 There's less insularity because people are talking to
18 people outside the bubble. There's more access to
19 services, and that helps avoid some of those budget
20 cuts that I talked about. There's collaboration. It
21 ensures that people are -- that complaints are taken
22 seriously because you're dealing with nonprofit folks

1 who don't have a stake in -- perhaps in not seeing
2 that -- that reports are substantiated or sustained.

3 So I just thought that -- that with one small
4 agreement between a local nonprofit, it opened up a lot
5 of doors, and that's just one small example of a
6 solution that maybe the folks at TDCJ and Allred, that
7 type of thing they might do.

8 DR. WILKINSON: Thank you for your testimony,
9 Mr. Krause, as well as your recommendations.

10 Let me start out maybe with a question. You
11 mentioned that it has gotten to the point or will get
12 to the point where, you know, budget cuts will prevent
13 TDCJ from paying for health and safety issues? What
14 makes you think that?

15 MR. KRAUSE: There has been open talk in the
16 legislature about -- about -- about not -- not having
17 the state fund medical services for -- for inmates
18 there and that -- that worries me.

19 DR. WILKINSON: That would worry me, too. I
20 just don't know how it's possible. There's too much
21 case law, as you know, that would disallow that, but,
22 you know, it's interesting that that conversation would

1 be taking place in the legislature.

2 MR. KRAUSE: Yeah. I'm not -- I'm not saying
3 that I think that in the end, entirely the effect would
4 be that there are no medical services whatsoever.
5 I -- but I do think that a number of folks would make
6 slashes to the -- to the budget and -- and emphasize
7 that particular area, that an area that we know is
8 already paltry and insufficient would -- would become
9 further crippled.

10 DR. WILKINSON: I know it's a big part of
11 what the University of Texas Medical Center does and
12 I'm also familiar a lot with the Telemedicine Programs
13 that they have at TDCJ with the University of Texas.
14 So, you know, I've heard a lot of things but not
15 medical being an issue and safety: that's the reason
16 why they're there.

17 MS. SEYMOUR: I think what happened with the
18 Texas budget is they put everything on the chopping
19 block, and then they're negotiating back because I've
20 been involved in that process this year.

21 DR. WILKINSON: Well, we'll have a chance to
22 chat with the good people from TDCJ about that. So

1 appreciate that.

2 Any other questions?

3 DR. CHRISTENSEN: Thank you for your
4 testimony, Mr. Krause.

5 I'm wondering. You are the Legal Director of
6 the Texas Civil Rights Project, correct?

7 MR. KRAUSE: That's right.

8 DR. CHRISTENSEN: And I'm wondering if in
9 instances like you've testified about regarding Jane
10 and John Doe, when you're made aware of these things
11 and exactly what type of -- what type of -- of
12 interface that you have with TDCJ officials and/or the
13 warden at the facility or some official regarding the
14 allegations that you've received.

15 MR. KRAUSE: Well, unfortunately, we
16 don't -- we don't find out about it until significantly
17 after in most situations. A lot of times folks have
18 already -- have already been assaulted. If they chose
19 to make a grievance, they've already gone through that
20 process and probably they don't usually write us until
21 after they've moved or they've been moved to another
22 facility. So it's a fair bit afterwards.

1 The communications that -- that we have with
2 TDCJ, I mean there are a couple levels there.
3 Unfortunately, because we do represent some of the
4 folks with the worst situations, a lot of the
5 conversations we have are with -- with the attorneys
6 that defend TDCJ.

7 I -- I have to say I would -- I would love to
8 have a more in-depth conversation and sit down with,
9 you know, with some officials, Mr. Livingston included,
10 to talk in more detail about these issues but sometimes
11 litigation prevents that.

12 MS. SEYMOUR: One of your solutions was to
13 coordinate and collaborate more with outside groups.
14 What -- what -- what did you have in mind? Like the
15 Harlingen Group or are you talking about like for
16 training, for compliance? What's your solution? A
17 little bit more detail.

18 MR. KRAUSE: Well, I'm not -- I'm not sure if
19 I -- the example I gave, and part of the Harlingen
20 Group, I thought was -- was really nice. So if I had
21 an example, that -- that's the one I would give, but,
22 you know, I've had the opportunity to work with a lot

1 of sincere folks over the years, you know, whether it
2 be -- whether it be groups that bring books
3 into -- into prison, whether it be clergy members,
4 whether it be counselors, all people who have
5 legitimate services to offer, and I'm not saying they
6 can't all -- they can't always get in, but I think that
7 collaboration could be increased and there -- there are
8 a number of groups that could do -- that could be -- do
9 more, if given the chance, and TDCJ could reach out and
10 let folks know.

11 I don't think the Family Crisis Center in
12 your average -- in your average county would
13 necessarily think that they'll -- you know, sure, you
14 know, come on in or we'll bring folks to you. So
15 reaching out and having those conversations might bear
16 a lot of fruit.

17 DR. WILKINSON: Do you have another question?

18 MS. SEYMOUR: Thank you.

19 DR. WILKINSON: Well, we appreciate your
20 testimony.

21 MS. SEYMOUR: Thank you.

22 DR. WILKINSON: Thank you very much.

1 MR. KRAUSE: And I thank you very much not
2 only for your -- for your attention to the details here
3 but for delving into such a difficult and disturbing
4 issue with such sincerity.

5 MS. SEYMOUR: Thank you.

6 DR. CHRISTENSEN: Thank you.

7 DR. WILKINSON: Thank you. Mr. Livingston,
8 Brad.

9 Well, thank you all for joining us today from
10 the Texas Department of Criminal Justice. We'll have
11 you all introduce yourselves momentarily, but before we
12 do that, why don't we swear you in? If you would all
13 raise your right hands?

14 Whereupon,

15 TEXAS DEPARTMENT OF CRIMINAL JUSTICE PANEL
16 were called as witnesses and, having been
17 first duly sworn, were examined and testified as
18 follows:

19 DR. WILKINSON: Thank you. And,
20 Mr. Livingston, I'll ask you to raise your hand again
21 because we need to get you on the record with the data
22 request.

1 To the best of your knowledge, can you attest
2 to the accuracy and truthfulness of the written
3 response of the Texas Department of Criminal Justice to
4 the data request that the Review Panel on Prison Rape
5 sent to your agency in preparation for today's hearing
6 which would include both Allred and Bridgeport?

7 MR. LIVINGSTON: Yes, sir.

8 DR. WILKINSON: Thank you. If we could start
9 out, we can start out with the Executive Director,
10 introducing yourselves.

11 MR. LIVINGSTON: I'm Brad Livingston,
12 Executive Director with the Texas Department of
13 Criminal Justice.

14 MR. WILLIAMS: I'm Eddie Williams, Senior
15 Warden of the Allred Unit.

16 MS. VITOLLO: I'm Tina Vitolo, the Chief of
17 Classification at the Allred Unit.

18 SGT. JAMES: I'm Lisa James, Unit Safe
19 Prisons Program Sergeant.

20 MR. THALER: I'm Rick Thaler, Director of the
21 Correctional Institutions Division, Texas Department of
22 Criminal Justice.

1 MS. BLOUNT: I'm Charma Blount, the Sexual
2 Assault Nurse Examiner for TDCJ Correctional Services.

3 MR. MORIARTY: I'm John Moriarty. I'm the
4 Inspector General for the Texas Department of Criminal
5 Justice.

6 MS. DEBOTTIS: I'm Gina DeBottis. I'm the
7 Executive Director of the Special Prosecution Unit.

8 DR. WILKINSON: Thank you for being here.
9 Just to let you know, Dr. Christensen and Mr. Swiderski
10 visited the TDCJ Allred Facility about a week or so
11 ago. So I'm sure some of you had the opportunity to
12 meet them at the facility.

13 So, Mr. Livingston, we are pleased to hear
14 your -- hear your testimony at this time.

15 TESTIMONY OF BRAD LIVINGSTON

16 MR. LIVINGSTON: Thank you, Chairman
17 Wilkinson, and again I'm Brad Livingston, Executive
18 Director of the Texas Department of Criminal Justice.

19 We appreciate this opportunity to appear
20 before your panel today on behalf of both the Board of
21 Criminal Justice in Texas and the agency. Again, I
22 want to thank you.

1 First, I want -- I want to indicate that the
2 Texas Department of Criminal Justice has been
3 and -- and is committed to operating a safe and secure
4 correctional system within the Texas Department of
5 Criminal Justice.

6 We -- we are committed to continuing our
7 efforts with respect to Safe Prisons and increasing the
8 safety of our facilities and tackling the tough and
9 challenging issues with respect to sexual assault and
10 sexual victimization in prison and look forward to
11 the -- the discussion we'll have here today
12 that -- that both we face and -- and other correctional
13 systems throughout the country.

14 We understand that this is a challenging, a
15 nuanced, and complex challenge for -- for every
16 correctional setting within the country and -- and from
17 that standpoint, we're no different than -- than other
18 correctional entities.

19 Please allow me, though, to begin by -- by
20 giving you some sense of -- of our agency's
21 organization. It is in some ways different
22 than -- than in other states, although again we do have

1 many similarities.

2 Within our jurisdiction, we are not only
3 responsible for the incarceration function within the
4 Texas Criminal Justice System, but we also manage and
5 operate the Parole Supervision System within -- within
6 Texas.

7 In addition to that, we have indirect
8 supervision over the probation functions within the
9 state, and I reference indirect because we don't
10 provide the -- the on-the-street or on-the-ground
11 probation supervision within the state. Our function
12 is more one of developing standards and oversight. We
13 distribute the funding to the local probation
14 departments. The local probation departments deliver
15 supervision on the streets, and in a way, that's
16 similar to our parole supervision functions. However,
17 those individuals work for the local probation
18 departments scattered throughout the state.

19 In terms of our governing board, our -- our
20 governing board is a nine-member board appointed
21 by -- by the Governor with -- with rotating six-year
22 terms. Every two years three of our board members'

1 terms expire. This Board has a small administrative
2 staff. They are volunteer positions, and by their very
3 nature, again it's primarily a policy board.

4 However, one, I think, unique feature is not
5 only are they responsible for hiring the executive
6 director but they also have an independent internal
7 auditor who provides independent audits throughout the
8 jurisdiction within -- within TDCJ, as I pointed out,
9 again Incarceration, Parole, and Probation. That
10 internal auditor and his staff work directly for the
11 Board. They do not work for the executive director.

12 In addition to that, the Office of Inspector
13 General, John Moriarty's here today to provide
14 additional testimony, he and his staff work for the
15 Board. They do not work for the executive director.
16 The Office of Inspector General is comprised mostly of
17 certified peace officers and -- and investigate
18 alleged violations of the law and serious policy
19 violations within the agency.

20 In addition to that, the Board also has
21 recently added a PREA ombudsman pursuant to legislation
22 that was passed a couple of legislatures ago,

1 legislative sessions ago, and I'll talk a little bit
2 more about that in a few minutes.

3 The PREA ombudsman monitors the agency's
4 efforts to eliminate sexual assault within -- within
5 the system and also coordinates with the Office of
6 Inspector General and the Safe Prison Program which is
7 operated by Rick Thaler and -- and his -- his division.

8 I should emphasize again the role of the
9 Office of Inspector General in investigating sexual
10 assaults and the role of the Special Prosecution Unit.

11 I won't go into detail with their -- with respect to
12 their roles because they are both here to testify, but
13 I think the most pertinent point is that they are
14 independent of the agency. They are certainly
15 independent of the Prison Management Division within
16 the agency and -- and in many ways give not just our
17 Board but the legislature and -- and all those who
18 provide oversight to the agency, I think, a real sense
19 of checks and balances with respect to the independence
20 of those organizations relative to the executive
21 director and -- and the senior management
22 within -- within the agency.

1 I also want to note some of the actions of
2 the Texas legislature over the last several years.
3 Prior to the enactment of PREA at the federal level,
4 the Texas legislature mandated a Safe Prisons Program
5 within the agency to address sexual assault within the
6 offender population.

7 Although our agency had relevant policies and
8 procedures in place prior to that legislative action, I
9 believe it demonstrates their recognition and
10 challenges that we face with respect to that.

11 In 1999, TDCJ suggested and the legislature
12 enacted a law which made it a felony offense for an
13 employee or any other individual to have consensual sex
14 with an offender in - in our custody, and, as I
15 pointed out a few minutes ago, in 2007, the legislature
16 codified our -- our policies with respect to
17 zero-tolerance towards sexual assault and also created
18 the position of the PREA ombudsman, again who -- who
19 reports to our Board within -- within our agency
20 structure.

21 I believe these actions further demonstrate
22 the ongoing concern within the Texas legislature and

1 the agency with respect to safe prisons and with
2 respect to sexual assault and sexual victimization
3 within the criminal justice system.

4 Let me also indicate without -- this -- this
5 is not directly tied to sexual assault but our -- our
6 legislature has also, over the last several legislative
7 sessions, I believe, enhanced and -- and demonstrated
8 their commitment to criminal justice and -- and best
9 practices and -- and treatment within -- within our
10 system. They have substantially increased funding for
11 a variety of our programs that are intended to reduce
12 recidivism within the -- within the system and -- and
13 divert offenders from incarceration in the first place.

14 Those programs are -- are vibrant. They're
15 up and running. They have been successful. The most
16 recent recidivism rates within the state are at
17 twenty-four percent system-wide. While that's -- I
18 think stacks up fairly well nationally, certainly we're
19 not ready to declare victory because we have a lot of
20 work to do with respect to continuing those programs,
21 with respect to fine-tuning those programs, and making
22 certain that -- that we are focused always on -- on

1 doing the right thing with respect -- with respect to
2 both these programs and again running safe and secure
3 facilities.

4 The legislature in 2009 also provided ten
5 million dollars in security equipment enhancements for
6 the agency. We -- we put in place a significant array
7 of -- of additional resources at most of our -- our
8 maximum-security units with specifically the -- the
9 funding being targeted for comprehensive video
10 surveillance at three of our maximum-security
11 facilities. The installation of those comprehensive
12 camera systems is complete in one of the three
13 facilities and is underway, nearing completion in the
14 other two facilities.

15 As it relates to moving the ball forward with
16 respect to that initiative, we -- we have requested
17 another ten million dollars for the upcoming budget
18 cycle and in a few moments I'll talk a little bit about
19 the -- the -- the current legislative deliberation with
20 respect to our budget in a more general way.

21 But with respect to the requested ten million
22 dollars, as of now, that funding is in place in both

1 the Senate and the House versions of the budget. It
2 would continue to move the ball forward, as I
3 mentioned, with respect to providing video surveillance
4 at -- at our maximum-security facilities.

5 Our objective moving forward is to continue
6 seeking and receiving funding for -- for this
7 initiative, so that over time we can have all of our
8 maximum-security facilities outfitted with
9 comprehensive video surveillance systems throughout
10 the -- throughout the system.

11 We'll have to make a judgment call prior to
12 the next budgetary period as to whether to increase the
13 dollars requested. Certainly in this fiscal
14 environment, I'll be perfectly honest with you, we're
15 somewhat surprised that the ten million dollars for
16 capital improvements in this area is included in the
17 budget. I'll just again be honest at this point in the
18 process. It has been in some ways a pretty brutal
19 budget process but as of now that ten million dollars
20 for us to continue advancing in this area is included
21 in -- in the budget.

22 DR. WILKINSON: Do you think that will be

1 tough to get funds for the medium-security and other
2 security levels?

3 MR. LIVINGSTON: We're going to take it one
4 step at a time and certainly our biggest -- our biggest
5 priority and our highest priority with respect to video
6 surveillance would be at those twenty-two. Again,
7 we're such a large system, we have twenty-two
8 maximum-security facilities, and to the extent that we
9 can get funding for all of those and those systems in
10 place, we will obviously continue looking at
11 other -- at other technology priorities.

12 DR. WILKINSON: Are those facilities
13 super-max types?

14 MR. LIVINGSTON: They have -- in the Allred
15 Unit we'll get into more specific detail, I know, as we
16 go through the day. The Allred Unit is very typical
17 of -- of the maximum-security facilities in some ways,
18 in some ways it may not be typical, but in terms of the
19 housing configuration, in terms of the classification
20 of offenders and the wide range of offender
21 classification types are included in most of those
22 maximum-security facilities.

1 So you'll have a combination of significant
2 number of -- of a general population of offenders, even
3 in those -- even in those facilities, as well.

4 And with that, it's a good segue because I'll
5 talk a little bit specifically about the Allred Unit.

6 As you all know, the Allred Unit is -- is a
7 facility with 3,682 beds maximum capacity. It's a
8 maximum-security facility, has just over a thousand
9 TDCJ employees. Again, as I pointed out a minute ago,
10 it has a variety of custody levels. It's designed and
11 similar in nature of the maximum-security facilities
12 that were built in the 1990s within our system.

13 The Allred Unit has a Safe Prison Coordinator
14 and has had a Safe Prison Coordinator position on staff
15 since 2005. The Allred Unit management team has been
16 actively engaged in -- in the implementation and
17 refinement of our Safe Prisons Program over the years,
18 with several specific enhancements over the
19 last -- last two years, and, in addition to the
20 unit-specific enhancements, they have also implemented
21 several agency-wide initiatives which contributed to
22 the Safe Prison environment over the years.

1 These Allred-specific enhancements include
2 the installation of additional DDR camera systems in
3 two housing areas to help prevent acts of sexual
4 violence, sexual assault, other -- other violence,
5 extortion, and -- and certainly those camera systems
6 aid in the investigation of any of these types of
7 incidents.

8 They also -- we've installed additional metal
9 detectors, parcel scanners, body orifice security
10 scanners, and created a unit contraband shakedown team
11 that assists in decreasing contraband, again all of
12 which helps reduce the trafficking and trading and
13 other violations that can lead to the predatory
14 behaviors and extortion.

15 We also system-wide have had, within the last
16 couple of years, the system-wide installation of an
17 offender telephone system which facilitates offender
18 communication with family and friends.

19 Certainly our unit continues to focus on
20 ensuring that all staff and offenders are fully aware
21 of the Safe Prison Program and the agency's
22 zero-tolerance policy and -- and -- and our reporting

1 methods, and I know we'll talk more about that in a few
2 minutes.

3 I know you have numerous questions regarding
4 the Bureau of Justice Statistic survey provided from
5 offenders at these units, but let me take a few minutes
6 again to -- to briefly discuss the agency's policies
7 and organization that we have in place to address
8 sexual victimization in the correctional environment
9 before opening it up for questions.

10 From the time an offender enters our system
11 and from the time an individual accepts employment with
12 our agency, we communicate our expectations for
13 behavior and our mechanisms for reporting any behavior
14 or violations of our standards of conduct.

15 The offender population receives an
16 orientation and a handbook addressing numerous issues
17 relating to their incarceration. A significant focus
18 of this orientation curriculum addresses the issue of
19 alleged sexual assaults and the correlating behaviors,
20 such as extortion, gang membership, and -- and other
21 things which may lead to assaults.

22 Additionally, the offenders are provided with

1 brochures regarding Safe Prisons Program and are
2 interviewed by the Safe Prison Coordinator at intake
3 and -- at intake and again upon permanent unit
4 assignment, helping them to understand the Safe Prisons
5 Program specific to that facility.

6 Posters documenting the agency's
7 zero-tolerance standard and contact information to
8 report incidents are posted in prominent locations
9 throughout the unit.

10 Employees receive pre-service and in-service
11 training, both of which provide specific curriculum
12 related to PREA and our Safe Prisons Program. Each
13 employee also receives the -- the agency ethics policy
14 and our standards of conduct for which he or she must
15 acknowledge receipt in writing.

16 All employees are also provided with a
17 toll-free number for the Office of The Inspector
18 General to report criminal violations, as well as
19 waste, fraud, and abuse.

20 The organizational structure that's in place
21 for receiving and investigating allegations of physical
22 and sexual misconduct include a grievance system, the

1 agency ombudsman, the PREA ombudsman, our
2 administrative monitor for use of force, as well as
3 direct reports to the Inspector General.

4 None of these agency administrative functions
5 that I just outlined report to the division responsible
6 for prisons operations.

7 In addition, allegations of sexual assault
8 can be reported by -- by or to any TDCJ employee. In
9 fact, our policy specifies that employees are required
10 to act on any allegation that they hear.

11 There are also many other individuals who
12 work on our units who aren't technically TDCJ
13 employees. The Windham School District employees,
14 those who deliver the education to our units, are
15 separate administratively from the agency and -- and
16 provide a somewhat independent set of eyes and ears on
17 our units, as is the case with the healthcare workers.
18 Those healthcare delivery professionals typically work
19 for the UTMB, University of Texas Medical Branch, or
20 the Texas Tech Health Science Center. So those
21 employees are again another set of somewhat independent
22 eyes and ears within our -- within our units.

1 Our Safe Prisons Program involves a
2 coordinated effort, I believe, to integrate the
3 education, training, classification, security, the
4 monitoring of -- of medical issues surrounding sexual
5 assault and sexual victimization, and the investigative
6 function, again all geared towards improving and
7 promoting offender safety within our system.

8 This contains many of -- of the elements that
9 may be common in other prison systems. Certainly we
10 use an extensive offender classification system to
11 place offenders in the appropriate custody and housing
12 and -- and work and educational and treatment
13 environments. The administrative process for dealing
14 with -- with allegations, I believe, is extensive and
15 again multilayered in terms of jurisdictions involved.

16 Every allegation is -- is investigated by
17 again, a multitude of -- of administrative and, in the
18 case of the Office of Inspector General, possible
19 criminal investigations. Everything -- everything with
20 respect to that program and -- and the -- as I pointed
21 out, the -- the multi-jurisdictional nature of -- of
22 our approach is geared towards providing and enhancing

1 safety within our system.

2 We also have at least three separate entities
3 that -- that track in an ongoing way the numbers of
4 allegations throughout our system.

5 TDCJ has also benefitted by a number of
6 grants with respect to providing additional resources
7 for -- for our Safe Prisons Program. Certainly one of
8 those grants we have utilized again to provide a
9 certified sexual assault nurse examiner to coordinate
10 those examinations and -- and provide training within
11 our system. Ms. Blount is here today to provide
12 testimony.

13 In conclusion, I wanted to emphasize yet
14 again our commitment to -- to this very challenging and
15 difficult -- difficult situation. Again, every
16 criminal justice system in this country faces prison
17 rape, sexual victimization within its jurisdiction.
18 Certainly we are committed to making sure that we take
19 every step that we can. Again, we have a stated
20 zero-tolerance policy with respect to sexual
21 victimization and sexual assault within our system. We
22 are a very large system. We're committed to doing

1 everything we can from both a training and
2 investigative standpoint and -- and with that, Mr.
3 Chairman, Members of the Panel, I would pause for any
4 questions you might have.

5 DR. WILKINSON: Thank you, Mr. Livingston.
6 Unless any of the other witnesses have any kind of
7 opening thoughts, we'll proceed with some questions.
8 I'm sure we'll cover a lot of ground. By the way, just
9 logistically, I know there was kind of a break
10 scheduled in between the testimonies. I think we'll
11 dispense with the break and just go straight through,
12 so if that's okay.

13 Gary, do you want to start out?

14 DR. CHRISTENSEN: Well, I would certainly
15 like to thank the people and the folks at Allred for
16 the hospitality shown us when we visited the facility.

17 The facility was very well run in terms of security
18 from -- from my perspective, having been in I don't
19 even know how many prisons and jails over my career,
20 and it looked -- looked well run.

21 But to the matter at hand, as we talked when
22 we were down there, it's certainly not my intention to

1 do anything but advance our practice as -- as
2 corrections professionals and that's going to require
3 that we delve into some difficult issues. So I
4 certainly don't wish to offend anyone by any of my
5 questioning but -- but there are certain questions we
6 need to ask by statute to -- to understand some of the
7 issues.

8 I don't know if you have the documents to
9 pass out. I'll leave that up to the director how he
10 wants to distribute those but certainly the director
11 and the warden for sure and the assistant director.

12 The -- I don't know which order you have
13 those in but there's one that should be a single sheet
14 entitled Trends in The Allred Facility.

15 MR. MAZZA: That's coming around.

16 DR. CHRISTENSEN: Okay. And I'll wait for
17 everybody to get those.

18 What I asked Dr. Beck and his staff to do
19 from the Bureau of Justice Statistics is review the
20 Allred Facility from the previous time that had been
21 testified here in Washington, D.C., and these
22 statistics found in the 2008-2009 Survey, to, from my

1 perspective, evaluate what happened because I heard
2 about the many improvements. Director, you talked
3 about some. Certainly they talked about some of the
4 many improvements that have been put in place in terms
5 of policy at the Allred Facility.

6 So I'm kind of a data guy. I like to say
7 that, great, great, we put all these policies in place,
8 how has it resulted, and -- and I have looked at some
9 of the -- some of the reports a little bit but I wanted
10 to make sure exactly what I was looking at, so I asked
11 the crew to put this together, and, unfortunately, it
12 seems that -- well, first, I'd like you to react to
13 what -- what's in front of you in terms of overall
14 numbers.

15 MR. LIVINGSTON: Sure. Like you, we always
16 want to see how we measure up with -- with respect to
17 the data and -- and certainly the numbers in the
18 one-page document that you've passed out show a
19 startling and -- and negative trend with respect to the
20 survey results as compared to the first -- first
21 survey in 2007.

22 Certainly a disconnect between what our

1 expectations would be, what our expectations are going
2 forward. Certainly as -- as we dive into the data and
3 dive into the results of this survey, not just at the
4 Allred Unit but system-wide, it -- it has caused and
5 will continue to cause us to redouble our efforts in
6 every way, shape, and form.

7 It -- it's -- again, it's -- it can be and
8 should be a wake-up call to the agency and -- and our
9 employees with respect to making sure that we're doing
10 everything we can.

11 DR. CHRISTENSEN: Also, when I was there, I
12 certainly noted all the posters and all the -- all the
13 postings to talk about PREA and how a person might
14 report or report an incident. I think most -- from my
15 perspective, most perplexing is the statistic regarding
16 abuses in sexual contact that has more than doubled
17 since the last report and wondering what, if
18 anything, -- and again, I'm kind of springing these on
19 you, although these are directly -- these are derived
20 directly from the -- from the published reports. So
21 it's not any data that we -- that we cooked up.

22 But just what do you think might be the cause

1 of this, specifically at the Allred Facility, and if
2 you think this trend is indicative of TDCJ as a whole?

3 MR. LIVINGSTON: I'll let Rick Thaler and the
4 warden jump into this, as well, but again it's
5 really -- it's really a disconnect for us in a number
6 of ways. Even the 2007 numbers, not just at this unit
7 but in other -- other units, as well, the survey
8 results have -- have been real difficult for us to put
9 our arms around in a number of ways because they are
10 significantly different than -- than the reported
11 numbers that we see within our system.

12 I certainly acknowledge, I was here for Dr.
13 Beck's testimony yesterday, certainly acknowledge the
14 reality that there is -- is false-positives and
15 false-negatives with respect to any kind of reporting
16 system, whether it's our reporting system that we have
17 in the agency, that again over time we have put a lot
18 of stock in. We've put a lot of effort and energy into
19 making sure that we have as broad a net as possible in
20 terms of allowing for the reporting of -- of any type
21 of incident, but even at that, again the numbers in
22 2007 and again in the second survey are off the charts

1 compared to the numbers that we see reported throughout
2 our system on -- on a unit-by-unit basis.

3 Certainly the unit we're talking about here
4 today is the Allred Unit. So part of our job, as we go
5 forward and -- and reacting and responding to these
6 numbers, is -- is, on the one hand, as you pointed out,
7 potentially the growth between the -- the offender
8 survey results in 2007 as compared to the second
9 survey, but also squaring those up with our own
10 reporting systems because we want to make sure that our
11 reporting systems are accurate, that our reporting
12 systems are comprehensive.

13 After all, and this is not a shot at -- at
14 the survey, but with respect to the survey, as you all
15 know, it's -- it's anonymous. It's confidential, as it
16 again is designed to be, but on the ground every day,
17 as we're trying to run a safe and secure prison system,
18 it's important for us to have accurate information so
19 that we can investigate and ultimately have either
20 criminal or, at minimum, depending on the circumstance,
21 administrative remedies for -- for any -- any
22 allegation in substantiated sexual victimization within

1 our system.

2 So the wake-up call for us is not just the
3 growth between the -- the -- the two surveys but also
4 again squaring it up with our reporting systems
5 and -- and that's part of what we have -- have done and
6 will continue to do, is -- is to try to reconcile those
7 differences and I can't specifically tell you today why
8 there are such differences either between these two
9 years -- these two surveys at the Allred Unit or our
10 own reporting systems, but again I -- I don't think
11 it's indicative of specific spike with -- with respect
12 to sexual assault within -- within our system.

13 Again, the only thing we can go on in an
14 ongoing fashion is -- is our reporting systems that we
15 have in place and -- and part of -- again, part of our
16 commitment is to make sure that they are as accurate as
17 possible.

18 DR. CHRISTENSEN: When I was there on site
19 and I just want to make sure I got this statistic
20 correct, I think I was told that, based upon your
21 reporting system, that the numbers reported by the
22 federal survey about ten times as to what you actually

1 see on the ground, is that correct?

2 MR. LIVINGSTON: That's not a precise
3 comparison but it's close, yes. That's -- that's
4 ballpark, certainly.

5 DR. CHRISTENSEN: Is that consistent with the
6 other facilities, as well, or is that -- or is that
7 just -- that statistic just --

8 MR. LIVINGSTON: You'd have some variation
9 but that would be very consistent. The mismatch would
10 be consistent.

11 DR. CHRISTENSEN: The mismatch, ten being the
12 larger number reported to the federal survey to one in
13 the local correctional facility, in the prison?

14 MR. LIVINGSTON: Yes, sir.

15 DR. CHRISTENSEN: Any efforts to understand
16 the difference in the two or any -- any explanation,
17 thoughts? I realize that we don't have any -- anything
18 hard or any kind of hard data to -- to look at, but any
19 thoughts about that?

20 MR. THALER: As -- as we talked when you were
21 at the facility and again being an anonymous survey,
22 it's hard in some case to get specific data from that,

1 but again we take all those numbers and go back and
2 look at each of our facilities that were represented in
3 that survey, take a close look at the operations on
4 that -- on those particular facilities.

5 We spoke earlier about the abusive sexual
6 contact, increase in numbers, and we also talked about
7 last week, Dr. Livingston, you remember, we continue
8 our effort to educate our population and educate our
9 staff. Our PREA Education Program delivered in most
10 cases by our offenders to our offenders educates them
11 on what is appropriate and what is not appropriate and
12 sexual abusive contact covers a wide range of any
13 contact that is inappropriate and should be reported.

14 So we encourage our populations at Allred and
15 other facilities to come forward with anything, any
16 allegations that they think is inappropriate so that we
17 can make a determination as to what appropriate action
18 is taken.

19 Again, whether it's our numbers or the
20 numbers of that survey, it's our job to take those
21 numbers and go out and -- and analyze what they mean on
22 that particular facility. In this case, that wide

1 variance in thirty-something allegations on Allred
2 compared to 280 that were estimated in the survey
3 is -- is a pretty significant difference.

4 So our challenge is to go out there and find
5 out from -- from our past evaluation of our -- of our
6 programs, we put a lot of effort into starting when an
7 individual hits an intake facility, not the unit of
8 assignment but when they hit the intake facility,
9 educating them as to what is sexual victimization,
10 what's appropriate and not appropriate behavior. We
11 continue it through our Peer Education Program and then
12 when they arrive at their facilities, again we go
13 through the process again with those individuals,
14 trying to educate our population surely better than we
15 did ten years ago, so that they feel comfortable coming
16 forward and reporting it to any of those entities that
17 we mentioned earlier.

18 So I can't answer for you here this morning
19 why there is that wide variance, but again we don't
20 make any assumptions one way or another. It's our
21 responsibility to look into those numbers and try to
22 get those answers.

1 DR. CHRISTENSEN: Warden?

2 MR. WILLIAMS: I'd like to add, also, that
3 looking at all that, I've kind of set myself back
4 outside the circle looking in and looked at avenues
5 where I could use to assist me in this manner, in
6 addition to training my staff and offenders.

7 I've also met quite a bit with my religious
8 programs. We have very large faith-based programs on
9 that facility. I have over 200 religious volunteers
10 that come at different times and another to different
11 programs, we showed you one of those programs, in an
12 attempt to open their eyes up and open their ears up
13 and thinking like an inmate would sometimes think that
14 sometimes they may be a little easier to approach than
15 a teacher or a nurse or a correctional officer and talk
16 to them and express my importance -- the importance of
17 them reporting to me any time an inmate approaches them
18 with anything in this manner, the importance of that
19 immediately reporting it to staff so we can go ahead
20 and look into the situation.

21 DR. CHRISTENSEN: Thank you. And again, I
22 realize that the overarching numbers are different,

1 ten-to-one, but in terms of percentage with your
2 reporting, have you seen in your reporting similar
3 increases in terms of percentage, not the actual
4 numbers but in terms of percentage from 2007 to 2008 or
5 nine? Have you seen an increase -- increases
6 consistent with those reported?

7 MR. LIVINGSTON: No, we haven't, and -- and
8 again, I know the basis --

9 DR. CHRISTENSEN: And I'm sorry. And/or
10 decreases? What are the trends?

11 MR. LIVINGSTON: The -- again, system-wide,
12 with respect to the numbers that we submit to BJS every
13 year, there are so many different definitions but the
14 one I'm going to use is -- is those allegations that
15 meet the -- the Texas statutory definition of sexual
16 assault. I know that -- from that standpoint, we're
17 narrowing -- narrowing the -- the pool here.

18 But we have seen a decrease from 2007 to
19 2009, the most recent year that we submitted to BJS,
20 not a substantial decrease but a slight decrease
21 nonetheless, from 261 in 2007 system-wide to 168
22 in -- in 2009. So from that standpoint, the

1 indication -- indicators would be again a -- a slight
2 or some moderate decrease from those overall reporting
3 numbers.

4 Within the Allred Unit, again, a slight
5 decrease during that same three-year period. So in a
6 number of ways, the numbers disconnect for us. They
7 disconnect in terms of our own reporting processes and
8 the reporting numbers. Grand totals within the unit
9 specific, both in terms of the narrow view of those
10 that meet the Penal Code definition of sexual assault,
11 if you cast the net more broadly, which we do, we -- we
12 investigate every -- every assertion and every
13 allegation of sexual misconduct, whether it meets the
14 Penal Code definition for sexual assault or not.

15 When you cast that net more broadly, again
16 the numbers still seem to be trending in the right
17 direction. Zero is certainly where
18 we're -- where -- where our objective and commitment
19 is, but -- but, nonetheless, we're not there yet
20 certainly by any -- by any measure, but again
21 there -- there are several ways that the numbers
22 disconnect, one of which is the overall trend, as

1 you're asking now, and then, as we've talked a few
2 minutes ago about the -- the magnitude or the basis
3 difference between -- between the totals.

4 DR. CHRISTENSEN: I also asked when I was
5 there about trends, other related -- other facilities
6 that are similar to Allred in the system. You know,
7 it's not necessarily fair, given the type of inmate in
8 Allred, to compare it to Bridgeport, for example, but
9 certainly it is appropriate to compare it to other
10 prisons, Texas being a large prison system,
11 other -- other of the -- and I know that there are
12 other thoughts about Allred in terms of its uniqueness,
13 but you mentioned twenty-two maximum-security
14 facilities throughout TDCJ and how -- how the numbers
15 and the trends compare in Allred to those other
16 facilities.

17 MR. LIVINGSTON: And -- and potentially Rick
18 can get into more detail, but I think overall it's fair
19 to say that -- that it's fairly similar in terms of our
20 reporting systems in terms of the numbers. It's higher
21 in -- in some ways than -- than many of our other
22 facilities, but I think if we narrow it down and look

1 at other facilities that have a similar mix of -- of
2 offender populations within -- within the unit, it
3 would be, based upon our numbers again, pretty similar
4 to -- to comparison units.

5 Where -- where we find real difficulty in
6 making comparisons is when you have two units that may
7 look the same from a physical-plant standpoint but if
8 you dive and delve deeper into the population mix that
9 you have at a given -- at a given unit, that -- that's
10 where you find some of the differences potentially and
11 it -- we can talk more about this either now or later,
12 but certainly the Allred Unit has a significant number
13 of offenders that -- that, unfortunately, meet the type
14 of characteristics or have the type of characteristics
15 that Dr. Beck has found seem to be significantly
16 overrepresented when it comes to sexual victimization
17 throughout -- throughout this country and -- and in
18 their survey, he referenced in a number of ways those
19 who have violent offenses, those who have mental health
20 issues, those who are -- are non-heterosexual, those
21 who are in safekeeping status.

22 A whole range of -- of offender

1 characteristics nationwide within -- within his survey
2 are -- are seeming to pop up in -- in extreme ways in
3 terms of their sexual victimization responses to that
4 survey. It -- as it turns out, the Allred Unit houses
5 a significant number of offenders who meet those, for
6 lack of a better phrase, overrepresented or -- or
7 numbers of -- of offender population types that -- that
8 are -- are more likely to respond on the survey that
9 they've been sexually victimized and so that -- that's
10 a real challenge in -- in terms of both managing the
11 unit operations for the warden but it's also a
12 challenge with respect to trying to make comparisons
13 system-wide.

14 But as big as we are, we can always find a
15 handful of other units that we, as -- as leaders and
16 managers within this system, can say, you know what,
17 it's most similar to these handful of units, and it's,
18 again, in some ways, comparable to some of those other
19 units but -- but on the units that it's -- it's higher
20 than apparently comparable units, it's typically
21 because of that -- that offender mix.

22 DR. CHRISTENSEN: So in terms of risk

1 factors, on the risk factor -- the risk factors that
2 Dr. Beck talked about, as well as the classification
3 level, you would consider Allred standing alone in
4 your -- in your system or are there other --

5 MR. LIVINGSTON: I would suggest that it
6 stands alone, but it stands with just a small handful
7 of other units. We have 112 units system-wide with
8 respect to the totality of its -- its risk levels and
9 totality of its relevant points of comparison for this
10 purpose. I would -- I would think it would be within a
11 handful, four or five-six units, maybe.

12 DR. CHRISTENSEN: So comparing to those four
13 or five or six units, I think you mentioned that in
14 some ways it's similar but -- but it's hard in others.

15 MR. LIVINGSTON: Compared to those --

16 DR. CHRISTENSEN: I wonder if you could
17 expand more.

18 MR. LIVINGSTON: And, Rick, you can go into
19 more detail, if you like, but compared to those units,
20 it's -- it's not an outlier, really, in terms -- in
21 again, in terms of our reported numbers.

22 DR. CHRISTENSEN: Could you tell me more

1 about what those numbers are in more specific terms?

2 MR. LIVINGSTON: Sure. Again, going back to
3 the BJS definition that -- that we report on annually,
4 in 2007, again system-wide, the numbers were 261. Of
5 that, Allred Unit was -- was fourteen and again
6 system-wide the 2009 number was 168, the Allred Unit
7 eleven. The Hughes Unit in 2007, twenty-two, in 2009,
8 seventeen, the McConnell Unit five and seven for those
9 two years, Michael Unit, sixteen and five, Telford
10 nineteen and thirteen.

11 DR. CHRISTENSEN: Okay. Thank you. We've
12 heard the testimony of -- sorry -- Mr. Krause, of Wayne
13 Krause earlier and some of what he talked about, and I
14 realize one of the cases that he's talking about is
15 under litigation, so before you tell me, I realize you
16 can't talk about it because it's under litigation, I
17 probably can answer the same thing, but he did talk
18 more -- let's talk generally about the procedures to
19 which he alluded.

20 MR. LIVINGSTON: Sure. And -- and
21 I'll -- I'll comment on a couple of things at -- at a
22 high level and -- and again Mr. Thaler, Mr. Williams

1 can speak more directly, but a couple of things
2 and -- and certainly we appreciate his testimony and I
3 don't want my testimony to -- to appear to be in any
4 way a debate with -- with him.

5 I will acknowledge a couple of -- of points
6 that he's made but take issue with a couple of the
7 others without again getting into the issues specific
8 to -- to a case that's under litigation.

9 But with respect to training, certainly
10 any -- any -- anybody who looks at our system has to
11 acknowledge that with 40,000 employees, and 112 units
12 scattered throughout this state, continuity and
13 consistency with respect to message, with respect to
14 the leadership standards that we outline and -- and
15 promulgate, that's an ongoing challenge. Anyone who
16 suggests otherwise is -- is not being real. Okay?

17 I will say this, that -- that with respect to
18 our training and with respect to the leadership
19 engagement within the agency, we are very, very much
20 dialed in to having a comprehensive message on -- on
21 the appropriate leadership, appropriate management, and
22 administration of our units, to include specific issues

1 as it relates to sexual assault, sexual victimization
2 on our units.

3 Rick Thaler and his three deputies and
4 regional directors are in constant communication and
5 dialogue in both formal and informal ways. Each of the
6 regional directors are very much engaged in ongoing
7 dialogue with -- with -- with their wardens.

8 Again, having said that, the real challenge
9 in any correctional system, whether it's a system as
10 large as ours or a smaller system, is -- is the
11 potential and sometimes actual gap between policy and
12 practice. I think that's true in -- in any setting
13 with respect to any subject matter, not just issues
14 relating to sexual assault. That's one of the things
15 we are constantly having dialogue with from my level
16 all the way to -- to the wardens and -- and the
17 management teams that they have on their units.
18 It's -- it's very much a part of our leadership and
19 management dialogue and discussion.

20 But, more specifically as it relates to
21 training, we have very, very significantly dialed up
22 the training within our agency over the last handful of

1 years. We have just in that period of time, we have
2 created sergeant -- Sergeants Academy to provide
3 targeted and very specific training for our sergeants,
4 new -- newly-promoted sergeants, sergeants retreat for
5 additional training for sergeants that had already been
6 sergeants for a number of years prior to the initiation
7 of the Sergeants Academy, Lieutenant Command School,
8 additional training for our captains.

9 All of that has been initiated and -- and put
10 in place to augment what we already had with respect to
11 in-service training. In-service training has been
12 augmented and -- and expanded over the last several
13 years and we have elevated the Training Department and
14 examined the Training Department, frankly, I can say,
15 turned it upside down within the last four to five
16 years, making sure that we have a key leader within the
17 agency, very highly respected, in most cases former
18 senior warden moving into -- into that Training
19 Department job to take the lead and
20 take -- take -- take the training initiatives
21 and -- and -- and advance the ball with respect to
22 that.

1 Several years ago, the Training Department
2 was -- was not as engaged in -- in -- in these -- these
3 issues as it is today. Does that mean that we have
4 everything in place that will allow 40,000 employees to
5 know every single day how they should act? We have the
6 policies in place certainly, and in most cases, I
7 believe we have solid leaders and leadership teams on
8 the ground at the units to do that, and -- and we are
9 extremely vigilant at making certain that we have the
10 kind of leaders and managers that we need to have to
11 make sure that practice matches policy.

12 I won't sit here today and tell -- tell this
13 panel or any panel that -- that we have that mastered.

14 I think if we did, we should bottle it and -- and go
15 on a road show throughout the country, but we are very
16 committed to training and we are very committed to the
17 consistency and -- and best practices that you've heard
18 about, not just this morning from Mr. Krause but
19 yesterday, as well.

20 I would also just for a moment talk a little
21 bit about the budget process, and he spoke very
22 specifically, and I think inaccurately, about the

1 medical funding that -- that is being discussed within
2 the legislature.

3 I will say this, that the -- without --
4 without getting into the specifics of -- of his
5 assertion, it -- it -- one thing that is correct is --
6 is his characterization that it's a very difficult and
7 challenging legislative session with respect to funding
8 within -- within the Texas Department of Criminal
9 Justice.

10 I oftentimes remind both employee groups and
11 others not to be overly-optimistic or
12 overly-pessimistic about how this will play out because
13 our legislature meets every two years for 140 days and
14 we are now about 106 days into this session. We won't
15 know the final budget until the final gavel hits, but
16 having said that, I feel considerably more optimistic
17 about where our budget stands today than I did at the
18 start of the legislative session.

19 Just to give you some context, almost every
20 state agency in the State of Texas at the start of this
21 process, to include this agency, looked with -- we were
22 staring at a fifteen- percent budget reduction. Okay?

1 As we've -- as this process has moved forward
2 to the point now where both the House and the Senate
3 have taken action, most state agencies are still
4 looking at that fifteen-percent reduction. In our
5 case, the legislature has substantially, substantially
6 restored funding, such that it would be a considerably
7 smaller percentage reduction for -- for this agency.

8 And with respect to medical in particular,
9 this agency spends almost \$500 million a year on
10 medical services for the offender population, again
11 very close to a billion dollars for a biennium.

12 The legislature, within the context of our
13 overall budgets, the starting point would have been a
14 twenty-four-percent reduction to medical, okay, whereas
15 in most cases, the starting point was a fifteen-percent
16 reduction, in some targeted ways there were some
17 functions that were zero-funded.

18 For example, the Victim Services function
19 within our agency as a starting point was at zero,
20 okay, and that has been fully restored in both -- in
21 both the Senate and House versions. But there
22 has -- and I've been involved in every public

1 discussion and in most private discussions. There has
2 never been, never been any discussion, not a single
3 word that our medical functions would be zeroed out.
4 Okay?

5 The worst case scenario was the starting
6 point which would have been a twenty-four-percent
7 reduction. Okay?

8 The Senate took action within the last ten
9 days that would restore a substantial amount of that
10 funding, such that it would be overall a ten-percent
11 reduction to medical which, frankly, we don't -- I
12 would prefer not to have a ten-percent reduction but
13 it's significantly better than -- than twenty-four.

14 Within the unit-based delivery system,
15 though, the unit-based healthcare would be a
16 five-percent reduction and while a five-percent
17 reduction will create additional challenges for us
18 and -- and will be again a burden for staff and -- and
19 again will create challenges, will create some issues
20 that we'll need to deal with, it's -- it's hard to
21 suggest that a five-percent reduction on unit-based
22 healthcare is catastrophic.

1 Certainly in these -- in these fiscal times,
2 we have an obligation as fiscal stewards to do
3 everything we can to manage with -- with somewhat more
4 lean budgets and we're still working hard to
5 raise -- raise the totals of -- of funding
6 within -- within the system, but we won't get back to
7 current levels of funding, I feel certain of that, but
8 I also feel certain that we won't be anywhere near
9 the -- the numbers that -- that we started the session
10 at.

11 With respect to security in particular, there
12 has been discussion and, in fact, in some -- some
13 versions of the budget, one of our units would be
14 closed. I think the real -- the real sticking point
15 with respect to that item is whether we need that
16 facility from a population standpoint. I believe our
17 legislature is acting very responsibly as it relates to
18 whether to fund that unit because I have not seen any
19 movement on their part to require us to close units or
20 a unit and then simply deal with an overcrowded system.

21 I know many states have had to close units
22 and -- and put significantly more offenders in fewer

1 units. That move has not been made at all, and, in
2 fact, I -- I don't believe that there's been any
3 discussion about that kind of -- of move within our
4 system.

5 Now, the House bill would -- would also leave
6 unfunded 3,000 other beds within the system. The
7 Senate bill funds those -- those -- those beds. Now,
8 why is that relevant to the discussion we're having
9 today? Certainly any system is more difficult to
10 manage, and all of the risk factors inherent with
11 running a prison system go up if you have to put three
12 or 4,000 additional offenders in fewer facilities.

13 I don't believe that's going to happen. I
14 feel very confident in -- in that and -- and so
15 from -- from a baseline standpoint, I think, while we
16 still have to tighten our belt, I don't think
17 the -- the budget decisions in any way, shape, or form
18 will be catastrophic, either on the medical front or on
19 the security front.

20 DR. WILKINSON: We know that there are tough
21 budgets all over the country, and I think even
22 hospitals are tightening their budgets. So it doesn't

1 mean you're going to necessarily compromise the medical
2 care if you have a good formulary for pharmaceuticals
3 and good healthcare delivery system, both mental health
4 and physical health.

5 But we want to get to investigations and
6 those kind of things, and we can come back, but I'd
7 like to ask Mr. Moriarty. We also heard testimony from
8 Mr. Krause earlier that there was one ombudsperson and
9 another staff person. Is that kind of the totality of
10 where you guys are with the investigating issues
11 of -- of sexual misconduct or can you just kind of
12 describe kind of the -- the -- the process?

13 MR. MORIARTY: Sure. Sure. My -- my name's
14 John Moriarty. I'm the Inspector General for the Texas
15 Department of Criminal Justice, and I have 137 State
16 Police officers that are criminal investigators.

17 DR. WILKINSON: Sworn persons?

18 MR. MORIARTY: That's correct. Sworn State
19 Police officers that are trained criminal investigators
20 to conduct investigations inside the prison.

21 Last year -- in the prison system and the
22 parole system. Last year, we handled inside the prison

1 4,000 felony investigations inside the entire system
2 with 442 being sexual assault allegations.

3 The -- just -- just so -- I mean, we have -- we have a
4 high incidence of several problems with -- with sexual
5 assaults inside.

6 Going back to the date and time of -- of
7 '07-'08-'09, we had one particular case where there was
8 an inmate at the Allred Unit made a poster child for a
9 prison as a victim of prison sexual assault. We spent
10 thousands, and I mean thousands, of man hours
11 investigating. His allegation was that he had been
12 sexually assaulted by forty-five different inmates.

13 When you -- when you talk about a
14 self-reporting issue without going in there and
15 factually investigating what happens, it's very easy to
16 skew the numbers that we're -- that we're talking about
17 and the -- this individual -- and Gina DeBottis, the
18 Special Prosecution Chief, can tell you more about her
19 side of it, but I ended up getting a -- getting an
20 order from the grand jury to investigate him for
21 falsely reporting.

22 Now false reporting, because Texas has made

1 it a benefit to report because of the protections
2 involved, we -- we get a high incidence of false
3 reports on our side when we get into it. Once they're
4 moved and then we start proceeding along, they'll
5 come -- a lot of the inmates will -- several of the
6 inmates will have come to us and said, "Look, I had a
7 gambling debt, I had a drug debt, I needed to get moved
8 off that cell block, you know." That -- that's fine.
9 That's well and good and it's a protection issue, but
10 it's not a sexual assault issue, and -- and we waste a
11 lot of man hours investigating false allegations.

12 Now that being said, you know, ferreting out
13 the legitimate and viable sexual assaults, you know, is
14 a priority for this office. Now coupled with that is
15 obtaining the information and the process of getting
16 DNA samples processed and getting -- you know, we're
17 kind of last on the totem pole because we're not a
18 priority and -- and there's a big backlog on testing
19 DNA.

20 I mean sometimes we've waited for up to a
21 year for samples to come back and that's an issue and
22 that needs to be dealt with.

1 The false reporting issue: In the free
2 world, you know, there's a law against -- up to a year
3 in jail in Texas law if you falsely report to the
4 police. Well, you know, there is -- I mean, it's kind
5 of foolish to -- to be trying to prosecute an inmate
6 for falsely reporting because you don't want to put out
7 the word that you don't want to receive the complaint,
8 but then again, you know, there's got to be some sort
9 of balance there.

10 You know, Texas making it a benefit has
11 caused me the biggest problem because of the limited
12 investigative resources of the 137 investigators, but
13 we do aggressively -- and we have a very unique setup,
14 I think, in Texas with Ms. DeBottis's office, you know.

15 I think it works very well, and I don't see Allred as
16 a smoking gun situation. I've looked at the numbers.

17 You know, at one point we -- in '07-'08, our
18 reporting numbers, the time delay from the time that
19 the allegation -- we received the allegation in some
20 cases back in those days was a hundred days. Well,
21 it's down to thirty days now. That's still not
22 ninety-six hours that does us the best good for

1 collection of evidence, but it's -- it's drastically
2 improved from '07-'08-'09.

3 MS. SEYMOUR: Your 137 officers, what type of
4 training do they receive, not in investigations but in
5 sexual assault investigations, sexual assault cases
6 with victims who --

7 MR. MORIARTY: Well, they go through -- they
8 go through an eight-week Criminal Investigative Academy
9 just for my office. Besides the regular police -- you
10 know, --

11 MS. SEYMOUR: Right.

12 MR. MORIARTY: -- Police Academy that they go
13 through when they come to work for the Inspector
14 General's Office, we have our own Police Academy,
15 Criminal Investigative Academy, that during that time,
16 they're -- they're trained in the specific -- and I
17 think that's a very critical component to this whole
18 thing.

19 MS. SEYMOUR: How much of that forty hours is
20 about sexual assault investigations?

21 MR. MORIARTY: Eight weeks.

22 MS. SEYMOUR: Eight weeks. I'm sorry. Thank

1 you very much.

2 MR. MORIARTY: About one week, I'd say, about
3 450 hours.

4 MS. SEYMOUR: Okay.

5 MR. MORIARTY: But -- but there's ongoing
6 mandated -- every -- every biennium, the State of Texas
7 requires sexual assault training.

8 One of the other things we did was -- and
9 this may be -- I don't know if it's a problem in other
10 states, but, you know, law enforcement cannot identify
11 victims of sexual assault by -- by law in some states.

12 Well, we had that problem because we couldn't even
13 talk to the corrections people about who we were
14 looking at. If they didn't have the name, we couldn't
15 give it to them by law. So we got that changed
16 legislatively, so we could share that information in
17 order to do a better job protecting the inmate.

18 DR. WILKINSON: Ms. DeBottis, how does your
19 department connect to the Office of the Inspector
20 General or is it the same?

21 MS. DEBOTTIS: No. Thank you, Mr. Chairman
22 and Members of the Panel.

1 My name is Gina DeBottis, and I'm the
2 Executive Director of the Special Prosecution Unit.
3 I've been a prosecutor with this agency for
4 eighteen-and-a-half years.

5 DR. WILKINSON: So is the prosecutor like a
6 county prosecutor or how does that --

7 MS. DEBOTTIS: Well, we are -- we are --

8 DR. WILKINSON: -- fit in legally?

9 MS. DEBOTTIS: -- separate. We are -- this
10 particular division is funded on a grant out of the
11 Governor's Office and we are completely independent. I
12 report to an independent board of district and county
13 attorneys who have prisons and youth facilities in
14 their jurisdictions. Those district and county
15 attorneys then choose an eleven-member executive board
16 and I report to that board of district and county
17 attorneys.

18 We work locally in the counties where the
19 prisons are located and we also, since 2007, also
20 prosecute cases that happen inside our Youth
21 Commission, as well. So I can speak to the juvenile
22 practices in Texas, as well.

1 But I think the thing that's unique about the
2 Special Prosecution Unit is we are completely separate
3 from the Texas Department of Criminal Justice. They
4 have no oversight over my agency and I have no
5 oversight over their agency.

6 That being said, we work well together. We
7 collaborate with TDCJ and OIG to ensure that victims of
8 sexual assault are protected and perpetrators are
9 prosecuted.

10 That being said, I'd like to just talk very
11 briefly about specific legal challenges that we face in
12 prosecuting these types of cases and they kind of go
13 along with a little bit about what Mr. Moriarty talked
14 about, but I believe that TDCJ does a very good job in
15 informing offenders of their rights. They've got good
16 policies and procedures in place for offenders to
17 report if they are sexually abused, but even with those
18 policies and procedures and things that TDCJ can do
19 from a disciplinary standpoint to discipline either an
20 employee or an offender for sexual abuse, it still
21 makes it really difficult in the criminal arena to
22 necessarily go forward with the prosecution.

1 One of the specific challenges, as Mr.
2 Moriarty alluded to, is in Texas, every sexual assault
3 victim has the right to a sexual assault exam within
4 ninety-six hours. After that period of time, the
5 ability to collect biological and physical evidence
6 diminishes greatly. So certainly if an offender were
7 to report an issue of sexual abuse or sexual assault
8 within the ninety-six hours, at that point, from an
9 administrative level, the ball can get rolling from an
10 investigative level, the ball can get rolling and so
11 when the case comes to our office, we have physical
12 evidence to go forward.

13 Obviously DNA evidence is the gold standard
14 for prosecution of a case like this. The only time
15 that DNA doesn't necessarily help us would be in a
16 situation where an offender said that, yes, sexual
17 contact did occur but it was consensual, and I know
18 sitting here that there's no such thing as consensual
19 sexual activity in prison, but to the extent that two
20 offenders do engage in a relationship that they
21 mutually agree is a consensual relationship, even DNA
22 evidence at that point isn't necessarily going to help

1 us if we have something else, perhaps offender
2 witnesses or, you know, other sorts of physical
3 evidence, that's helpful. So for us, one of the keys
4 is to have the case reported as -- as soon as possible.

5 Another challenge for us in prosecuting these
6 cases obviously is -- is the lack of witnesses. One of
7 the things about sexual assaults in a prison system is
8 they're crimes of violence, but they're shrouded in
9 secrecy because offenders don't always want to report.

10 If something happens in a cell and we don't have any
11 witnesses and we don't have any physical or biological
12 evidence, clearly it's going to be difficult for us to
13 prosecute a case.

14 Again, as -- as you're probably aware, the
15 burden of proof in any criminal case is we've got to
16 prove each and every element of the offense beyond a
17 reasonable doubt. So we do have challenges prosecuting
18 sexual assaults inside TDCJ that probably don't exist
19 in the free world.

20 Again that being said, as Mr. Moriarty
21 pointed out, the issue of false allegations is
22 something that is a reality in a prison setting that is

1 not necessarily present in -- in the free world and I
2 would like to spend just a couple minutes talking about
3 the case that Mr. Moriarty referred to because I was
4 the prosecutor that handled that case.

5 The individual [REDACTED] Johnson sued
6 TDCJ --

7 DR. WILKINSON: Don't mention names.

8 MS. DEBOTTIS: Okay. This offender sued
9 TDCJ --

10 DR. WILKINSON: The person was convicted?
11 Was the person convicted of anything?

12 MS. DEBOTTIS: No.

13 DR. WILKINSON: Okay.

14 MS. DEBOTTIS: No. Yeah. This case was
15 disposed of ages ago.

16 He filed a lawsuit alleging that forty-five
17 different offenders sexually assaulted him, that he had
18 complained and no one did anything. He was bought and
19 sold as a sex slave and that TDCJ failed to protect
20 him.

21 Mr. Moriarty's office did an incredible
22 investigation. Again, I mean, hundreds of man hours

1 were spent on this case. I was the prosecutor that
2 received the case, did an investigation, and what the
3 investigation showed was not only was [REDACTED] not
4 sexually assaulted, several of the offenders that he
5 alleged sexually assaulted him weren't even housed on
6 the Allred Unit at the time.

7 We had evidence that he had written letters
8 to a lover that was housed in another facility saying
9 that when he got all this money from the state, that he
10 would go and live happily ever after and they would
11 have all of this money.

12 Needless to say, the grand jury no-billed the
13 case and again they -- they wanted OIG to file
14 false -- a false report on -- to a peace officer on the
15 charge.

16 That being said, that's just an example of a
17 challenge that we face in a situation like that.

18 DR. WILKINSON: This case was before the
19 reporting period. How long ago?

20 MS. DEBOTTIS: Yeah. This was in 2004.

21 DR. WILKINSON: Okay.

22 MS. DEBOTTIS: This was a situation that

1 happened in 2004, but it would have showed up as a case
2 against forty-five offenders.

3 DR. WILKINSON: Right.

4 MS. DEBOTTIS: It would have shown up as
5 forty-five different cases of sexual abuse or sexual
6 assault and it was one that we did take very, very
7 seriously and went forward as far as the legal system
8 would allow us to go forward, until the grand jury
9 decided to no-bill that case.

10 I believe that you have heard some evidence
11 and some testimony about a case that's currently going
12 forward. My office does currently have a case right
13 now against a former employee and the case is making
14 its way through the criminal court system. The case
15 has been indicted.

16 DR. WILKINSON: Is that the case Mr. Krause
17 referenced?

18 MS. DEBOTTIS: I -- I believe probably it is
19 because I believe they are representing the offender
20 in -- in civil litigation.

21 To talk just very briefly about that case, I
22 feel like this case is an example of the system

1 working. If something were to happen between an
2 employee and an offender and it is reported right away,
3 if physical evidence can be collected and tested and a
4 case can be investigated and turned over to us, I
5 believe the criminal justice system is working in this
6 case and I believe that it will continue to work in
7 this case, and it's something that my office takes
8 seriously and, you know, in continuing to work with OIG
9 and -- and TDCJ will continue to do that.

10 One thing that it is important for me to
11 point out is that our office does not only prosecute
12 offenders, but we prosecute civilians and TDCJ
13 employees, as well.

14 DR. WILKINSON: We talked a lot about
15 investigations and -- and, you know, in addition to
16 prosecutorial remedies, there are administrative, you
17 know, remedies that can be imposed on, you know,
18 predators inside correctional facilities, including
19 transfer and, you know, all those different kinds of
20 special-housing units and so forth.

21 One of the things that we haven't heard a lot
22 of testimony about over the course of the last couple

1 days are tracking predators. Do you track, you know,
2 those persons who have been tagged as a person who's
3 especially been convicted or somehow or another created
4 an infraction inside a correctional facility, and so
5 you'll know where they are throughout their stay and
6 keep tabs on them and so forth?

7 MR. MORIARTY: That's correct. We have a
8 predator list that we keep that we also share with the
9 prison system, but we also have a list of not only
10 people that are suspected predators but also suspected
11 professional victims, professional witnesses types,
12 that we see again and again reporting, despite the fact
13 that, you know, we put cameras on them and we know it
14 didn't occur, that they don't know the camera's there
15 type thing.

16 The system has -- you know, in order to -- to
17 cut down on the false reporting, we have put video
18 surveillance on some of these individuals.

19 DR. CHRISTENSEN: Mr. Moriarty, you -- you
20 reported, I believe, in 2009 442 incidents, you
21 said, --

22 MR. MORIARTY: That's correct.

1 DR. CHRISTENSEN: -- of sexual misconduct?
2 Yet I heard from Mr. Livingston that there were 168,
3 and I'm wondering where the numbers are missing.

4 MR. LIVINGSTON: Let me -- let me first jump
5 in and Mr. Moriarty can also speak to it, but again,
6 as -- as I tried to communicate in my answer,
7 the -- the -- the numbers I'm looking at specifically
8 system-wide, looking from year to year, are those
9 numbers that meet the -- the statutory definition for
10 sexual assault that most closely resembles the
11 methodology we use to report to BJS every year. Okay?

12 The numbers that Mr. Moriarty referenced cast
13 a wider net and -- and are a much wider methodology
14 which includes any allegation of sexual misconduct, but
15 I'll let him dive into that in more detail.

16 MR. MORIARTY: That's correct.

17 DR. CHRISTENSEN: So that could also explain
18 some of the disparity between your numbers and -- and
19 Ms. -- and BJS's numbers, as well?

20 MR. LIVINGSTON: It -- it sure could explain
21 not a tenfold difference.

22 DR. CHRISTENSEN: But some?

1 MR. LIVINGSTON: But some.

2 MS. SEYMOUR: I have a question. Who oversaw
3 the internal investigation that included allegations
4 that the Safe Prison Program Coordinator was dismissive
5 or didn't pay attention to an inmate's allegations?
6 Was that you?

7 MR. MORIARTY: At what facility and what year
8 and --

9 MS. SEYMOUR: This was Allred here.

10 MR. MORIARTY: In what year?

11 MS. SEYMOUR: Mr. Krause testified about
12 that.

13 MR. MORIARTY: I wasn't here for all of his
14 testimony.

15 MS. SEYMOUR: Oh, I'm sorry.

16 MR. LIVINGSTON: And that specifically is the
17 case that is under active litigation right now.

18 MS. SEYMOUR: Oh. So you don't want to --

19 DR. CHRISTENSEN: Should we look at some
20 specific investigations?

21 DR. WILKINSON: Yeah.

22 DR. CHRISTENSEN: Let's go to, if we would,

1 you have -- you have a package of information called
2 Allred -- Allred Unit Exhibit A and without names of
3 the people in there, it is an inmate and it depicts
4 events related to an inmate -- at least allegations and
5 if we could turn to Page eighteen, it talks about
6 the -- excuse me. Page fifteen, it talks about the
7 offense of the alleged perpetrator. I don't know if
8 you want to share copies.

9 MR. WILLIAMS: Fifteen or eighteen? I'm
10 sorry. Eighteen. I'm sorry.

11 DR. CHRISTENSEN: Without using the inmate's
12 name, Warden, are you familiar with this inmate?

13 MR. WILLIAMS: I am, sir.

14 DR. CHRISTENSEN: Would that -- and is that
15 inmate -- is that inmate classified as a predator?

16 MR. WILLIAMS: He is one of our sexual
17 predators.

18 DR. CHRISTENSEN: Okay. Just proceeding to
19 Page eighteen, on Page eighteen, and again I -- I
20 assume that these are notes related to classification,
21 disciplinary infractions, things like that. Am I
22 correct about that? What I'm looking at, Page

1 eighteen?

2 MR. WILLIAMS: Yes, sir. Yes, sir.

3 DR. CHRISTENSEN: Warden, what are these?

4 What am I looking at here?

5 MR. WILLIAMS: These are -- these are notes
6 that are taken during committees and things of that
7 nature that the case manager will write down certain
8 particular notes and certain punishments that have
9 occurred during that time. It looks like here it's
10 from '98 to -- 5/14/98 on top to 4/8/97 on bottom, if
11 you're looking at the same thing I'm looking at.

12 DR. CHRISTENSEN: Yes.

13 MR. WILLIAMS: Okay.

14 DR. CHRISTENSEN: And so specifically as it
15 relates to the entry that -- that begins with 1/20/99,
16 could you explain what that is?

17 MR. WILLIAMS: Well, it looks like he's been
18 to -- to disciplinary on a level two code twenty sexual
19 misconduct and got forty-five days restriction. He got
20 reduced to Line Class 1 to Line Class 3, which affects
21 the amount of good time he draws each month and he lost
22 149 days of good time.

1 DR. CHRISTENSEN: Okay. So -- so there's
2 some level of sexual misconduct?

3 MR. WILLIAMS: Yes, sir. They found him
4 guilty of sexual misconduct on the administrative
5 standpoint. I can't talk from the criminal standpoint.
6 This is just from the administrative standpoint.

7 DR. CHRISTENSEN: Okay. And -- and the same
8 thing, moving to Page twenty-two, and the entry of
9 11/22/02, toward the bottom of the page?

10 MR. WILLIAMS: Yes, sir.

11 DR. CHRISTENSEN: Could you explain that?

12 MR. WILLIAMS: It looks like he was seen on a
13 level two, code twenty, sexual misconduct, found
14 guilty, fifteen-day cell restriction, ten-days loss of
15 good time, remained -- let me see. ten-days loss of
16 good time.

17 DR. CHRISTENSEN: Okay. So similar to the
18 previous one, and then again on to Page twenty-three
19 with the -- with the entry of 5/20/03, about two-thirds
20 of the way down.

21 MR. WILLIAMS: Yeah. I see. I'm just -- I'm
22 just having trouble reading that first part of it

1 there.

2 DR. CHRISTENSEN: Okay.

3 MR. WILLIAMS: Level Two, sexual misconduct,
4 which could be masturbation, guilty, fifteen-days
5 of -- can't read that -- remained Line Class 3,
6 fifteen-day cell restriction, remained Line Class 3.
7 So it looks like he's found guilty of sexual misconduct
8 which could be masturbation.

9 DR. CHRISTENSEN: Okay. Page twenty-four,
10 there's two entries on that page, 9/28/03 and then
11 again 3/12/04, one right at the top and one toward the
12 bottom. Could you explain those, as well?

13 MR. WILLIAMS: Let's see here. Misconduct,
14 guilty, fifteen-days cell restriction, Main Line
15 Class 3. The bottom one three/twelve is masturbating.
16 That's what -- that's what it looks like most of these
17 are. Guilty, fifteen days for Main Line Class 3.

18 DR. CHRISTENSEN: Okay. And then again on
19 Page twenty-five, 9/1/04-7/26/05.

20 MR. WILLIAMS: 7/26/05?

21 DR. CHRISTENSEN: 7/26/05 is toward the
22 bottom.

1 MR. WILLIAMS: Code 2, Sexual Misconduct,
2 guilty.

3 DR. CHRISTENSEN: And above, toward the top,
4 9/1/04, same thing.

5 MR. WILLIAMS: Yeah. Code 20 Violation,
6 guilty, fifteen-day cell restriction, Main Line
7 Class 3.

8 DR. CHRISTENSEN: Okay. And then, lastly, on
9 Page twenty-six, 9/7/06, about not quite two-thirds of
10 the way down the page.

11 MR. WILLIAMS: Code 20, Sexual Misconduct,
12 guilty, fifteen-day cell restriction.

13 DR. CHRISTENSEN: So is it safe to assume,
14 and I know that you didn't count them up but I did as I
15 went through, that that eight times previous
16 over -- over a period of a bunch of years, this guy was
17 found guilty of sexual misconduct?

18 MR. WILLIAMS: Masturbation, looks like. I
19 seen a couple masturbation notes there. Yes, sir.

20 DR. CHRISTENSEN: But not all -- but you
21 don't know that all of them --

22 MR. WILLIAMS: I can't say all of them. I

1 only noticed that on a couple of those. Now whether or
2 not the case manager put down masturbation next to all
3 of them, I don't actually have a screen to tell you
4 that in this many cases to discuss it with you but
5 based on this, he was found guilty, Code 20.

6 DR. CHRISTENSEN: Okay. So -- so then if you
7 go back to the beginning of this package, it talks
8 about the allegations of this particular case and just
9 take -- take a second. I don't know --

10 MR. WILLIAMS: What page?

11 DR. CHRISTENSEN: Just take a second and look
12 at the package. I don't know if you're familiar
13 with -- with this --

14 MR. WILLIAMS: It's a serious incident review
15 required to do after we have an incident referred to
16 OIG of alleged sexual assault, looks like he was
17 interviewed by staff and OIG, the victim was placed in
18 transient, looking through the investigation here,
19 transient status pending outcome of investigation to
20 help protect the investigation, protect the potential
21 victim. We recommend that. If I remember correct, I
22 look through here, I actually interviewed him on

1 committee, recommended transfer for the offender.

2 DR. CHRISTENSEN: So yet in this situation,
3 was this person in the same cell as -- as his alleged
4 victim? The alleged perpetrator and the alleged victim
5 were --

6 MR. WILLIAMS: After -- after the
7 investigation, no, sir. My understanding is that,
8 reading the investigation --

9 DR. CHRISTENSEN: No. I'm sorry. Prior to
10 the incident that's being investigated here, were they
11 in the same cell together, housed in the same cell?

12 MR. WILLIAMS: Looks like they were. Yes,
13 sir.

14 DR. CHRISTENSEN: So despite the fact that he
15 was a predator and had done and been involved in all
16 these -- all these areas of sexual misconduct, he was
17 in the same cell with another inmate?

18 MR. WILLIAMS: Well, we have him labeled as a
19 predator and he's in a predator cell, and as I
20 discussed with you when you come to the facility, we
21 don't always house two predators in the cell. You
22 know, sometimes there's a predator in the cell, and the

1 other guy that we don't have that's in there,
2 he -- he's not necessarily a victim that's in the cell
3 with him.

4 Now these instances that he was found guilty
5 on, it's not toward -- I'm not saying -- there's
6 nothing here saying it's toward another inmate, could
7 be toward staff. He was sexually masturbating toward a
8 staff member.

9 DR. CHRISTENSEN: But it could be. We
10 don't -- there's some that you -- that you know, some
11 that you don't know. So it could be toward -- on
12 another inmate, right? The previous times, could be?
13 You don't know? You can't --

14 MR. WILLIAMS: Previous to this, --

15 DR. CHRISTENSEN: -- tell by this -- you
16 can't tell by this document?

17 MR. WILLIAMS: I can't tell by this document.

18 This document here could have been why he was labeled
19 as a predator, based on this investigation, and made a
20 predator.

21 DR. CHRISTENSEN: Okay.

22 MR. WILLIAMS: I do know that **[REDACTED]**

1 is -- is one of my predators.

2 DR. CHRISTENSEN: Okay.

3 MR. WILLIAMS: This could have been an
4 instance that made him the predator.

5 DR. CHRISTENSEN: Please, no names. Now
6 let's turn to Page Thirty-three, if you would, and all
7 the way down, almost to the end of the Investigations
8 Summary, without the names, could you tell me what you
9 see there? I think it's the second sentence from the
10 last.

11 MR. WILLIAMS: It looks like OIG interviewed
12 both victim and assailant and the assailant was
13 returned to his house with no other findings. Is that
14 what you're talking about?

15 DR. CHRISTENSEN: Before that. The -- the
16 sentence starts, "After further investigation, offender
17 blank admitted to the act." See that sentence?

18 MR. WILLIAMS: Yes.

19 DR. CHRISTENSEN: And not fully to all the
20 acts that were alleged but admitted to the act of
21 sexual misconduct with the other inmate, correct?

22 MR. WILLIAMS: Admits to act of sexual

1 misconduct but denies placing -- yes, I'm at that
2 point. Yes, sir.

3 DR. CHRISTENSEN: Okay. Now, so this is
4 substantiated sexual misconduct between two inmates, a
5 perpetrator -- a predator against another inmate while
6 housed in the same cell.

7 You're going to have to explain to me then
8 down below, read to me the box that -- that's X'd out,
9 the box that's X'd. I don't understand.

10 MR. WILLIAMS: What page is that again, sir?

11 DR. CHRISTENSEN: Are you -- Page
12 Thirty-three, same page. Same page right at the
13 bottom, and I assume that that's the conclusion of the
14 investigators, the investigator.

15 MR. WILLIAMS: I can't -- I can't explain
16 that, why the investigator checked that box, sir, but I
17 can explain why I recommended transfer, based on
18 testimony I received from the inmate, looking over the
19 evidence, as to why I recommended transfer. I can't
20 explain why the investigator initialed that box, Unable
21 to Substantiate Subject's Allegations.

22 Now, the inmate alleges or the aggressor

1 denies inmate's allegations on part of it but looking
2 through the investigation here, it shows that part of
3 the -- part of the -- of the allegation was admitted
4 to, part of it wasn't admitted to.

5 DR. CHRISTENSEN: But the part admitted to
6 was certainly sexual misconduct? Would you agree?

7 MR. WILLIAMS: Looks that way.

8 DR. CHRISTENSEN: So could this
9 be -- would -- is this -- would you say that
10 this -- this is common practice or could this be -- I
11 mean, it's a pretty serious mistake. It's a mistake,
12 and what -- and again, I also direct that question at
13 the OIG's Office because the OIG was involved, how
14 something like this could happen.

15 MR. MORIARTY: Let me -- let me clarify.
16 This is not an OIG investigation.

17 DR. CHRISTENSEN: Okay.

18 MR. MORIARTY: This is -- they make mention
19 in their administrative report that an OIG investigator
20 interviewed but the OIG investigator does not share
21 information on what we're doing on a criminal
22 investigation side. We have a separate completely

1 different criminal investigation.

2 Now I'm not prepared to answer your question
3 about this particular case today because I was not
4 aware of it coming up, but we do conduct a separate
5 criminal investigation that includes forensic exams and
6 everything else, separate from this administrative
7 examination done by the unit.

8 DR. CHRISTENSEN: Okay. Does this --

9 MR. WILLIAMS: I would like to clarify
10 something.

11 DR. CHRISTENSEN: Sure, sure.

12 MR. WILLIAMS: Just because an inmate is
13 found guilty of Code 20 violation, a Code 20 violation
14 can range from masturbation to actually being involved
15 in sexual misconduct with another offender. Based on
16 the circumstances, that don't necessarily mean the
17 inmate's been found guilty of a Code 20, that he is in
18 fact a predator.

19 DR. CHRISTENSEN: But you said that he is a
20 predator.

21 MR. WILLIAMS: He's -- he's one of our
22 suspected predators. Yes, sir. Now I'm -- I'm

1 not -- I don't have all the -- all the -- everything in
2 front of me but this could have been an instance that
3 made him the actual potential predator.

4 DR. CHRISTENSEN: So what -- what -- tell
5 me -- tell me what are some of the possibilities for a
6 person who is convicted of a Code 20? You've already
7 mentioned masturbation. Other than that?

8 MR. WILLIAMS: In reference to what, sir?

9 DR. CHRISTENSEN: You -- you're talking about
10 a code in your -- in your Classification/Disciplinary
11 Code, things that meet the standard for a Code 20
12 offense.

13 MR. WILLIAMS: Masturbation.

14 DR. CHRISTENSEN: Aside --

15 MR. WILLIAMS: We have a lot of
16 masturbation --

17 DR. CHRISTENSEN: Aside from that.

18 MR. WILLIAMS: -- instances. Having
19 paraphernalia, contraband paraphernalia, pornography
20 that they're not supposed to have.

21 SGT. JAMES: Most offenders that are found
22 guilty of engaging in sexual conduct with another

1 offender are charged with 20.1 and 20.2 or 20.3, a 7.0,
2 which is sexual abuse, or a Level 1, Code 10, which is
3 a felony offense. Those are how we know that they were
4 actually engaging in sex. A Code 20, 99.9 percent of
5 the time, --

6 MR. WILLIAMS: Masturbation.

7 SGT. JAMES: -- is masturbation. It's not
8 engaging in sexual activity with another offender.

9 MR. MORIARTY: Our experience on it is that
10 they're usually masturbating and usually a female
11 correctional officer is involved in the case and so
12 she'll usually write the case, and that's why it shows
13 up as sexual misconduct because she's written them up
14 for exposing himself basically to her.

15 DR. CHRISTENSEN: Isn't that a serious issue,
16 as well?

17 MR. MORIARTY: It's a misdemeanor under state
18 law and that's why it's dealt with administratively,
19 not under the criminal side. We handle felonies only.

20 DR. CHRISTENSEN: But so -- so, I mean, at
21 minimum, we're talking about at least, at least eight
22 prior times of some kind of violation of policy that

1 meets state standard for a crime?

2 MR. WILLIAMS: He was -- he was supposedly
3 housed on his -- based on his offense violations.

4 DR. CHRISTENSEN: He was appropriately
5 housed?

6 MR. WILLIAMS: Yes, sir.

7 DR. CHRISTENSEN: Meaning? Say more.
8 Explain it to me. I don't understand.

9 MR. WILLIAMS: What you're -- what you're
10 asking him to -- you don't know how an inmate can be
11 placed in -- can remain where he's at with eight
12 violations for sexual misconduct and Code 20, 99.9
13 percent is masturbation. That does not mean he cannot
14 be housed in the general population. That's just the
15 type of housing that we house him in.

16 DR. CHRISTENSEN: Well, and I'm more -- I'm
17 more responding to there's -- there's quite a
18 difference between masturbation and exposing yourself
19 to a female employee for -- for a completely different
20 purpose, and, I mean, there's -- it's kind of a
21 different thing as far as I -- I would think anyway.
22 Would you agree?

1 MR. WILLIAMS: Well, our Code 20 is set up
2 for masturbation. That's -- that's what most of the
3 cases are, masturbation. I -- I would agree that
4 masturbation -- masturbation and trying to expose
5 yourself is probably about the same manner, if you
6 think about it.

7 MS. SEYMOUR: I think about it. I disagree.

8 MR. WILLIAMS: It's kind of -- both are
9 pretty tacky, but I'm not sure I'm understanding your
10 question.

11 DR. CHRISTENSEN: Well, I mean, again, having
12 been in lots of correctional facilities and run a much
13 smaller one myself, I certainly wouldn't tolerate an
14 offender exposing himself at any employee, specifically
15 for the purpose of exposing himself, while recognizing
16 that offenders are housed behind bars for a long time
17 and private masturbation is a little bit -- not a
18 little bit, a lot different, a lot different
19 from -- than doing it for the purpose of exposing
20 yourself to any person, including another inmate, by
21 the way.

22 MR. WILLIAMS: I agree. I agree. I just

1 don't have --

2 DR. CHRISTENSEN: That's what -- that's what
3 I was asking you.

4 MR. WILLIAMS: Yes, sir.

5 DR. CHRISTENSEN: So you do agree?

6 MR. WILLIAMS: Yes, sir.

7 DR. CHRISTENSEN: All right. Thoughts of
8 anyone regarding the fact that the offender, the
9 alleged perpetrator and now predator actually admitted
10 to doing what -- what was alleged, yet most -- most of
11 it anyway, yet the investigation was marked unable to
12 substantiate subject's allegations. Thoughts? How
13 could something like that happen? I mean, we're
14 not -- and again, I realize a very large system. We're
15 not talking about that many things, that many instances
16 relative to the instances that have got to happen in a
17 prison system that large.

18 I think year 2009, you're talking about 168
19 incidents, of which this would be one. How could that
20 happen?

21 MR. THALER: I guess I'll -- I'll just speak
22 in general. I don't know the specifics of the

1 investigation. I can't even tell from the
2 documentation any additional actions taken against the
3 offender.

4 All I can speak to is in those cases where we
5 do have an allegation brought forward, the immediate
6 responsibility for us as an agency and for me as the
7 administration is to, first, look out for the
8 protection of that individual who's bringing forward
9 the allegation. In this case, apparently this
10 individual was moved to transient housing.

11 In most -- in most all cases, I can say we
12 are on the side of caution. In some cases that
13 requires that these individuals whose allegation
14 is -- is brought against is also segregated from the
15 population, put into some isolation as we determine
16 whether or not appropriate administrative disciplinary
17 charges are necessary or whether the Office of
18 Inspector General would move forward with criminal
19 charge.

20 I can't speak to this specific case. I can
21 say in most all cases that is exactly what occurs.
22 Again, immediately looking out for the protection of

1 the victim in this case and, secondly, looking out for
2 the protection of the rest of the offender population
3 should there be a potential predator preying on -- on
4 individuals.

5 In those cases where there's substantiated
6 disciplinary to show that an individual did, indeed,
7 violate an agency policy that relates to forcible
8 contact with another individual in our population,
9 again, in most all cases that you referenced in
10 our -- in our policy, you'll see that that individual
11 in most all cases is removed, also, from our population
12 and put into the administrative segregation setting for
13 an extended period of time or years prior to any review
14 in that classification of that individual somewhere in
15 the future.

16 So I can't speak to this specific case, but I
17 believe records would indicate most often that is the
18 procedure that's used.

19 DR. CHRISTENSEN: So -- so in this case, you
20 would just chalk this box that was checked off by the
21 investigator as a mistake?

22 MR. THALER: Not knowing --

1 DR. CHRISTENSEN: It's kind of -- it's hard
2 to -- really, I'm not trying to --

3 MR. THALER: Not knowing --

4 DR. CHRISTENSEN: It's hard to understand,
5 honestly.

6 MR. THALER: Not knowing to the specifics of
7 this case, me handling the situation, looking at this
8 investigation here, some administrative action would
9 have gone forward with that individual related to the
10 classification custody of that individual and, of
11 course, disciplinary -- administrative disciplinary
12 process that we have. Again, I can't speak to the
13 Office of Inspector General or -- or if they moved
14 forward with official criminal investigation or not.

15 SGT. JAMES: In regards to, it has changed
16 that where the investigator would no longer mark that
17 box. A decision whether it's substantiated or
18 unsubstantiated will be made by the committee and not
19 the investigator. It's the investigator's job to put
20 the facts down and the committee will determine whether
21 it's substantiated or not and they no longer mark that
22 box.

1 Now without knowing -- I don't know all of
2 the details of that particular one, but it could have
3 been that the perpetrator said, yes, I did let him
4 masturbate me but it was of his own free will. So,
5 therefore, the investigator would not have been able to
6 substantiate whether or not it was an actual assault or
7 if it's consensual.

8 DR. CHRISTENSEN: Except that
9 there's -- there's other stuff in there about physical
10 injury that were verified by medical staff.

11 SGT. JAMES: I haven't read that, sir. I
12 don't have one in front of me.

13 DR. CHRISTENSEN: Well, you -- and again,
14 these are -- these are files that you guys gave us.
15 One of -- one of the difficulties that I had is
16 figuring out exactly what happened to the offender,
17 given the fact that there's -- that there's an
18 admission regarding the act and there's pretty
19 substantial evidence to verify that there was some kind
20 of physical something went on, physical force. There's
21 actual physical injury to the other inmate, while
22 relatively minimal, but physical injury nonetheless,

1 consistent with his allegations, and this fire -- file,
2 which I believe is supposed to be an entire file,
3 doesn't really talk about what happened and whether
4 that would then meet the standard for a felony matter.

5 MR. MORIARTY: I mean, it -- I can tell you
6 my -- us being present, there is a criminal
7 investigation on this issue. I obviously am not
8 prepared to talk about it.

9 DR. CHRISTENSEN: Sure, sure.

10 MR. MORIARTY: But when we investigate and
11 we -- when we respond to an allegation of sexual
12 assault, there will be an investigation conducted and
13 we will have a file on that.

14 DR. CHRISTENSEN: Gotcha. So, and again,
15 I -- I'm not expecting everybody to cull through this
16 file in a hurry. What I'm trying to do is illustrate
17 the point here. When we're talking about the
18 inconsistency in numbers, inconsistency in practice,
19 perhaps illuminating a situation like this might lead
20 to a practice to ensure that things like this don't
21 happen. I mean that's my entire purpose, not as
22 a -- not as a gotcha incident, please don't take it

1 that way, but it's really relative to questions that I
2 had looking through that file myself.

3 So let's -- any -- anything to add on this?
4 I see some folks want -- do you want to add something
5 before we move away from this file?

6 MS. DEBOTTIS: I would just like to add from
7 a criminal standpoint, it would be important for me to
8 know if -- if you made an admission, was that admission
9 just made in a disciplinary hearing? If so, that would
10 not be admissible in a criminal case.

11 Now, if he were properly Mirandized by OIG
12 and then gave a statement from a criminal standpoint,
13 that would be something that I could use to go forward
14 on a criminal case, but just merely giving an admission
15 in administrative cases would leave it for the agency
16 to do something but anything that happens in a
17 disciplinary case in terms of that, unless he is
18 Mirandized, that would not be admissible in an actual
19 criminal case.

20 DR. CHRISTENSEN: We understand that. Thank
21 you. Anything to add on this particular incident
22 before we move on? No?

1 SGT. JAMES: On this particular incident, the
2 perpetrator was placed in administrative segregation
3 which is maximum-security as a result of this, and I
4 don't know that you have that in front of you because
5 what you have is an AR packet and that's chart -- that
6 was sent in and turned off, the copy that you have,
7 prior to him being seen by the committee. So something
8 did happen with the perpetrator behind these
9 allegations. He was placed in -- in maximum-security.
10 He wasn't just left out there.

11 DR. CHRISTENSEN: Maximum-security
12 administrative segregation single cell?

13 SGT. JAMES: Yes, sir.

14 DR. CHRISTENSEN: Okay. Thank you. All
15 right. Anything further on this particular incident?

16 (No response.)

17 DR. CHRISTENSEN: All right. Moving on to
18 the -- are you --

19 DR. WILKINSON: Go ahead.

20 DR. CHRISTENSEN: You guys have questions?

21 DR. WILKINSON: We do but go ahead.

22 MS. SEYMOUR: We'll take a few minutes at the

1 end. I have some questions.

2 DR. CHRISTENSEN: Okay. Moving on to the
3 document entitled Staff-on-Inmate Assaults, I believe
4 it looks like this, when you get it, you might as well
5 pass the Inmate-on-Inmate, as well, while you're
6 passing out.

7 Everybody have that in front of them?
8 Staff-on-Inmate Assaults? And specifically again I
9 don't even want to use ranks or titles. I don't want
10 to give any kind of -- put on the record where anyone
11 can be specifically identified by this, but I'm looking
12 at Incident Number Four and directing your attention to
13 Page Number Two, Incident Number Four, Page Number Two,
14 Staff-on-Inmate Assaults. We on the same -- you
15 finding where I'm talking about?

16 So Incident Number Four, and then -- and then
17 Page Number Two, is just a continuation of -- it's five
18 columns that go all the way through the document, and
19 so you can see that it's a pretty serious allegation
20 against a superior officer within the facility.

21 My question regarding that is if you move on
22 to Page Number Three, in Incident Number Four, Box

1 Number Ten, everybody there with me, Page Number Three,
2 Incident Number Four, Box Number Ten, would it be
3 common practice in an incident -- in a situation like
4 this that a far less superior officer would actually
5 investigate an allegation against a much higher
6 officer -- higher-level officer?

7 MR. THALER: And I'll let Mr. Moriarty speak
8 to this, but we're looking at the ranking structure of
9 the individual that the allegation's against. That's
10 the individual that would be under my ranking structure
11 within the Correctional Institutional Division.

12 The investigator that you're referencing in
13 this particular case --

14 DR. CHRISTENSEN: In Box Number Ten, Page
15 Three, Box Number Ten, Incident Four.

16 MR. MORIARTY: This -- this -- this is again
17 administrative paperwork from my office. This would be
18 the -- probably the individual that received the
19 initial complaint, would be my guess.

20 MR. WILLIAMS: Yes, that's correct.

21 MR. MORIARTY: And -- and that's who
22 would -- would be responsible basically for forwarding

1 the initial complaint to my office for independent
2 criminal investigation of that matter.

3 DR. CHRISTENSEN: So --

4 MR. MORIARTY: When they refer to
5 investigator in this document, they're referring to an
6 administrative investigation that may have to do with
7 classification or other issues, not -- not the actual
8 criminal act that we're talking about. It's handled by
9 my office which is an outside entity.

10 DR. CHRISTENSEN: All right. Well, I assume,
11 are you familiar with this, Warden?

12 MR. WILLIAMS: Yes, sir, I am.

13 DR. CHRISTENSEN: And again, please, without
14 any names, without any rank.

15 MR. WILLIAMS: Yes. Yes, sir. What happened
16 is one employee received a complaint by the offender
17 this happened. I contacted -- the Warden's Office
18 automatically referred to OIG based on the allegations.

19 DR. CHRISTENSEN: So automatic, you said
20 automatically, immediately referred to OIG?

21 MR. WILLIAMS: Yeah. Based on the
22 circumstances, the testimony of the offender.

1 DR. CHRISTENSEN: Sure.

2 MR. WILLIAMS: I also found out through my
3 investigation, my synopsis of the report that the
4 offender -- the offender admitted the allegation was
5 false. However, he wanted to follow through because he
6 was angry at the major. That's -- that's the testimony
7 that he give the initial lieutenant that was referred
8 to OIG.

9 DR. CHRISTENSEN: Oh, I see.

10 MR. WILLIAMS: Based on -- based on the
11 severity of the -- of the complaint, it's a mandatory
12 referral to OIG, but the inmate come back and stated to
13 the investigator essentially that he was -- it
14 was -- he knew it was not true but he wanted to go
15 ahead and proceed with it because he was angry at the
16 major.

17 DR. CHRISTENSEN: And my -- my question is
18 not so much the veracity of the complaint, it was just
19 a curiosity about a much less superior officer
20 investigates -- seemingly investigating a --

21 MR. WILLIAMS: Might I clear that up?

22 DR. CHRISTENSEN: -- a much more superior.

1 MR. WILLIAMS: You know, that's ad seg area.
2 He's walking through. No. I'm sorry. That's
3 a -- the lieutenant's walking through doing
4 inspections. Hey, lieutenant, I got to report
5 something to you. He initially reported. The
6 lieutenant was the first one to initially see the
7 report which he forwarded up the chain of command.

8 DR. CHRISTENSEN: I see. So when these other
9 situations and incident, did you go back to
10 Page -- Page Number Three, Incident one, two, three,
11 the different investigators, they would be the first
12 person who heard, as well?

13 MR. WILLIAMS: Let me look at them, sir.

14 DR. CHRISTENSEN: And realizing that these
15 are very, very different situations.

16 MR. WILLIAMS: Okay. It looks like here the
17 officer obtained knowledge of inappropriate notes from
18 one employee to an offender, confiscated the notes,
19 turned them over to [REDACTED]. I'm sorry. Turned
20 them over to the investigative employee.

21 DR. CHRISTENSEN: You're just trying to out
22 everybody.

1 MR. WILLIAMS: I understand. That's what it
2 looks like, looking at what's in front of me. The
3 officer obtained knowledge of it and reported it to the
4 supervisor and that's the appropriate measures, proper
5 protocol when they find something of that nature.

6 DR. CHRISTENSEN: Okay. So, generally
7 speaking, if a superior officer or anybody with rank
8 were accused of any type of act like that, it would be
9 immediately forwarded to the -- to the OIG and/or your
10 office?

11 MR. WILLIAMS: Normally, I get copies of all
12 the allegations that come forth and I send them,
13 depending on the severity of them, to OIG.

14 DR. CHRISTENSEN: Are there instances in
15 which a less superior officer would be charged with
16 investigating a superior officer?

17 MR. WILLIAMS: That's not supposed to happen,
18 sir.

19 DR. CHRISTENSEN: Are there instances?

20 MR. WILLIAMS: I --

21 MR. THALER: I can speak to policy for the
22 warden there. To answer your question, no. No,

1 there's not. In those cases, the warden on the
2 facility handles it. He is responsible for the
3 administrative side of investigations, unless that
4 investigation rises to the level of the warden ranks
5 within the facility, and then the investigation is
6 elevated to the regional director within that
7 particular geographical area, and all those
8 allegations, when there's inappropriate conduct
9 relating to an employee -- relating to an
10 employee-and-offender relationship, where that involves
11 sexual activity or sexual conduct or not, it's taken to
12 the Office of Inspector General, and normally the
13 investigator at the facility who opens a potential
14 criminal, or could be an administrative investigation
15 from the Office-of-Inspector-General side, for
16 inappropriate conduct between a staff member and -- and
17 an offender. John can speak to that.

18 MR. MORIARTY: And also, I mean, no matter
19 what they do, if they conduct their own administrative
20 investigation or whatever, we have a separate, totally
21 separate operation and investigation going on, and
22 they -- by the time we get done, if it -- if

1 it -- there is -- there can be also on our side an
2 administrative investigation, a concurrent criminal
3 investigation with the criminal having the priority
4 with the follow-up with two different separate
5 investigators, actual assigned investigators, and they
6 cannot share information because one's a criminal
7 investigation and one's an administrative
8 investigation.

9 DR. CHRISTENSEN: Sure, sure.

10 SGT. JAMES: Something else to keep in mind
11 there is that it may be a night-shift supervisor that
12 this offender goes to and makes these allegations, and
13 that investigator, that supervisor that was first
14 notified, is going to initiate the investigation. He
15 was the first one that was approached, and then he will
16 pass that on, say this offender came to me, this is
17 what he said, and a higher-level supervision is going
18 to take that investigation over, but he was the first
19 one contacted. Therefore, he did start the
20 investigation, but he will pass that on.

21 DR. CHRISTENSEN: Okay. All right. Thank
22 you. Moving on to the document entitled

1 Inmate-on-Inmate Assaults, and again it's a similar
2 five-incident grid format, and if you just take a
3 minute for everyone, including the OIG, to look at Box
4 Number Five on the Incident Page, of each of the
5 incidents, and I'm sure if -- if these allegations are
6 true, that they certainly would be coded for felony
7 offense, is that true?

8 MR. WILLIAMS: Yes, sir.

9 DR. CHRISTENSEN: Okay. So moving along, if
10 you'd just take a minute to read on Page Three, Box
11 Number Twelve all the way across. Look up when you're
12 done going through those results of Box Number Twelve.

13 Are you through Box Number Twelve? And then
14 move on to Box Number -- on the next page, Box Number
15 Fifteen, and now I'm going to have questions about
16 whether you think that those outcomes are appropriate,
17 given -- given the -- your very good standards and the
18 standards of the OIG.

19 MR. THALER: And I guess we do not have all
20 the investigative reports in front of us. Apparently
21 from this documentation, the offender came forward, if
22 these dates are right, with an allegation that occurred

1 over a year ago in this particular situation.

2 DR. CHRISTENSEN: Which one? Which incident?

3 MR. THALER: Number Five. This document says
4 it occurred in eleven of 2007. He brought it forward
5 in eleven of 2008.

6 DR. CHRISTENSEN: Okay.

7 MR. THALER: So not knowing his status and
8 whether he's in the same facility where the incident is
9 alleged to have occurred, it would be hard for me to
10 determine whether leaving him in his current status at
11 that particular time was appropriate or not.

12 DR. CHRISTENSEN: Okay. So let's look at
13 Incident Number One. Incident Number One, first off,
14 if we go back to Page Number One of Incident Number
15 One, the nature of the offense is anal and oral sex by
16 intimidation and Box Number Six says that he was
17 consent -- complainant was continually threatened by
18 another inmate and intimidated into having sexual
19 relationships.

20 Box Number Twelve then says allegations by
21 complainant were substantiated. He was transferred to
22 transient housing before receiving a unit transfer but

1 then Box Number Fifteen says that he was charged via
2 Disciplinary Code, and I'm not sure that -- actually,
3 I'd ask for an explanation regarding that. It sounds
4 like a pretty serious situation to me.

5 Anyone?

6 MR. THALER: In -- in regards to
7 which -- which area are we addressing?

8 DR. CHRISTENSEN: Incident Number One,
9 regarding what was -- the allegations that are depicted
10 in Box Number Five --

11 MR. THALER: Okay.

12 DR. CHRISTENSEN: -- and what was
13 substantiated -- and that they were substantiated --

14 MR. THALER: Correct.

15 DR. CHRISTENSEN: -- and that there was -- it
16 seems that there was no criminal act taken, no criminal
17 action whatsoever taken. I'm confused about that,
18 honestly.

19 MR. THALER: From this document, I can't tell
20 whether the Office of Inspector General --

21 DR. CHRISTENSEN: I'm sure -- I know that
22 they have complete and comprehensive files, but, you

1 know, obviously we don't have -- certainly, if you're
2 interested in any of these things, they don't ring
3 true.

4 MR. THALER: And from what I see from this
5 document, from the administrative side, the -- the
6 predator in this case was charged with administrative
7 disciplinary violation.

8 DR. CHRISTENSEN: Right. Which is -- would
9 be minimal.

10 MR. THALER: Bare minimal, and again it would
11 have been referred to the Office of Inspector General
12 and I can't speak for Mr. Moriarty whether he opened up
13 a case.

14 DR. CHRISTENSEN: I mean, if -- if everything
15 here is correct, would that be something --

16 MR. MORIARTY: With that additional
17 information, sure.

18 DR. CHRISTENSEN: Okay.

19 MR. MORIARTY: In this case, the victim
20 declined to cooperate with the prosecution of the other
21 inmate.

22 DR. CHRISTENSEN: So okay.

1 MS. SEYMOUR: And with all the evidence that
2 you had?

3 MR. MORIARTY: It doesn't matter. If the
4 victim -- the victim doesn't cooperate, there is no
5 case.

6 DR. CHRISTENSEN: We -- but we do know, I
7 mean, the psychology of the victim is that that's very
8 common for a victim to do that for any number of
9 reasons, not -- not least of which is extreme shame
10 about what he or she has been involved in.

11 So are there any thoughts or safeguards
12 to -- to help the victim to come forward or
13 often -- offer the victim certain protections or -- or
14 practices like that? I mean, do you agree with what I
15 said about the victim mentality?

16 MR. MORIARTY: Yeah. I mean, I do. That is
17 correct in some cases, but there's also a domestic
18 situation, just like there is in the free world, you
19 know, that we've got to deal with, you know, which a
20 lot of people don't want to -- I mean fail to identify
21 is going on and so, you know, we get down to the
22 situations with, you know, the consensual issue

1 is -- is a major factor.

2 Even if we have good physical evidence, short
3 of -- short of any kind of trauma, physical -- as a
4 result of a physical assault, but, you know, in a
5 consensual he said/he said situation, it complicates it
6 greatly.

7 DR. CHRISTENSEN: Okay.

8 MS. DEBOTTIS: Also, this document, at least
9 from a prosecution standpoint, is but one piece of the
10 puzzle. I believe it gives a lot of administrative
11 information, and I'd be happy to look at the files that
12 you have to see if there is a corresponding OIG number
13 because that -- that's what I would go off of.

14 So TDCJ would have an incident number. If
15 they report it to OIG, they would open up an
16 investigation, and that's how I would look at my
17 records. So I'd be happy to take a look at what you
18 have to see if I can correspond it to -- to information
19 that I have, but again from a prosecutorial standpoint,
20 everything that you're saying, I think, is very
21 important, and I think it's very critical, and I
22 believe that something may have happened; but I

1 would -- I'd like to look at the file again from my
2 standpoint as a prosecutor to see when did the incident
3 happen versus when was it reported. Do we have any
4 physical evidence? Do we have a victim that is willing
5 to cooperate? Do we have any outside witnesses?
6 Because again, I can't use the results of a
7 discipline -- administrative disciplinary case in a
8 criminal prosecution.

9 So I would -- if you guys have an OIG file
10 here, I'd love to look at it because I think it -- at
11 least at that point I can at least look at it as a
12 prosecutor and say, you know, is this something that we
13 took, is this something that we presented to the grand
14 jury? And if not, maybe I could give you an
15 explanation as to why.

16 DR. CHRISTENSEN: I'm sure we can arrange
17 that -- that type of -- but while you're doing that, I
18 mean, to look at Incident Number Two and Three, it's
19 even a little bit more serious, I believe, and there is
20 actually -- in Incident Two, there's actually tearing
21 that was documented, tearing of the anus.

22 MS. DEBOTTIS: I -- I can respond to this

1 from a criminal standpoint. If this is the one I'm
2 thinking of, just based on the date, and I believe that
3 it is, an investigation was done. Our office completed
4 it. We presented it to the grand jury and for some
5 reason in 2009 the grand jury no-billed it.

6 DR. CHRISTENSEN: So obviously with
7 this -- again that for me, looking at -- and just as
8 for you, I mean, looking at a synopsis of the thing,
9 and certainly there can be any one of a number of
10 reasons why something's no-billed, but when you have
11 the kind of evidence where there's an allegation, it's
12 verified, and, indeed, there's medical examinations and
13 a rape kit that was done, why that would be no-billed.

14 MR. MORIARTY: We can -- we can tell you
15 story after story about a lack of jury sympathy for the
16 victims of prison sexual assaults. I mean, you know,
17 our -- part of our training with our investigative
18 staff is to humanize the victim in front of the grand
19 jury and the jury to make them someone's brother,
20 somebody's father, you know, but -- but there is very
21 little jury sympathy out there in our -- in our
22 experience.

1 MS. DEBOTTIS: Which is a big challenge for
2 us and, I mean, usually cases that my office accepts
3 and -- and takes to grand jury, speaking generally,
4 obviously not talking about specific facts, but I've
5 presented numerous cases to grand juries and they do
6 have questions because they don't understand the nature
7 of the prison and -- and how the relationships work and
8 all of that, and it is incumbent upon us to, you know,
9 explain to them, you know, what our case is, why this
10 is important, why this is something we need to go
11 forward with, and I'll be honest with you, there have
12 been times that grand juries have no-billed cases that
13 I have been flat out stunned, I mean flat-out stunned
14 that they came back with a no-bill. I'll be honest
15 with you.

16 DR. CHRISTENSEN: Is it possible that
17 additional -- and again, people don't understand the
18 nature of homosexual relationships, especially in the
19 prison setting, but some of these other situations are
20 not that. I mean, they are, but they're not -- they're
21 not consensual homosexual relationships, at least it
22 doesn't appear to be.

1 MR. MORIARTY: Let me -- let me give you
2 another quick story about a case that we handled. It
3 was a case involving one of the prison gangs, that they
4 had abused a younger inmate, multiple sexual assaults
5 over a couple-a-day period. He came forward. We got
6 all the physical evidence that we needed in the case.
7 There was a weapon involved. Well, the gang member had
8 gotten several other gang members to come in and
9 testify that, hey, this guy was a -- you know, he was a
10 punk and he -- he enjoyed this and that's what -- you
11 know, he -- all this kind of stuff.

12 Well, we charged him -- Gina's office charged
13 him with the -- with the aggravated sexual assault,
14 multiple counts, and we also charged him with
15 possession of a weapon. Well, the jury came back and
16 found him not guilty on all three aggravated sexual
17 assault counts but gave him thirty years for possession
18 of a weapon in the penitentiary. So, I mean, you know,
19 it's -- it's a very -- and when we had DNA, we had -- I
20 mean, you -- you couldn't have been a tighter case
21 than -- than -- than what we had.

22 MS. DEBOTTIS: And again, one of the things

1 that I think our office does better than maybe a lot of
2 states is -- because this is something that we
3 specialize in -- is prosecuting crime that happens in
4 the prison system. So we do have an expertise in
5 dealing with this that maybe a local district
6 attorney's office, particularly in a rural county,
7 wouldn't necessarily have, and, you know, these cases
8 fall to the bottom of the pile, bottom of the docket
9 in -- in, you know, a regular jurisdiction, and so our
10 office does these cases on a regular basis, and the
11 case that John's talking about happened in South Texas,
12 and, I mean, we were, again, flat-out stunned. You
13 convict somebody of having a weapon but not the sexual
14 assaults when it was a slam-dunk from our standpoint.

15 MR. LIVINGSTON: And, Dr. Christensen,
16 just -- just as it relates to the incident you asked
17 about a minute ago, and we have more detail on it, the
18 Incident Number Two, the administrative disposition, I
19 know they're talking about from a criminal side, it was
20 no-billed by the grand jury, but from an administrative
21 side, this -- the perpetrator was placed in single cell
22 administrative segregation as -- as the final

1 administrative act on our end and again, as they
2 testified, although we do have a Prison Prosecution
3 Unit and they testified today in a number of cases, the
4 difficulty in getting criminal prosecution, and that's
5 a frustrating point for all of us.

6 Certainly administratively, one of the things
7 that we have to make sure we do is take the right and
8 appropriate administrative action along the way
9 and -- and again for Incident -- Incident Number Two,
10 the offender was -- the perpetrator was -- was placed
11 in -- in single cell administrative segregation.

12 DR. CHRISTENSEN: Thank you.

13 MR. MORIARTY: One of the other things that
14 has come up over the years because of these type
15 incidents that we're talking about with different jury
16 reactions and that kind of thing, you know, we -- crime
17 inside a prison is crime inside a prison, no matter
18 where it happens, say, in the state of Texas. It's all
19 pretty much the same environment.

20 One of the things we've been discussing with
21 some of the judicial folks has been prison court, just
22 like a drug court, to handle specifically crimes that

1 occur inside the prisons. It's just that the funding
2 hasn't been there, and this -- this isn't necessarily
3 so we can move forward on it but we -- we have had
4 the --

5 DR. WILKINSON: This is for inmates, right?

6 MR. MORIARTY: Well, for any crimes that
7 occur inside, whether they be --

8 DR. WILKINSON: Staff, as well?

9 MR. MORIARTY: Yeah.

10 DR. WILKINSON: Through video?

11 MR. MORIARTY: Well, through investigation,
12 we do get cases like you, you know, heard testimony on
13 earlier today, you know, when you have misconduct or
14 contraband smuggling or -- or whatever it is.

15 DR. WILKINSON: The court seems like a novel
16 idea but Texas is a big state. You couldn't have a
17 court in each one of those jurisdictions.

18 MS. DEBOTTIS: The way we envision it would
19 be maybe having three or four courts statewide.
20 Clearly, there'd be, you know, venue issues and stuff.

21 If it were something that we could obtain funding for,
22 we would like to maybe have three or four courts in

1 different parts of the state with, you know, district
2 judges that hear nothing but these types of cases, but
3 it's been something that's been floated around.

4 I think there's some positives and negatives
5 to it, but until the funding is -- is available, that's
6 not going to happen.

7 There are some jurisdictions that will give
8 us a visiting judge and cases move a lot faster,
9 Brazoria County being one of them. We have dockets
10 down there quite a bit. We've got seven facilities
11 down there. We have a visiting judge that hears our
12 cases quite -- quite often. Other counties, they do
13 kind of fall to the bottom of the docket.

14 But part of our agency's mission is to assist
15 the local DAs. We basically handle all of these cases,
16 so the local DAs don't even see them, which means they
17 at least get some more attention than they otherwise
18 would if they were just going to a DA's office, being
19 investigated by the local sheriff or the local police
20 chief.

21 But obviously, you know, the court situation
22 and juries are really, you know, our biggest challenges

1 from -- from a prosecution standpoint.

2 DR. WILKINSON: Do you keep records on -- I
3 know there's nothing you can do if you take a case to
4 the grand jury and they give you a no-bill because
5 it's -- obviously because it's Texas. But do you keep
6 track of the number of cases you take to the grand
7 jury?

8 MS. DEBOTTIS: Mm-hmm.

9 DR. WILKINSON: So do you have those numbers
10 and did you -- would you also have the numbers of
11 indictments and convictions?

12 MS. DEBOTTIS: I have some numbers that
13 I -- that I can give you right now specifically for
14 Wichita County over the last four years, cases
15 that -- that we've -- that we've had. I can
16 certainly -- I've got a copy of it here. I can, you
17 know, read it into the record.

18 DR. WILKINSON: Is that the county
19 that -- that's the county that --

20 MS. DEBOTTIS: Where the Allred Unit is, yes.

21 DR. WILKINSON: Yeah.

22 MS. DEBOTTIS: In 2008, my office

1 received -- received in the office five sexual assault
2 cases. One of them we declined; one -- two were
3 no-billed; one was dismissed; and one was indicted.

4 In 2009, we had six sexual assault cases that
5 we received. Two were no-billed; one was indicted; one
6 was declined; one was dismissed. We had three
7 aggravated sexual assaults. One was sentenced and
8 two -- two were dismissed, and we had an official
9 oppression, which was no-billed.

10 In 2010, our office received two sexual
11 assaults. One was accepted and is currently pending
12 grand jury. The other one was no-billed by a grand
13 jury. We had an aggravated sexual assault that was
14 dismissed, and we have two violations of civil rights
15 of a person in custody, and those two were both
16 indicted. I believe one of those is the case
17 that -- that we were talking about that's currently
18 pending criminal prosecution.

19 DR. WILKINSON: So I heard one that was
20 sentenced out of that whole list, right?

21 MS. DEBOTTIS: In 2009, from -- from the
22 Allred Facility, yes.

1 DR. WILKINSON: So as a prosecutor, how does
2 that make you feel that, you know, you take all these
3 cases and investigate them, and you get one that's
4 convicted out of all of those?

5 MS. DEBOTTIS: Not -- not very good. I mean,
6 I -- I don't like the numbers, but again these are just
7 cases that our office receives. I mean, we -- you
8 know, we had one sentenced out of the three of those
9 that we received that year, you know, for aggravated
10 sexual assault, and -- and two were dismissed.

11 I would have to go back and look maybe at the
12 reasons why the cases would be dismissed. You know,
13 there's any -- any number of reasons the cases were
14 indicted as to why it may have been dismissed down the
15 road.

16 And then I've also got some numbers, you
17 know, statewide for last year on, you know, various
18 sexual charges across the state. The ones I just read
19 into the record were from the Allred Unit.

20 DR. CHRISTENSEN: Are the rates of
21 conviction, no-billed, dismissed similar throughout the
22 state, or is that something that's more regional in

1 Wichita?

2 MS. DEBOTTIS: I don't have concrete
3 information as to a specific facility, so I would
4 generally say that I think that they're pretty
5 consistent statewide.

6 DR. CHRISTENSEN: I mean because like -- like
7 New York, and many people don't realize it about New
8 York, it's a very, very diverse state. There's some
9 very, very, very rural areas and very metropolitan
10 areas. So -- and as you might imagine, similar to
11 Texas, there are some very different views and values
12 within those counties and jurisdictions which certainly
13 influence the way a court proceeds.

14 MS. DEBOTTIS: And I would say that that's
15 right. The vast majority of the TDCJ facilities are in
16 rural parts of the state. There are a few areas that
17 are particularly urban. Our facilities around Houston
18 area and Brazoria County are -- are relatively urban.
19 Beaumont is a large urban area where the facilities are
20 pretty much, you know, right in -- in -- in an urban
21 setting.

22 Wichita Falls itself is a relatively, you

1 know, decent-sized town, but, you know, the facility's
2 out just a little ways, but the vast, vast majority of
3 our facilities are in rural parts of the state, and I
4 think, particularly in rural areas, I think jurors are
5 a bit different than maybe they would be in our more
6 urban areas.

7 MR. MORIARTY: Hence, the discussion about,
8 you know, a prison court located in a major
9 metropolitan area.

10 DR. CHRISTENSEN: Right.

11 DR. WILKINSON: Ms. Blount, I don't want you
12 to leave without having something to say.

13 DR. CHRISTENSEN: And actually, that segues
14 wonderfully into a question that I had regarding all
15 the way to the end of this document it talks about how
16 sexual representatives are assigned, and I'm wondering
17 if you can help us to determine -- the end of the
18 document, Inmate-on-Inmate --

19 MS. SEYMOUR: What's a sexual representative?
20 What is that?

21 DR. CHRISTENSEN: I'd like to know what it is
22 and how they're assigned.

1 MS. BLOUNT: A sexual representative -- thank
2 you. A sexual representative is an individual who's
3 been specifically trained to be kind of a patient
4 advocate. They are usually a psychologist, a
5 sociologist, a chaplain, social worker, case manager.
6 They are -- they take training, not specific training,
7 it's not, you know, eight weeks or -- or just several
8 hours of training to -- to be a part of that
9 examination when they do bring them to Medical and a
10 sexual assault kit, a rape kit is used, to be that
11 person's eyes and ears of what goes on in that
12 examination, during that examination.

13 MS. SEYMOUR: And you would do the
14 examination yourself?

15 MS. BLOUNT: In some cases, yes, ma'am.

16 MS. SEYMOUR: I would just suggest maybe
17 getting a better title than sexual representative. I
18 thought there was confusion here and it wasn't clear to
19 me that they're basically a patient advocate.

20 MS. BLOUNT: The -- the correct title is
21 Offender Victim Representative.

22 MS. SEYMOUR: Offender --

1 MS. BLOUNT: Victim --

2 MS. SEYMOUR: -- Victim Representative.

3 Thank you.

4 DR. CHRISTENSEN: Can you explain why in some
5 of these instances that are depicted in -- and again
6 they're all relatively serious incidents -- some were
7 given a sexual -- I'm sorry, I know I'm using the wrong
8 title, but I'm quoting it from the documents -- sexual
9 representative, and others were not?

10 MS. BLOUNT: They're all -- if I am correct
11 to assume, they're all given that opportunity. Some
12 may agree to have that person present during the sexual
13 assault examination, and some may not want anyone
14 present during the sexual assault examination.

15 Mr. Moriarty can correct me if I'm wrong, but
16 I believe that once they have agreed to a sexual
17 assault examination, that's when the victim
18 representative is contacted.

19 MS. SEYMOUR: How do you make the decisions
20 on who would get a rape kit examination
21 versus -- versus not?

22 MS. BLOUNT: That's usually up to the Office

1 of Inspector General.

2 MR. MORIARTY: Any -- any time there's any
3 indication of sexual assault, there's going to be
4 within ninety-six hours of the time it's being reported
5 because after that, it's --

6 DR. WILKINSON: Is it done in the hospital or
7 in the institution?

8 MR. MORIARTY: Yeah. I'll let --

9 MS. BLOUNT: The -- the state's divided
10 between two entities that do patient care, and that's
11 the Texas University, the University of Texas Medical
12 Branch, which is the southernmost, and Texas Tech,
13 which would fall underneath the Allred Unit, and Texas
14 Tech sends theirs out to the free world, to the outside
15 facilities to do the rape kit assessments.

16 All of the -- all offenders who make a
17 complaint or allegation outcry, if you would, of a
18 sexual assault are seen by Medical for an assessment,
19 and we've had some that's made an outcry come into an
20 intake facility that happened sixteen years ago when
21 they were an offender once before, and they have been
22 brought to Medical for an examination, so all of them

1 get that. If it meets that criteria of ninety-six
2 hours in order to be able to do a forensic medical exam
3 and rape kit.

4 MS. SEYMOUR: I don't know if this is a
5 question for you or whom it's a question for, but on
6 the grids, was the complainant provided victim
7 services? Can anyone describe what victim services
8 would be? Is that the patient advocate or is there
9 more in terms of victim advocacy counseling,
10 explaining, as I think our panel has some concerns
11 about people not -- don't want to serve as a witness
12 for reasons that are very clear to us, may not be clear
13 to a complainant. What kind of victim services are we
14 talking about?

15 MS. BLOUNT: They are all given a pamphlet
16 whenever the investigation is started about the Safe
17 Prison Act and the victims' rights. Whenever they come
18 to Medical to do a forensic medical examination, I'll
19 just speak on my part of it, our policy dictates and
20 it's not just our policy dictates, they -- they --
21 that's one of my job duties to do, is to do an audit on
22 all these cases that we get, whether it's fondling or

1 sexual assault, that they are referred to mental health
2 services immediately and if that mental health
3 clinician is not on duty at that time, then they follow
4 the steps to ensure that they are receiving them as
5 soon as possible, usually by the Division of Medical
6 Services. So they are seen within just -- in that
7 crisis mode when that victim comes in there because
8 it's victim-centered care.

9 Now, as far as giving pamphlets and stuff,
10 they are also given those. I'll let Tina answer that.

11 MS. VITOLO: Yes. I can speak on the fact of
12 being an Offender Victim Representative, sexual assault
13 representative because I am one for the Allred Unit,
14 and I have had to go for some basic examinations in the
15 past.

16 We do have a sheet of rights of crimes of the
17 victims that they are given, pamphlet. We basically
18 are their eyes and their ears when they go through
19 these examinations.

20 The SANE nurses are excellent nurses, and
21 they explain the kit very well, but had they not, we
22 normally would go over the kit with them, also, so that

1 they would know what's going on with them during the
2 examination. We make sure that the appropriate
3 referrals are sent, you know, make sure if they need
4 extra counseling, if they want to see the chaplain, but
5 we make all those referrals for them.

6 MS. SEYMOUR: I guess I have to differentiate
7 between giving someone a brochure, a pamphlet. I would
8 call that psycho-education. Victim services is very,
9 very different. So I'm -- I appreciate the
10 clarification.

11 MS. VITOLLO: Right. They have
12 their -- normally, if it was to go further into the
13 prosecution side of it, they have the right to make a
14 victim-impact statement where they can, and they do
15 have the ability to -- can affect these offenders'
16 paroles and such based on this, you know, by knowing
17 when the offender's going to come up for parole,
18 knowing when they are -- could be released, where
19 they're at. You know, as -- as part of their rights,
20 they're allowed to have that information, and
21 they -- we normally will refer them over to the
22 Inspector General for that and if it goes that far,

1 then they have those rights to make those victim-impact
2 statements through victim services.

3 MS. DEBOTTIS: And my office does have the
4 Victim Assistance Coordinator on staff for victims in
5 all of our cases where there is a victim.

6 MS. SEYMOUR: I should have asked you that.
7 I knew that. I should have asked you earlier for the
8 record. Thank you for clarifying that.

9 DR. WILKINSON: Well, we're about -- well, we
10 are in the eleventh hour of this hearing, but I wanted
11 to ask the Warden. It looked like there's a liberal
12 use of taking away good time, is that right?

13 MR. WILLIAMS: We have guidelines set forth
14 by the agency that the unit authority follows affecting
15 good time based on certain charges.

16 DR. WILKINSON: It looked like you had one
17 that was like 140 some days and the other one was ten
18 or whatever it was.

19 MR. WILLIAMS: It could have been all the
20 good time he had left. I don't -- I don't have all the
21 documents in front of me, sir.

22 DR. WILKINSON: Yeah. So the dispensing

1 of -- taking away good time is not necessarily a
2 deterrent if it's the same person who's doing this.

3 MR. WILLIAMS: Well, it's -- I would like to
4 think that it's a deterrent to take good time away.

5 DR. WILKINSON: You would think, you know,
6 that they'd want to get out as soon as possible.

7 MR. WILLIAMS: Sometimes, depending on the
8 offender, no, sir, they don't seem to be, depending on
9 the offender.

10 DR. WILKINSON: The other thing, and I've
11 learned this with at least the masturbation piece, that
12 a lot of times when a mental illness is involved, when,
13 you know, we have prisoners who are masturbating in
14 front of people, sometimes they're not just being kind
15 of dirty old men or something, you know, or women, but
16 they are really, you know, -- they don't know the
17 difference, you know. So how do you, you know,
18 intervene with persons with a mental illness in some of
19 these cases, or do you have people who counsel folks? I
20 mean, do you know if a person who's either a victim or
21 a predator, whether or not they've been diagnosed with
22 mental illness?

1 MR. WILLIAMS: Well, depending on whether or
2 not they're on a psych case level, we can check the
3 caseload on every offender that this charge has gone
4 to. If they are on the psych caseload, we can refer
5 the offender to them. If they're not on the psych
6 caseload and we think that his behavior and his
7 disciplinary record shows that he may be having
8 problems in that area, we have the opportunity and
9 right to refer them to psych caseload, also.

10 DR. WILKINSON: So you can mitigate their
11 behavior --

12 MR. WILLIAMS: Yes, sir.

13 DR. WILKINSON: -- based on a mental illness
14 or --

15 MR. WILLIAMS: Well, we think -- if we think
16 there's something going on there, like for instance, if
17 he's -- if he has a history of mental illness but his
18 medication's been changed and we think that may be a
19 cause to the problem, we can refer him back to Psych
20 Service and let Psych re-evaluate him to see if that
21 was in fact what's causing the behavior.

22 MR. THALER: And, Dr. Wilkinson, just from

1 the global perspective, as we talked about the last two
2 days in the hearing, there's a large number of
3 individuals, of course, in our institutions that have
4 mental illness, and if any of those individuals are on
5 the active caseload with Psychological Services, when a
6 disciplinary correction is written, that is -- that is
7 routed through that psychiatrist who clears
8 that -- that individual for administrative action.

9 Indeed, if they feel their mental illness
10 is -- is a cause in some cases, there are other
11 approaches to that.

12 The particular program that deals with anger
13 management, particularly for our most aggressive
14 offenders, in some cases that's instances such as we're
15 referring to here, at one of our facilities in North
16 Texas, the individual might be referred to for program
17 opportunities as opposed to disciplinary process.

18 DR. WILKINSON: Well, we've heard a lot of
19 the discussion today. Anything else, by the way?

20 MS. SEYMOUR: I'm good.

21 DR. WILKINSON: You're good?

22 DR. CHRISTENSEN: No. I'm certain they're

1 afraid if I open my mouth, I'm going to ask another
2 question but I'm not. So we do appreciate your
3 testimony.

4 DR. WILKINSON: Well, I mean, again, I mean,
5 it's -- I mean, Director Livingston mentioned earlier
6 that this is not kind of an exact science, you know.
7 It's -- you know, the one thing that kind of -- I mean,
8 you've got a lot of players in what's going on here
9 between the Inspector General's Office, the
10 Prosecutor's Office, your internal investigations,
11 administrative, criminal, you know. I mean -- So
12 there's a lot of things happening and -- and -- and it
13 seems to me like, you know, as much of this that can be
14 synchronized, so the right hand will know what the left
15 hand's doing, and I'm not convinced that, you know, an
16 administrative investigation can't be information used
17 in a criminal investigation. We do it all the time.
18 That's where it starts.

19 You know, the first responders are going to
20 be those correctional officers and staff, and if they
21 don't know how to preserve the evidence and all those
22 kinds of things, then, you know, it's going to be very

1 difficult to have a good criminal investigation at some
2 point, but, you know, so there's a lot of theory about
3 first responders and what happens there and
4 preservation of evidence and good investigations and
5 all those kind of things that can certainly be
6 information used, at least from my experience, in the
7 criminal investigation.

8 But it's a big system, you know, 40,000 staff
9 people, a lot of people to be trained and -- and so
10 forth, and with you all having the Texas Youth System,
11 Youth Services doesn't make it easier. They were here
12 last year, you know, talking about some of these
13 issues. So it's very complex, you know, to -- to deal
14 with, at least, you know, Texas Youth Commission, but I
15 know they've gone through a lot of training lately, you
16 know, to mitigate, you know, some of the issues that
17 they've had. So it's -- it's tough, but I appreciate
18 you all being here.

19 If there are any follow-up issues,
20 documentation that we want, we kind of reserve the
21 right to ask for it. If there are anything that you
22 all would like to submit for the record that's

1 not -- we will duly receive those and after you get
2 back, if there are anything that's clarifying that
3 you'd like to submit, we -- we would love to have that,
4 as well.

5 Anything else from where you sit?

6 MR. LIVINGSTON: Just in closing, again, I
7 want to thank you for the opportunity to sit in front
8 of this panel and -- and discuss in detail many of
9 these issues. As -- as you pointed out, Dr. Wilkinson,
10 there are many moving parts and -- and the extent to
11 which we can synchronize those moving parts, then we're
12 all going to benefit from it, most notably the offender
13 population who are in our care and custody.

14 We're -- we're committed to making sure that
15 we raise the bar and continue to make our system and
16 our units. Today, the discussion has been about the
17 Allred Unit but certainly that's important. The Allred
18 Unit and the numbers there are very, very important,
19 given the instant issues that we've discussed today.

20 System-wide, we're committed to making sure
21 that we -- we not only have solid and sound policies in
22 place but that our practice matches up with -- with

1 those policies and again lots of moving parts. We're
2 committed to making sure that we connect those parts on
3 a regular basis and -- and have a smooth running
4 system.

5 DR. WILKINSON: Well, thank you for being
6 here. We will close this session but just as regarding
7 the schedule for this afternoon and I know the Elmira
8 folk are here, we will get started with the Elmira
9 testimony at one o'clock. We will have Mr. Beck from
10 the New York -- from the Correctional Association of
11 New York at 12:30, so a little bit different than
12 what's on the schedule, and we will go straight through
13 again this afternoon.

14 So we will break now for lunch and reconvene
15 at 12:30. Thank you.

16 MS. SEYMOUR: Thank you, Texas.

17 (Whereupon, at 11:25 a.m., the hearing was
18 recessed for lunch, to reconvene this same day at
19 12:30 p.m.)

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21

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23

1 A F T E R N O O N S E S S I O N

2 (12:37 p.m.)

3 DR. WILKINSON: Well, Mr. Beck, you are the
4 Director of the Prison Visiting Project for the
5 Correctional Association of New York, correct?

6 MR. BECK: That's correct.

7 DR. WILKINSON: Okay. I need to swear you
8 in, if you don't mind. If you'd raise your right hand?

9 Whereupon,

10 JACK BECK

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

14 DR. WILKINSON: Thank you. We've received a
15 copy of your written testimony. It's rather
16 voluminous. I don't know if you plan to read the whole
17 thing.

18 MR. BECK: I was not planning at all to read
19 it.

20 DR. WILKINSON: Okay.

21 MR. BECK: In fact, I'm very interested
22 in -- in having a dialogue, if that's what you would

1 like to do.

2 DR. WILKINSON: We'd like for you very well
3 to have you summarize it. I mean, it's very good.

4 MR. BECK: Okay. I will. I thought I'd run
5 through it very quickly.

6 DR. WILKINSON: No, no. Take your time. You
7 have about twenty minutes or so to kind of talk to us
8 and then we'll talk to you.

9 MR. BECK: Okay. All right.

10 TESTIMONY OF JACK BECK

11 MR. BECK: Well, thank you very much. I
12 really welcome this opportunity to be before you to
13 talk about what's going on in terms of the New York
14 State Prisons.

15 I work at an organization that's very old --
16 it goes back 165 years -- that has authority under the
17 legislature to actually go inside the prisons, evaluate
18 what we see in there, and then make reports to the
19 legislature and the public about what we observe.

20 I've been at the Correctional Association for
21 about six-and-a-half years, and prior to that, I did
22 litigation about conditions inside New York State

1 prisons. So I've been basically going, what we call in
2 New York Upstate, to the prisons for about thirty
3 years.

4 What we do, to kind of give context for what
5 I'm testifying about, is my organization has this right
6 to go in and walk anywhere in the prison we want to
7 walk, to talk to anyone we want to talk to. Those
8 encounters are not confidential because there's a
9 security staff that go with us, but in order to get
10 information, what we have done is develop surveys that
11 we will distribute to the inmates through mail because
12 we have confidential legal mail status which they can
13 then send back to us, and so our evaluations of the
14 prisons inside New York are based upon getting a bunch
15 of information from the Department of Correctional
16 Services. We call it DOCCS.

17 We inspect the facilities for a day or two,
18 walking around, speaking to the administrative staff,
19 inmate staff members, and then we have this large
20 volume of surveys that we receive from the inmate
21 population.

22 In addition, because my organization is

1 concerned about advocating for policy changes, we also
2 get a large number of documents from the department
3 about all facilities. So besides looking at a specific
4 facility, we then do it in context of -- of system-wide
5 data.

6 In the last five years, I have also been
7 using this survey technique. So now we have surveys
8 from twenty-eight different prisons, which is a
9 majority of the population inside of Corrections, not
10 the majority of the facilities, where we can then do a
11 comparative analysis. So I can -- I've asked these
12 same questions over and over again, and then I can
13 evaluate the answers at one prison versus another. So
14 that's kind of our methodology.

15 I've been asked to testify in particular
16 about Elmira Correctional Facility, but I also want to
17 talk about some broader data and other concerns that I
18 have, which I covered in here.

19 The superintendent, I know, who was there,
20 which I was just saying hello to, when actually I did
21 my inspection in 2010, although he's not there now, is
22 present, and if they want to give more details about

1 the prison, they certainly can, but for our purposes,
2 it's a maximum-security facility, almost 1,800 inmates,
3 in large-tiered cells.

4 When we went there, we -- in our survey, we
5 are not focusing on sexual violence. We're -- we're
6 looking at general prison conditions, but we do have a
7 number of questions that deal generally with
8 inmate-staff relationships, potential violence or abuse
9 by staff, inmate-inmate relations, and we do ask a few
10 questions about sexual abuse, and putting that in
11 context, I have previously testified before the PREA
12 Commission.

13 I did a study about violence inside the
14 prisons in '05 and '06, and gave testimony where we
15 spent much more time. At that time, I -- I felt that
16 it's very difficult and kind of what I call a quick
17 snapshot and not a lot of time to really get
18 necessarily reliable information, particularly if
19 you're going to ask about someone's personal
20 experience.

21 So what we decided to do is to ask questions
22 more about their perception of the environment rather

1 than their personal experiences, particularly about
2 that, and especially since, although we have
3 confidential legal mail, there is always a concern from
4 the inmate population that in fact it might not be
5 confidential when they turn something in. So we
6 decided not to ask certain questions that might be very
7 sensitive when we can't assure the confidentiality of
8 that.

9 And in that survey, what we found at Elmira
10 is that it is a facility at the time that we were there
11 that -- that was by far not the worst facility in terms
12 of the levels of violence or tension between staff, but
13 there were some issues, and one of those issues was
14 that a higher percentage than most -- than at most
15 other prisons said that sexual abuse by staff was a
16 frequent occurrence.

17 In fact, eleven percent said that was a
18 frequent occurrence and for us that triggered -- that
19 triggered something, particularly when that same person
20 was not what I'd say exaggerating or -- or heightening
21 other staff abuse. In other words, it did not look like
22 an angry population that was criticizing everything and

1 so when we saw that, that raised concerns for us.

2 We then very recently received, because we
3 had a FOIA request in to the department, data that the
4 department gave us for every facility for the last
5 three years, '08 through '10, and these are actual
6 allegations of inmate-on-inmates or inmate sexual abuse
7 and staff sexual abuse, and in my testimony, I
8 also -- I evaluated that data and that data showed
9 that -- was very consistent with -- with the
10 information that we received that suggested that there
11 are higher levels of allegations of sexual -- staff
12 sexual abuse at Elmira.

13 As a matter of fact, it was the eighth
14 highest rate because we normalize it per thousand
15 inmates of the sixty-two male facilities, and I
16 definitely believe that that suggests that there is a
17 problem at that -- at that facility.

18 Also in this data, we did a lot of
19 correlation between several factors because we're
20 trying to find out if what we're receiving is accurate,
21 and are there other characteristics that -- that match
22 that, and so, for example, the -- the data that we

1 received independently from the department actually
2 highly correlated with our data that we have from the
3 surveys that we have done; namely, places that the
4 inmates reported to us had high levels; they were
5 consistent in terms of the department's data.

6 We also found that at that facility
7 but -- and also at some others that there was a high
8 correlation between allegations of sexual abuse by
9 staff and other indicia of violence in the facility
10 and, in particular, in New York State, they do
11 something called Unusual Incident Reports, UIRs, and
12 one of the -- a couple of those categories are one is
13 assault on staff, and another is inmate assault on
14 inmates, and we found, particularly on assaults on
15 staff, that there was a very high correlation between
16 high rates of UIRs about assault on staff at the same
17 facilities that were -- that we had high rates of
18 allegations of staff sexual abuse.

19 MS. SEYMOUR: I'm sorry. Is that physical
20 assaults on staff, the UIRs, or sexual assault?

21 MR. BECK: No. They are physical assaults on
22 staff.

1 MS. SEYMOUR: Okay. Thank you.

2 MR. BECK: They're not related to sexual
3 conduct. I'll actually get to that separately.

4 So these are -- what we're seeing is, you
5 know, is there a correlation between kind of violence
6 in the prison and this separate aspect which is, you
7 know, allegations of staff sexual abuse?

8 So, although the inmates at Elmira did not
9 report to us very high levels of attention with staff,
10 as a matter of fact, our report on that was saying that
11 this for a maximum-security we thought was somewhat
12 less, when you actually looked at the number of UIRs,
13 the Unusual Incident Reports, that was a fairly high
14 rate at that -- at that prison, and also we found that
15 for UIRs on inmate-on-inmate assaults that it had one
16 of the highest rates.

17 So there's this very interesting, from our
18 standpoint, point of the staff -- the inmates that we
19 talked to did not perceive especially high tension, but
20 in fact, there was a fairly significant level of actual
21 violence going on, and, finally, there was also another
22 correlation we found, is that inmates can file

1 grievances, and they go into a bunch of different
2 categories, and one of the categories, they call it
3 Code 49, is grievances about staff conduct, that
4 generally go to staff misconduct, and that's any staff
5 misconduct. Again, it's not sexual. The rates for
6 Elmira were -- were also high for the number of
7 grievances for staff misconduct.

8 So, based on that, it's definitely our
9 opinion that there is -- should be a concern about
10 staff abuse. All the indicia, including obviously the
11 Bureau of Justice Statistics report, are consistent
12 with what we are seeing at Elmira. Clearly, it is not
13 the highest in the state, but there was -- there was
14 this consistent pattern in all the data I looked at
15 that would suggest that the findings of the Bureau of
16 Justice Statistics is similar to our findings and also
17 the data we evaluated from the department.

18 Second issue I was asked to really address is
19 the issue of abusive pat-frisks and that's a
20 very -- you know, I think that's a very important
21 issue, and I think the Panel should be very concerned
22 about it, and I have a few points on that.

1 First of all, abusive pat-frisk is a serious
2 problem in the prisons. It is a confrontation. It is
3 a time when there's a high level of potential for
4 confrontation between inmates and staff, and many
5 things, not even separating the sexual abuse, can be
6 related to that. We hear this story all the time. We
7 ask a lot of questions about it, and generally the
8 inmate population is concerned about these pat-frisks,
9 and -- and we have a lot of data on that.

10 The basic story at Elmira is that, yes,
11 people express concern about pat-frisks at Elmira but
12 not at a rate that was substantially higher than at
13 other places and particularly not in correspondence to
14 the allegations of sexual abuse that we received.

15 And so, although it's a concern, and I think
16 a legitimate one, and I think PREA should be concerned
17 about it because there are -- there is this fine line
18 between an aggressive pat-frisk and one that becomes
19 sexually abusive. I also think it's not in the
20 interest and safety of staff and inmates to have overly
21 aggressive pat-frisks because I think, although it is
22 justifiable and I recognize a justifiable security

1 concern, there still needs to be respect of kind of
2 human dignity and also the perception of both the staff
3 and the inmate what is going on and again these are
4 maximum-security inmates. Many of them have been
5 incarcerated a long time. They have been pat-frisked
6 many, many times, and when you start to hear abusive,
7 they say this is something more, and then when it
8 becomes sexually abusive, that is a sub-category of
9 that.

10 But our view is that that does not explain
11 the allegations of sexual abuse, and we have a couple
12 of pieces of evidence that support that that -- that I
13 included in my testimony.

14 First of all, in 2005 and 2006, we did a
15 whole survey just on violence inside the prison. We
16 asked many more questions and we asked the very
17 question of (a) having inmates say whether or not they
18 were personally experienced sexual abuse and then we
19 had a separate question because we knew pat-frisks were
20 a major component of it, did the sexual abuse that they
21 claimed they experienced, was there things other than a
22 pat-frisk in it, involved, and twenty-seven percent of

1 all the people we surveyed said they -- responded to
2 the survey, said that they experienced staff sexual
3 abuse. These are rates much higher than what you
4 received in yours.

5 We then, when we asked the question how many
6 of you experienced sexual abuse other than abusive
7 pat-frisk, thirty percent of those individuals said
8 this was something more. That does a substantial
9 number of people experienced their -- their experience
10 was abusive pat-frisks, but still there's a very
11 significant number, and if you normalize that for
12 the -- for the entire body, that would say eight
13 percent of the inmate population experienced sexual
14 abuse, their perception, other than a pat-frisk.

15 We also have some specific things about
16 Elmira. During that same time period, we got all the
17 grievances that were appealed to Central Office and
18 DOCCS and they provided us with the actual summary of
19 all of those grievances. Now we wouldn't see the full
20 document, but we saw a summary of a description and in
21 those summaries, they would -- they would have
22 allegations about sexual conduct and of the fifteen

1 that related to Elmira, little less than half of those
2 dealt with abusive pat-frisks, but the remainder were
3 other sexual conduct.

4 So as far as I'm concerned, we have three
5 pieces that suggest that abusive or that sexual abuse
6 allegations are not just pat-frisks. We have the data
7 that we have from 2003 -- I mean 2005 and six
8 system-wide that suggest it is an important but not the
9 entire piece. We have information about Elmira, and
10 then we also have this comparative piece about Elmira
11 inmate statements about pat-frisks that don't suggest
12 it's a particularly egregious problem there.

13 Next, of course, the obvious question is what
14 is it about the facility that may facilitate abuse and
15 what -- what does not?

16 One is that this is a physical plant that's
17 an older -- one of the classic older prisons. That
18 means cells that are in very long corridors. There are
19 almost no cameras in the prison. There are many areas
20 where people could be isolated as they're being moved
21 around.

22 Next is that inmates are generally escorted.

1 That means there's always staff. They don't just move
2 whenever they want, they move in a group, but many
3 inmates told us that when there's potential
4 confrontation between them and staff, everyone else is
5 removed, and the inmate is isolated, and that is very
6 feasible in terms of the operation of that facility.

7 Second is our thesis that when you have
8 correlations between kinds of violence in a prison,
9 you're also going to have a component of that violence
10 that is sexual, and we have -- we have that present.

11 We also see that inmates, when they express a
12 lot of concern about staff misconduct, which again we
13 have high rates at -- at Elmira, that a level of that
14 is going to be related to possible sexual violence.

15 Finally, as many prisons that we see in New
16 York, there is concern about the conduct in the
17 three-to-eleven shift. That's when the executives go
18 home. Now it's, you know, the jail is essentially run
19 by the correctional officers and that's when people
20 assert to us that there's confrontations between
21 inmates and staff, and we saw that at Elmira as at many
22 other facilities.

1 I'd next like to turn to kind of put Elmira
2 in the broader context. We -- there is a table in my
3 document called Table A which is a compilation of every
4 prison in New York State that summarizes the data that
5 we received from the Department of Correctional
6 Services about allegations of staff and inmate sexual
7 abuse for three years, and then we -- we normalized
8 that data to doing allegations per year per thousand
9 inmates so you could compare that, and then we started
10 ranking them, and the data, I found, is particularly --
11 I don't want to say shocking, but pretty startling.

12 There's a group of prisons where the rates
13 per thousand inmates per year are substantially higher
14 than they are at the average facility and the -- and
15 the male facilities, and I first want to talk about the
16 male facilities, that if you took the median facility,
17 there are about three allegations per year per thousand
18 inmates, but then there are a group of facilities, and
19 particularly nine male facilities, where those
20 allegations go somewhere from the number of fifteen to
21 sixty-four allegations per year. I mean, we're talking
22 about rates that are five to twenty times higher. That

1 suggests something is going on that requires attention.

2 In terms of the male facilities, every one
3 but one is a maximum-security facility. We found high
4 correlations with violence in the facility. That means
5 inmate assaults on staff and inmate-inmate
6 confrontations. We also found a number of high levels
7 of grievance concern -- concerning the office.

8 Essentially, our view is that if you have a
9 facility with high tension, difficult relationships
10 between inmate and staff, sexual abuse allegations, and
11 I think acts are going to be very much apparent.

12 Now, we did, on Page Eight, I'm just running
13 through my testimony quickly, we did talk about some of
14 the indicators of these eight facilities where we saw
15 certain aspects because we asked questions about
16 retaliation and threats and also the sense of how
17 effective are they, how effective the grievance system
18 is, and we also found in -- in a number of these
19 facilities, but not all, there are real concerns about
20 whether it's safe to raise a complaint, whether
21 you -- there are other mechanisms to kind of deal with
22 issues, and also we're refining a real fear that's

1 present.

2 Overall, the common factors that we have
3 found is high levels of violence in staff-inmate
4 confrontations and intimidating atmosphere where
5 threats by staff and retaliation were common. That was
6 the common parameters that we -- we saw in these
7 facilities.

8 The second piece is you might certainly want
9 to talk to the department people on it, but in New York
10 State, there is not a lot of protective custody. I
11 don't have -- I was trying to get data on this, but I
12 wasn't able to do that in the short time from when I
13 was notified about testifying, but there aren't a lot
14 of protective custody cells, and it's also very
15 difficult to get into protective custody in New York
16 State.

17 Generally, you have to make an
18 allegation -- a very specific allegation of what your
19 threat is and identify the people that are threatening
20 you. Particularly in maximum-security prisons,
21 although there are protective custody units, these
22 are -- these are really geared to very specific

1 threats. So the notion is that vulnerable people are
2 not readily identified and removed. There are two big
3 units in the whole state system at Clinton APPU
4 and -- and Merle Cooper that have, I think, more than
5 400 -- 400 cells, but other than that, there are small
6 units around the state for protective custody.

7 I don't believe, and this is now my opinion,
8 that it's very easy for people who feel somewhat
9 vulnerable to -- to access protective custody. In
10 addition, generally those -- the environment of
11 protective custody in New York State is a fairly, again
12 my opinion, repressive environment. In other words,
13 very limited opportunities to be out and participate,
14 and so people are very reluctant to kind of offer that,
15 if you look like it's going to be a long-term
16 confinement and you have general fears about being in
17 the prison population.

18 As a matter of fact, we have people
19 anecdotally who would tell us I'd rather get a ticket
20 and be moved to disciplinary confinement for a certain
21 period of time to get myself protected rather than go
22 the protective custody route because I either can't get

1 it or, you know, it's going to be a difficult process
2 for them.

3 Finally, this data also raised another
4 concern for us which is that we identified a number of
5 the much older and larger maximum-security prisons that
6 did have, although higher-than-median, were less than
7 this group of nine prisons that we identified, and they
8 are particularly Attica, Auburn, Clinton, Sing Sing,
9 and Green Haven. These are, for people who know a
10 little something about New York, these are the big
11 old-time maximum-security prisons and those rates were
12 somewhat less, and that was surprising to us because
13 when we did our -- our analysis in '05 and '06. We
14 actually went to a number of these facilities, and they
15 had some of the highest rates in our studies of
16 allegations of sexual abuse.

17 And so now I'm going to speculate because
18 obviously I don't have independent data, although I
19 just visited Attica. The superintendent is here. He
20 was at Elmira, and now he's at Attica, and I just sent
21 out about 950 surveys are going out to Attica inmates
22 in the next week, but I don't have any of those

1 results.

2 But my concern is that there might be
3 something in that -- in that environment that is
4 deterring individuals from coming forward to make
5 allegations because when we talked to inmates, when we
6 talked to them in '05 and '06 and even some of my
7 recent visits, people are very concerned about
8 retaliation for filing any complaints, and so I would
9 just urge that we cannot just rely on, you know, an
10 independent survey to necessarily answer the question
11 of how prevalent it is, and when you -- when I look at
12 my other indicia of that, in other words, high levels
13 of violence, a lot of tension with staff, high levels
14 of grievances, these are the maximum-security prisons
15 meet every other criteria, and so we are concerned that
16 there might be underreporting.

17 Just three more topics I want to address,
18 then hopefully we can ask questions.

19 One is I don't generally go to the female
20 institutions. We have a separate project. But in the
21 data on Table A, if you look at it, four of the top six
22 facilities of the highest allegations of staff abuse

1 were female facilities. That's a very sensitive issue
2 in New York because it's a pending litigation about it.

3 We're not at all involved in that litigation, but that
4 data just has to jump out at you and it's also
5 consistent. Their rates are thirteen to almost
6 twenty-five times higher than the median rate for a
7 male facility and we're talking about four out of five
8 of that. So these are medium-security as well as
9 maximum-security.

10 We have a separate project at my organization
11 within the prison project there. Actually in the
12 process, they have done a large survey of a number of
13 the facilities, actually all the facilities. They're
14 in the process of analyzing their data. We don't have
15 a report yet, but I think there are very serious
16 concerns about the women facilities, and I can't come
17 here and talk about the men without noting that
18 actually the rates are much higher at the women's
19 facilities, both for staff sexual abuse and
20 inmate-on-inmate, and we actually put a description in
21 here of some of the factors where we very much believe
22 that the women are more vulnerable for many reasons and

1 are more easily subjected to violence, and I wanted
2 to -- I don't have time to go into all those details
3 but I wanted to note it.

4 The next issue I wanted to talk about is what
5 I call inconsistent reporting of sexual abuse in terms
6 of the data.

7 I'm kind of a data guy, as you can maybe
8 tell, and I look at a lot of information on how it
9 comes through, and when I started to try to compare
10 this information, it became very frustrating on what is
11 really happening.

12 The first one, and the most important, is I
13 was provided just last week from the department,
14 because I had an outstanding FOIA request, with data
15 which they -- this is their data on allegations of
16 staff sexual abuse and allegations of inmate sexual
17 abuse and those numbers are for staff was in the range
18 of about 570 per year for those last three years.

19 When I look at the Bureau of Justice report,
20 Justice Statistics report for every other -- several
21 years, the rates for New York are about 200 and
22 something. How do we get a difference between 500 and

1 200?

2 Now I know there are definitional -- there
3 are definitional issues, but that is a very large
4 difference. It's basically forty-six percent of the
5 number come out in the federal report where we have
6 data that suggest that it's potentially much higher. I
7 think it's worth asking questions about that, and I
8 think this raises a very important issue. How do you
9 define sexual abuse? How do you define an allegation
10 of sexual abuse? How is that then processed because
11 there's different avenues in New York State on how you
12 actually process it.

13 If it's considered real sexual abuse, it's
14 investigated by the IG versus if it's regular
15 misconduct, it will be going through a prison system.
16 So these are very important issues, and it's not just a
17 matter of numbers: it's what is going on.

18 Similarly, that same discrepancy was even
19 greater when you looked at inmate-on-inmate. The
20 numbers were, for that time period, were like forty-one
21 in the BJS report and we have about 110 as an average
22 for the data that I received. So why is there such

1 discrepancies?

2 Another discrepancy that we believe exists is
3 we also get data on inmate disciplinary actions, and
4 there are a series of inmate disciplinary actions. In
5 other words, inmates have violated prison rules that
6 relate to sex, and I actually -- I list that data for
7 you, and although some of them would probably go
8 on -- go beyond what you would say because it's
9 basically what they call other sexual offenses, which
10 is lewd conduct or women -- it's generally more women
11 than men, actually holding hands or doing some more
12 what I would call casual physical contact, but it's not
13 permitted, but for the main ones, which is a sexual
14 offense, there was, you know, 200 and some odd cases,
15 yet when you get down to what is being reported in the
16 state, it's forty-one. Now how do we -- what is the
17 difference between those?

18 And then, finally, in the -- in New York
19 State, we have our Unusual Incidence Reports and
20 there's a category for an unusual incident which is
21 called sexual misconduct and I actually give you the
22 definition of that and those ranged in sixty-seven.

1 So we have all these numbers that are all
2 over the place and how -- that's sixty-seven per year.

3 Well, if you look at in the BJS report of actually
4 substantiated claims, we're talking about a much lower
5 number. If we're looking at allegations, we're talking
6 about a much higher number.

7 What does the sixty-seven represent? What
8 are the UIR sexual misconduct? I can't answer those
9 questions. Maybe others that are here today could.
10 But that raises concerns for us because if you're not
11 agreeing on what you're measuring, those numbers are
12 not meaningful and you can't really compare it.

13 And finally, to me, the last and most
14 important point of this whole system is that there is
15 clearly inadequate substantiation of claims.

16 I run through some of the numbers. If you
17 look, just look at the BJS report, only six percent of
18 all allegations were substantiated. Ninety-four
19 percent of the time an inmate raises a complaint, it's
20 not going to be substantiated. If you use the higher
21 numbers that I have, it's now down to about 2.5
22 percent.

1 Opposed to that is the notion of what is the
2 risk of coming forward and I'm sure people experienced,
3 you know that there are substantial risks about raising
4 allegations of abuse. Would you/could you advise
5 someone to come forward when you have, you know, one
6 out of whatever, one out of twenty or much -- even
7 higher chance of actually having some positive action
8 versus the real risks that -- that go on?

9 This, I think I have to emphasize this point,
10 for the inmate population stands in marked contrast to
11 their reality when they are the person that's done
12 something wrong. In New York State, ninety-five percent
13 of inmates who are alleged to violate prison rules are
14 found guilty. Five percent chance of ever beating a
15 ticket. Yet when you make an allegation, serious
16 allegation against staff, you have almost no chance of
17 winning that claim.

18 Why would someone come forward, and people
19 talk to us all the time, why would I raise a complaint?
20 The risks to me far outweigh any benefit that I'm
21 going to receive, and until you have a system that is a
22 balanced and fair system to really judge these claims,

1 it's not realistic to really expect people to come
2 forward and use that process, and then if they don't do
3 that, since this whole system is triggered on
4 essentially an allegation coming forward from inmates,
5 you're really hiding the whole system, and that means
6 that no matter what we do, I'm an outside advocate
7 myself, if people aren't going to come forward and tell
8 us what's happening, we can't really measure the
9 problem.

10 So three recommendations. I have several
11 things that we commented on the standards, so I'm not
12 focusing on the standards. I'm talking about what the
13 Bureau of Justice Statistics.

14 One is I think they need to improve the
15 collection and analysis of data about allegations of
16 and outcomes from inmate complaints, and, in
17 particular, kind of compare that to data about
18 grievances, unusual incident reports, inmate and staff
19 disciplinary actions, to kind of normalize that, not
20 just look at the surveys themselves that you're doing,
21 which I believe in, and I'm a survey person, but you
22 have to really look at that in the context of other

1 data.

2 Second is prior to sampling, and I know
3 they're trying to do an objective sampling in terms of
4 what prisons you're going to do, but I believe it's
5 justifiable to over-sample places that you think are
6 problematic. You can have two different measures as
7 a -- as a prison. I know you could say we have done
8 this over-sampling where we think it's problematic, but
9 you're really trying to find out is there really a
10 problem out there. You're not really trying to say the
11 system is at fault because you're not doing enough
12 sampling to really, you know, make a comment on that.
13 So why not over-sample places that you think are
14 problematic?

15 And then my third, and maybe a little more
16 radical, is that I believe it would be very useful for
17 the Bureau of Justice Statistics to do a pilot project
18 going beyond just surveys, and the reason I recommend
19 that is I think it is likely that in the -- in the PREA
20 Standards there's going to be a recommendation that
21 there be outside auditing.

22 I think the Bureau of Justice Statistics has

1 now a real history of looking at this issue, and they
2 should take it the next step. That could be very
3 informative to people later on doing this work on how
4 can I do this job better. That is beyond just going in
5 and doing a survey but, rather, collecting information,
6 finding out what documents you might need, creating
7 instruments that other people could use because the
8 people -- when you now throw this requirement out, not
9 you, I don't mean, but when the Department of Justice
10 comes out with a recommendation that now there has
11 to -- all departments and outside auditors have to do
12 this job, it would make great sense to have some real
13 experience coming forward and saying and here's some
14 things that we have done, this is what we found
15 effective, and this is what we found not effective.

16 I'm making this recommendation not for them
17 to actually validate claims but, rather, to start the
18 process of how do you properly investigate them, and I
19 think that would be very informative for all of us when
20 we later on have to take on this substantial burden of
21 figuring out how to verify complaints because
22 allegations alone are only allegations. It's actually

1 how do you verify them. So I believe a small pilot
2 project looking at that would be very useful.

3 Thank you very much.

4 DR. WILKINSON: Thank you very much for your
5 testimony.

6 When -- when you surveyed -- tell me about
7 that again. You give inmates actually --

8 MR. BECK: Yeah. What we --

9 DR. WILKINSON: -- a self-addressed envelope
10 and --

11 MR. BECK: Yeah. We -- we actually walk all
12 the blocks and we go literally to every cell we can.
13 Probably at very big institutions, we probably don't --
14 we didn't get to a hundred percent. At other
15 facilities, we do a hundred percent.

16 We generally sign up more than -- more than
17 fifty percent of the population at most prisons
18 and -- but we don't send the survey unless someone says
19 yes. We very much believe in that people bear risk
20 whenever they're going to give any information, and so
21 we go cell to cell or in dorms and ask them if they
22 would like to receive it.

1 I would say eighty to ninety percent of the
2 people actually agree who we talk to, if we can get to
3 them, because when you're going around --

4 DR. WILKINSON: You say in your testimony
5 that forty to sixty percent.

6 MR. BECK: Forty -- forty to sixty percent
7 I'm saying receive a survey. Most people that we talk
8 to agree but we can't speak to every person.

9 In other words, if you're going in housing
10 areas and program areas, you're always going to be
11 missing some of the population because it's very fluid.

12 DR. WILKINSON: All right.

13 MR. BECK: So we don't speak literally to
14 every single person.

15 DR. WILKINSON: Right.

16 MR. BECK: But we go around and go to
17 probably every area we can.

18 DR. WILKINSON: You don't just leave the
19 survey in the cell?

20 MR. BECK: No, we're not actually -- on our
21 agreement with the department, we're not allowed to do
22 that. So we have to physically mail the survey, but

1 we've had a personal contact with everyone that
2 receives our survey and then somewhere between twenty
3 and forty percent of the people who we send a survey
4 actually send it back to us.

5 DR. WILKINSON: So when you get allegations
6 of staff-on-inmate sexual contact, do -- did you
7 collect whether or not those were female staff or men
8 staff or do you have thoughts about that?

9 MR. BECK: I have some thoughts, but I have
10 not -- as -- and I really -- I did it somewhat earlier,
11 but I want to emphasize that we have not done any
12 concerted -- we -- we investigate major issues. We've
13 done a medical care, mental health services, substance
14 abuse treatment, other things.

15 We have not investigated sexual abuse because
16 I believe to do that job appropriately would require a
17 lot of effort, and it's on my list, but not one we have
18 done it. So our -- our investigations are -- are
19 clearly limited. So we haven't asked a lot of the
20 questions that if I was doing a study, I would ask.

21 I do have anecdotally some impressions. So
22 let me -- I wanted to do a caveat on what I'm talking.

1 I do believe that opposite sex encounters are much
2 more likely. I agree with the BJS that they are much
3 more frequent in terms of sexual abuse. In other
4 words, that means in the male prisons, that's where the
5 female -- a female officer and what's much more
6 substantial is male officers in -- in -- in the female
7 institutions.

8 I think there is in the descriptions that I
9 have, I think there is also a substantial difference
10 between same-sex encounters, particularly in the male
11 side, than -- than opposite sex. I believe the abuse
12 that I am hearing about is really very much a power
13 dynamic of people who are really abusive, more so than
14 looking at a relationship that you often find
15 in -- this is the difference between a willing -- a
16 willing encounter versus one that has different
17 characteristics.

18 I think the men in the maximum-security
19 prison often this is very much related to a real sense
20 of abuse that comes in many different ways, and sexual
21 abuse is part of that. That is my theory. I don't
22 have data to prove that, but that's the kind of

1 description I have.

2 We do have these incidents between -- that
3 I've heard about between women staff and male that
4 might have much more of a willingness or more of a
5 bargaining for benefits and the like that's not the
6 same in terms of same sex.

7 MS. SEYMOUR: I just appreciate your
8 recommendation on the pilot project to investigate how
9 to better evaluate the veracity of reports because I
10 was -- I was just -- I was surprised this morning by
11 the number of times I heard false allegations and false
12 reports and it seems to me that if you kind of go in
13 with that presumption, you're -- you're just not going
14 to be able to get at the truth, and I think that's a
15 really good suggestion and to be able to document what
16 is the process to get at the truth.

17 So thank you.

18 DR. CHRISTENSEN: Mr. Beck, --

19 MR. BECK: Yes?

20 DR. CHRISTENSEN: -- I looked at -- I
21 reviewed the facts and figures. I'm also a number guy.
22 So I looked at your Table One.

1 MR. BECK: Yeah.

2 DR. CHRISTENSEN: And I'm looking at the
3 incidents specifically as they relate to Elmira --

4 MR. BECK: Yes.

5 DR. CHRISTENSEN: -- and Attica.

6 MR. BECK: Okay.

7 DR. CHRISTENSEN: And the reason that I'm
8 doing that is both Elmira and Attica are -- are
9 reported --

10 MR. BECK: Yes.

11 DR. CHRISTENSEN: -- in the BJS report. So
12 as one numbers guy to another, the numbers don't match.

13 MR. BECK: What -- what do you -- in what
14 respect?

15 DR. CHRISTENSEN: They're significantly
16 different. Actually, Attica in the BJS report actually
17 reports a higher incidence of staff sexual misconduct
18 than Elmira, yet when we look at your numbers, it's the
19 reverse by quite a bit.

20 MR. BECK: Yeah. That's actually why I
21 talked about that. By the way, when you say my
22 numbers, they're actually department numbers.

1 DR. CHRISTENSEN: Well, the numbers that you
2 reported --

3 MR. BECK: Yeah, yes.

4 DR. CHRISTENSEN: -- on Table A.

5 MR. BECK: Right. And -- and that's an
6 issue. That's why I -- that's why I actually talked
7 about that. There are a group of maximum-security
8 prisons, and Attica is one of them that, under the
9 department's data on allegations of staff abuse: they
10 are much lower, and I am very -- that's what I was
11 trying to express. I'm sorry I didn't do it clearly
12 enough.

13 DR. CHRISTENSEN: So you're suspicious of the
14 lower reporting. So -- so when we say that Attica
15 is -- Attica on -- on Table A -- of your Table A is
16 half that, less than half that of Elmira, --

17 MR. BECK: Yes. I don't think that is -- I
18 don't think that's the -- an accurate statement of what
19 is going on, not in terms of what people are alleging
20 but what is going on.

21 When I went to Attica -- just I do have some
22 data I didn't present because I thought it was older.

1 When I went to Attica and we asked about sexual
2 abuse -- I want to make sure I pull it out because
3 I -- Attica had one of the highest rates that we had.
4 More than fifty percent of the people actually said
5 they thought they were sexually abused, but most of
6 that, a large percentage of that, was about pat-frisks,
7 but when we took out that, it was still over ten
8 percent of the people that we talked to said that they
9 experienced sexual abuse other than pat-frisks at
10 Attica. That was our separate study, but again that's
11 now -- you know, that's more six -- more than six years
12 ago, and so I wasn't relying on that.

13 I actually did submit, not here but earlier
14 in the week, I did give my testimony. This is all
15 contained in testimony I submitted to the PREA
16 Commission, and if you'd like to have it, I'd gladly
17 send it to you. That has the data on Attica.

18 So that's why I am very -- I am suspicious
19 but since I have not received new data from Attica, I
20 will be in the next two or three months, but it's also
21 very limited. I raised questions about whether this is
22 inmate underreporting. This is not DOCCS refusing to

1 report it but that inmates underreporting about abuse
2 because they are -- they do say to us they're very
3 concerned about raising allegations, and so that's -- I
4 am very concerned, and that's why I talked about the
5 potential of underreporting, and I -- I would put
6 Auburn and some of the other large maximum-security
7 prisons in the same category.

8 DR. CHRISTENSEN: Thank you.

9 DR. WILKINSON: Maybe just one more question.

10 MR. BECK: Sure.

11 DR. WILKINSON: You talk about the abusive
12 pat-frisks and sexually abusive pat-frisks. What makes
13 them abusive?

14 MR. BECK: Well, that's a great question, and
15 in some respects when I talk to other people, it's some
16 way how people talk about pornography, and I don't mean
17 to be too racy here, it's the eye of the beholder. I
18 believe that inmate A and inmate B, you do the exact
19 same thing to, one person might say, "That's just an
20 abusive pat-frisk: I didn't like it. I didn't think
21 it was necessary." And person B might say that "I felt
22 that's sexually abusive," because the very

1 nature -- correction people, you know. The very nature
2 of a pat-frisk involves touching and touching of, you
3 know, of intimate areas, and really -- and that's
4 actually an issue we haven't talked about, about
5 cameras and the like.

6 It's very hard to really, even with a camera,
7 be able to identify what is a sexually abusive -- on a
8 single encounter, what's sexually abusive or not. I
9 think it's somewhat the perception of the individual
10 but it's also -- it's these fine things that you know
11 it when you experience it, and I'm not trying to be
12 vague, but I think it's that -- it's that subjective
13 and it's also a pattern.

14 We did have a situation --

15 DR. WILKINSON: Is there a survey question to
16 ask about abusive pat-frisks or pat-frisks or --

17 MS. SEYMOUR: Define what that is.

18 MR. BECK: Yes. Well, actually because we --

19 DR. WILKINSON: -- what it is?

20 MR. BECK: I think it's very difficult to do
21 that. We actually -- when we did our first survey in
22 '05 and '06, we defined sexual abuse and made sure we

1 wanted to include, you know, sexually abusive
2 pat-frisks, so people would make sure that they
3 included that, but then we tried to separate it out,
4 but we didn't want to define that because I do believe
5 that that is a very personal element.

6 I think another piece of this is,
7 particularly on the women's side, is when you have
8 personally experienced -- I'm talking about the inmate
9 population -- prior trauma and sexual abuse, that this
10 encounter very much heightens your, I think, response
11 to that conduct.

12 I feel for Corrections. They are -- they do
13 have a difficult operation. How do you make a thorough
14 enough frisk to identify this, but how do you not go
15 beyond that line?

16 DR. WILKINSON: If they don't do some of
17 that -- I'm not justifying it but, --

18 MR. BECK: Right.

19 DR. WILKINSON: -- you know, the next option
20 would be a strip search or something.

21 MR. BECK: Right. And so -- but there is
22 another piece, though. Inmates are frisked all the

1 time, and we do -- people don't say every frisk is
2 abusive all the time. As a matter of fact, as a
3 separate example, in the women's facility in New York,
4 there's an incident where, all of a sudden, the number
5 of complaints about abusive pat-frisks went up because
6 there was a particular officer who was doing something
7 that the women all, even though they were being
8 pat-frisked, really found it to be not only too
9 aggressive but offensive.

10 It is hard to write on paper, but I believe
11 it is definitely feasible to kind of monitor that, and
12 although there are going to be objections to pat-frisks
13 any time, it's one of the highest areas that we talk
14 about: you do see differentiation in that. I see
15 differentiation in my surveys where people say this is
16 much more aggressive or -- or I find this offensive,
17 and that's when there are efforts that have to be made.

18 This is not one where you can -- I'm a lawyer -- where
19 you could write down a fact and say this is it, and
20 this is above the line and below the line. It
21 has -- it's a very soft one to kind of define, but one
22 that you can look at. How is the -- how -- and I'm not

1 trying to control inmates but how do the inmates
2 respond to this? And when those complaints go up, it
3 generally means that something else is happening, and
4 it's not just more aggressive. It generally has other
5 components to it.

6 DR. CHRISTENSEN: What's your opinion as to
7 how has the strip search litigation affected pat
8 search, the prevalence and the frequency of pat search?

9 MR. BECK: Well, you have to talk about it
10 in -- in somewhat different -- in the male
11 maximum-security prisons, people are pat-frisked all
12 the time. It's such a routine thing, it happens and it
13 happens all the time. I don't think it's the -- the
14 strip is necessarily the reason that has changed that.
15 It's that they go -- you know, every time they go to
16 the yard or, you know, are coming back from the yard or
17 there are very frequent times when they might
18 be -- might be going through that. So that litigation
19 wouldn't have to do with that.

20 If you're dealing with when you
21 really -- when you're picking people out, other than
22 routine pat-frisking, then I believe there -- there

1 might be some suggestion but that is not what most
2 people are encountering. It's not that there
3 is -- they're being pat-frisked because there's
4 suspicion that something is directed to them. It's the
5 more routine pat-frisking that's going on that I think
6 is driving these numbers.

7 DR. CHRISTENSEN: Well, and especially in
8 common areas, like that, because that's where --

9 MR. BECK: That's right.

10 DR. CHRISTENSEN: That's where they pass
11 stuff around.

12 MR. BECK: Right. And I'm not suggesting
13 that pat-frisks should not be done, cannot be done.
14 The question is how do you do something that is -- that
15 all of us would find difficult to experience. How do
16 you do it -- how do you do it in a way that doesn't
17 heighten that confrontation? Given that it's happening
18 all the time, every inmate is not beating people up
19 because they're being touched, when is it -- when does
20 it cross the line?

21 DR. WILKINSON: Well, it's a big issue across
22 the country, the whole issue of cross-gender

1 supervision and surveillance. I mean, many of the
2 jails now have -- almost eighty percent of their -- of
3 female staff on third shifts or second shifts or large
4 percentage. So they have to pat down men. At least at
5 Elmira it's men patting down men --

6 MR. BECK: Yes.

7 DR. WILKINSON: -- and, you know, so forth.
8 So it's not an easy issue, but I would plan to ask the
9 Elmira folks how they define -- how they train people
10 to do pat-frisks and so forth.

11 MR. BECK: And like I said, although they are
12 higher -- the numbers at Elmira that we had were not
13 suggesting that that was the primary concern there. I
14 just want to -- you know, I don't want to -- to -- by
15 the way, Elmira, in the group of the nine prisons that
16 we looked at, Elmira was in the lower part of that
17 group. They were still substantially higher than the
18 median, but it was in the lower -- in the lower group.

19 DR. WILKINSON: Well, we appreciate you --

20 MS. SEYMOUR: Thank you.

21 DR. WILKINSON: -- taking the train down here
22 this morning --

1 MR. BECK: Thank you. My pleasure.

2 DR. WILKINSON: -- and joining us and -- and
3 there -- when you get your new survey completed, if you
4 want to forward it to us, we'd love to have it.

5 MR. BECK: Okay. Thank you. Thank you very
6 much.

7 DR. WILKINSON: Thank you. Jason.

8 MS. SEYMOUR: Come on down.

9 DR. WILKINSON: We have a technical matter
10 we're trying to figure out.

11 (Pause.)

12 DR. WILKINSON: We have another testimony.
13 The person isn't here but we want to have it on the
14 record. So one of the OJP, Office for Civil Rights
15 staff, will be reading the testimony into the record.

16 MS. SCHECKNER: So this is an excerpt from
17 the written testimony of Betsy Hutchings, Managing
18 Attorney, Prisoners Legal Services of New York.

19 My name is Betsy Hutchings. I'm the Managing
20 Attorney of the Ithaca Office of Prisoners Legal
21 Services of New York. Through my work at PLS, I have
22 been involved in prisoners' rights litigation and

1 advocacy since 1984.

2 I was asked to testify about the unusually
3 high number of inmates reporting the occurrence of
4 staff-on-inmate sexual misconduct at Elmira
5 Correctional Facility. I offered to provide written
6 testimony and was also asked to prepare this excerpt
7 from my testimony to be read into the record.

8 Although prison rape is not a pleasant topic,
9 I appreciate the opportunity to talk about an issue
10 that is of great concern to inmates in New York State
11 prisons, their advocates, and those who care about
12 criminal justice issues. I'm sorry that I'm not able to
13 present this testimony in person and thank the person
14 who's reading this excerpt from my written testimony
15 into the record.

16 In my written testimony, I first note that in
17 the last year, my office received only five reports of
18 staff-on-inmate sexual misconduct. I then discussed
19 the institutional culture that causes inmates to be
20 reluctant to report staff-on-inmate sexual misconduct,
21 that is the fear of retaliation and fear that they will
22 not be believed, and the institutional policies in New

1 York State that discourage inmates from making such
2 reports.

3 I also discuss these factors in the context
4 of a disciplinary proceeding brought against AA, an
5 inmate in the custody of the New York State DOC, for
6 allegedly falsely reporting an incident of
7 staff-on-inmate sexual assault.

8 Finally, I make recommendations for changes
9 in procedures that, by reducing the likelihood of
10 retaliation, will encourage inmates to report
11 staff-on-inmate sexual misconduct.

12 Due to time constraints, this excerpt from my
13 written testimony necessarily omits details and
14 condenses a fuller discussion of the policies involved.

15 I hope that even this excerpt helps the members of the
16 Panel to understand the institutional obstacles which,
17 in combination with valid fears, result in the
18 underreporting of incidents of staff-on-inmate sexual
19 misconduct in New York State prisons.

20 Here's what happened when AA reported an
21 incident of staff-on-inmate sexual assault to the
22 Inspector General's Office of the New York State DOC.

1 The incident occurred in May 2010. Several
2 months after reporting an incident of staff-on-inmate
3 physical abuse, AA contacted -- I'm realizing now AA
4 refers to, let's say, John Doe. Contacted the New York
5 State DOC's Inspector General's Office and reported
6 that during the assault, the officer had also inserted
7 a hard object into his rectum. John Doe said that he
8 had not initially reported the sexual aspect of the
9 assault out of fear of retaliation.

10 The IG's Office investigated and, based on
11 the failure to report the sexual assault when he first
12 reported the incident, and the investigator's belief
13 that the medical report did not support the sexual
14 assault, filed institutional charges against John Doe
15 for lying.

16 In his defense to the charges and later in
17 his appeal from the determination of guilt, John Doe
18 pointed out that the DOC's policy for the prevention of
19 staff-on-inmate sexual misconduct, Directive 4028(a),
20 prohibits reprisals for reporting such incidents and
21 again explained that his fear of retaliation caused him
22 not to report the sexual misconduct at the time that it

1 occurred.

2 In addition, John Doe's PLS lawyer informed
3 direction -- excuse me -- the director of the DOC's
4 Disciplinary Program that she had spoken to the doctor
5 who had examined John Doe and that the doctor had said
6 that the results of the exam did not rule out that John
7 Doe had been sexually assaulted.

8 John Doe's appeal was denied, following which
9 he filed a grievance asserting that the disciplinary
10 proceeding violated the no-reprisal provision of
11 Directive 4028(a). His grievance was dismissed by the
12 director of the facility's Inmate Grievance Program.
13 To the best of my knowledge, the director made no
14 efforts to investigate or rectify the matter that had
15 been brought to her attention.

16 Only the -- only after PLS informed the
17 Commissioner of the New York State DOC about John Doe's
18 situation was the hearing reversed. By that time, John
19 Doe had served four months of his nine-month SHU
20 isolated housing sentence. This sentence also included
21 the recommendation that John Doe lose six months of
22 good time.

1 Note the number of people and the positions
2 which they hold who were directly or indirectly
3 involved in disciplining John Doe, all of whom should
4 have been aware of the DOC's policy prohibiting
5 reprisals against inmates who reported staff sexual
6 abuse; the investigator who wrote the misbehavior
7 report charging John Doe with lying; the investigators
8 assigned to the DOC's Inspector General's Office, the
9 division responsible for investigating inmate reports
10 of staff sexual misconduct; the lieutenant at the
11 facility who approved the misbehavior report for
12 adjudication at a disciplinary hearing; the hearing
13 officer who found John Doe guilty of lying, the hearing
14 officer who's a lawyer, not a lay hearing officer; the
15 Director of Inmate Disciplinary Programs, a DOC Central
16 Office position, who affirmed the determination of
17 guilt; the facility director of the Inmate Grievance
18 Program, who dismissed John Doe's grievance, asserting
19 that the misbehavior report violated the DOC's
20 no-reprisal policy and who took no steps to ascertain
21 whether he was being disciplined for reporting an act
22 of staff-on-inmate sexual misconduct.

1 The people involved in disciplining John Doe
2 had responsibility for implementing the DOC's policy on
3 the prevention of staff-on-inmate sexual misconduct.
4 Five years after the enactment of the DOC's policy
5 prohibiting reprisals against the reporters of
6 staff-on-inmate sexual misconduct, DOC staff holding
7 upper level positions in a range of divisions directly
8 or indirectly participated in punishing John Doe for
9 reporting a sexual assault speaks volumes about the
10 extent to which the department's policies, its
11 most -- its most visible manifestation of its
12 commitment to the PREA goals, has not been incorporated
13 into prison culture.

14 The interplay of a number of factors
15 convinces inmates that if they report staff-on-inmate
16 sexual misconduct, they will experience retaliation and
17 will not be believed. Perhaps the most intractable of
18 these is prison culture itself, the power disparity
19 between staff and inmates, the solidarity of the staff
20 and the insularity of prison culture. Add to this the
21 policies and procedures that overlook these cultural
22 constraints and the result is predictable.

1 Inmates will continue to withhold reports of
2 staff-on-inmate sexual misconduct, knowing that if they
3 report it, they are likely to experience retaliation
4 and will not be believed.

5 If the PREA goals are to be achieved in New
6 York State, the responsibility for accepting and
7 investigating reports of staff-on-inmate sexual
8 misconduct must be shifted to an agency external to
9 DOC. Inmates should be able to contact that agency
10 without having to first report to a DOCCS employee.

11 The place to start may be with the victim
12 advocates who are responsible for talking to
13 inmates -- excuse me -- talking to inmate victims of
14 sexual assault when they are brought to the local
15 hospitals. I spoke with three victim advocates in
16 preparing my testimony. All three were very sensitive
17 to the obstacles that inmates must overcome to report
18 sexual abuse by staff: shame, fear of retaliation, and
19 fear of not being believed.

20 I was asked to testify about why the number
21 of inmates reporting incidents of staff-on-inmate
22 sexual misconduct is higher at Elmira than most other

1 prisons in New York State. While the responses of
2 inmates at Elmira CF to the BJS survey gives rise to
3 this question, we will only know the answer to that
4 question when inmates throughout New York State can
5 report staff-on-inmate sexual misconduct without fear
6 of retaliation and with the knowledge that their
7 reports will be investigated without a presumption that
8 they -- that because they are inmates, they must be
9 lying.

10 To create this climate and to get the answer
11 to your question, we must establish systems and
12 procedures that encourage inmates to report such
13 conduct. Only then will we be in a position to
14 eliminate a scourge that is now endemic to prison life
15 in the United States.

16 Thank you.

17 DR. WILKINSON: We'll enter that testimony
18 into the record.

19 We need to swear you all in, if you don't
20 mind.

21 //

22 //

1 Whereupon,

2 ELMIRA CORRECTIONAL FACILITY PANEL

3 were called as witnesses and, having been
4 first duly sworn, were examined and testified as
5 follows:

6 DR. WILKINSON: Okay. Maybe, Mr. Effman, we
7 need to have someone represent that the documents you
8 sent were accurate, to the best of your ability. So I
9 would ask you to raise your right hand again.

10 To the best of your knowledge, can you attest
11 to the accuracy and truthfulness of the written
12 response of the New York Department of Correctional
13 Services to the data request that the Review Panel on
14 Prison Rights sent to your agency in preparation for
15 today's hearing?

16 MR. EFFMAN: Yes, I can.

17 DR. WILKINSON: Thank you. If we could maybe
18 have each of you introduce yourselves, name and title,
19 just, you know, one sentence about what you're
20 responsible for, first?

21 SUPERINTENDENT BRADT: Mark Bradt,
22 Superintendent of Elmira Correctional Facility during

1 the years of 2007 till November third of 2010, and I am
2 currently the Superintendent of the Attica Correctional
3 Facility from November fourth, 2010, to present.

4 MR. FONDA: My name is Vern Fonda, and I'm
5 the Inspector General for the New York State Department
6 of Corrections. I've been the Inspector General since
7 last October, about seven months, but I was a Director
8 of Operations prior to that in the Inspector General's
9 Office, so I'm familiar with the time frame that's
10 being considered here during today's testimony.

11 I oversee all the Inspector General's Office
12 operations.

13 MR. WENDERLICH: My name is Stephen
14 Wenderlich. I'm the Deputy Superintendent for Security
15 at the Elmira Correctional Facility, thirty-year
16 veteran of the department, and I've been at Elmira
17 about eleven years now. So I, too, cover that time
18 period we're referring to.

19 MR. EFFMAN: My name is Jason Effman. I'm an
20 Assistant Counsel with the department. I've been there
21 since 1999, and I also am serving as the PREA
22 Coordinator.

1 DR. WILKINSON: And you're representing also
2 the Commissioner who at the last minute could not make
3 the trip.

4 MR. EFFMAN: Yes, and -- and I do want to
5 state on the record that Commissioner Fischer's very
6 sorry he -- he cannot be here. In fact, he was at the
7 airport yesterday when he got the final word that he
8 was needed to appear at an emergency meeting with the
9 Governor today. So he apologizes.

10 DR. WILKINSON: Okay. Well, Mr. Effman, if
11 you all have a prepared statement, we'd love to hear it
12 at this point.

13 TESTIMONY OF JASON EFFMAN

14 MR. EFFMAN: I do, and as you all know, the
15 Commissioner did also submit a written statement and
16 he's asked me to deliver our opening remarks and I'm
17 going to start by thanking you for the opportunity for
18 us to appear here today and speak to you about what is
19 now called the Department of Corrections and Community
20 Supervision's record and our role in developing and
21 implementing policies directed at significantly
22 reducing sexual abuse in our prisons.

1 We believe that DOCCS has established itself
2 as a leader in this area through participating in
3 various meetings, conferences, studies and other
4 activities related to the implementation of PREA, and
5 also I think we have offered very extensive and
6 constructive comments on the proposed standards at
7 every step of the way.

8 One of the things we have been very careful
9 about trying to do is not just point out where we
10 thought proposed standards were flawed but actually
11 attempting to suggest why we believe that and how we
12 think they can be improved.

13 Although the focus of this hearing is on
14 Elmira Correctional Facility, our policies and
15 procedures are established by the Commissioner and do
16 apply to the entire agency. We do, of course, use the
17 term "zero-tolerance" when discussing our policy
18 regarding sexual abuse. That policy statement makes it
19 clear that we do not willingly tolerate sexual abuse of
20 our offenders.

21 Although we recognize that we may not be able
22 to ever fully eradicate the occurrence of sexual abuse,

1 we can and must ensure that staff and offenders in our
2 custody know that we have zero-tolerance for
3 unacceptable behavior and we will do everything in our
4 power to reduce, if not completely eliminate, its
5 occurrence.

6 Our approach is to educate offenders and
7 staff, take proactive and preventive measures,
8 immediately respond to all allegations, and seek
9 administrative and criminal penalties where
10 appropriate.

11 We believe that our outreach efforts
12 encourage both staff and inmates to report
13 inappropriate behavior, often before that behavior has
14 elevated to the level of sexual abuse or misconduct.
15 We also believe that our efforts to investigate
16 allegations of sexual misconduct and to prosecute where
17 there is evidence of a crime have a deterrent effect
18 within the system.

19 When investigating allegations of criminal
20 conduct, we work closely with the New York State
21 Police, their Bureau of Criminal Investigation, and
22 also with the local District Attorney's Office, to

1 ensure proper investigation and improve the likelihood
2 of an appropriate evidence-based outcome.

3 We have been involved in efforts to address
4 issues of sexual misconduct in prisons since long
5 before PREA was ever passed. In recent history, we go
6 back to 1996 when, in New York State, we did establish
7 a law criminalizing sexual conduct between our
8 employees and the offenders they supervise. That
9 established essentially an incapacity to consent for
10 our offenders.

11 Right after that law was enacted in September
12 1996, we created within our Office of The Inspector
13 General a Sex Crimes Unit. That unit
14 specializes -- specializes in investigating allegations
15 of sexual misconduct, whether those are between
16 department staff and offenders or between two or more
17 offenders.

18 In 1998, we participated in our first of a
19 number of National Institute of Corrections workshops
20 at American University, Washington College of Law.
21 That may have even been the first such program,
22 although I'm not sure. As a result of that workshop

1 and also with NIC technical assistance, we initiated a
2 training curriculum in 1998 called Avoiding
3 Inappropriate Behavior between Staff and Inmates.

4 During our 1998 to 1999 training cycle, that
5 was provided to all of the employees within the
6 department as part of the Commissioner's training
7 initiative for that period. It also became part of the
8 training curriculum at the Academy for new correction
9 officers and is used in our civilian training and is
10 part of our ongoing in-service training.

11 More recently and since the enactment of
12 PREA, we've continued to look at our policies and tried
13 to enhance our policies and take a number of other
14 steps.

15 In June 2005, we put together a series of
16 directives and orientation materials for -- for
17 offenders. We put out a memorandum to all of our
18 employees that went with their paychecks as well as to
19 our volunteers and contract providers.

20 Under our directives, an inmate may report an
21 incident of staff-on-inmate sexual abuse or
22 inmate-on-inmate sexual abuse to any employee. Every

1 employee is required to report any knowledge or
2 reasonable belief of staff sexual misconduct, any
3 inappropriate relationship between an employee and an
4 offender, staff voyeurism or any inmate-on-inmate
5 sexual abuse or threat.

6 Under our directives, each offender is asked
7 during every quarterly review if he or she has any
8 concerns regarding sexual abuse. The correction
9 counselor is prompted to ask this question by an
10 automated system and that answer is recorded, and, of
11 course, if the offender expresses any concerns, the
12 counselor is required to take appropriate action.

13 In October 2005, we started a new additional
14 training program on prevention of sexual abuse of
15 inmates. That, along with the program on ethics
16 awareness, was again taught to all of our employees as
17 part of the Commissioner's initiative for the 2005 to
18 2006 training cycle.

19 Since March 2006, we have been doing
20 supervisory level trainings, primarily for our new
21 sergeants and our new lieutenants in their schools
22 where they come up to Albany. I personally conduct

1 those. For many years I was doing those with an
2 assistant commissioner for correctional facilities
3 until his retirement. At the moment I'm doing those on
4 my own.

5 We've also continued our efforts to enhance
6 the information that we provide to the offender
7 population through their initial orientation with the
8 issuance of a pamphlet that we first put out in 2006.
9 It was given to every inmate at that time, and every
10 time an inmate transfers, they get another copy of that
11 pamphlet. We've updated it several times, most
12 recently this year, to improve our focus on issues
13 related to retaliation, to make it clear that not only
14 are incidences of sexual abuse and misconduct referred
15 up for proper investigation but allegations of
16 retaliation for either making a report or for
17 cooperating in an investigation will also be referred
18 up and treated the same way as the initial sexual
19 misconduct allegation.

20 In July 2010, we put out new posters, again
21 ongoing efforts to eliminate all forms of sexual abuse.
22 These posters went throughout the facilities,

1 relatively simple, just to remind offenders that they
2 have the right to be safe from sexual abuse, and
3 they're encouraged to report to any staff member if
4 they are being sexually abused.

5 We're constantly looking at our policies and
6 procedures, trying to make modifications as
7 circumstances warrant or as new information is
8 developed. Our directives are in the process of being
9 revised again to clarify reporting procedures and
10 address issues of retaliation and also to look at some
11 of the -- to try to tighten up the reporting mechanisms
12 and try to correct some of the holes where perhaps not
13 every time to the facility personnel do things exactly
14 the same way.

15 Turning to the National Inmate Survey, we
16 take the results very seriously. We've begun an
17 analysis to better understand the survey results. We
18 have to also look at the fact that Elmira Correctional
19 Facility was sampled in back-to-back surveys with very
20 different results.

21 Commissioner Fischer asked me to chair a
22 workgroup and on that group I had the Assistant Deputy

1 Inspector General for the Sex Crimes Unit, an assistant
2 commissioner for correctional facilities, an assistant
3 commissioner for program services, as well as our
4 Director of Victim Services. We did a similar process
5 where we were looking at Bayview. We've now turned our
6 attention to Elmira.

7 Our purpose is to study the BJS reports to
8 try to evaluate the scope of the problem of inmate
9 sexual abuse at the time of the report and now and to
10 report our findings to the Commissioner. We're not
11 done. Our analysis is certainly not complete but we
12 have started reviewing the various reported incidents.

13 We've had discussions with both staff and inmates at
14 the facility. That includes offenders who are serving
15 right now as elected representatives of the -- on the
16 ILC, and also those who serve in the Grievance Program
17 and then we selected a number of offenders at random
18 from throughout the facility with a focus on offenders
19 who were there during either the NIS-2 or in many cases
20 both NIS-1 and two, as well as some just inmates
21 selected at random from different housing units.

22 The response that we've had from both staff

1 and inmates alike, and I'm sorry I keep saying inmates,
2 it's -- we're changing terminology over to offenders.
3 I'm still getting used to it.

4 The response from all -- from all of them has
5 been surprise that Elmira Correctional Facility would
6 come up on a list as -- as having high incidence of
7 staff sexual misconduct. Certainly, we did not speak
8 to hundreds of inmates, hundreds of offenders. We had
9 a relatively small sampling, but their responses were
10 incredibly consistent with each other.

11 We know that during the relevant time period,
12 some of our offenders were subjected to unwanted
13 touching by a specific contract medical provider. We
14 did take appropriate action in that case to terminate
15 our relationship with that individual. He was referred
16 for prosecution, although he was ultimately found not
17 guilty.

18 Our review of the records, as well as the
19 discussions that we've had, lead us to believe that the
20 vast majority of the concerns are directly related to
21 the necessary and thorough same gender pat risks. The
22 offenders we spoke to reported never having experienced

1 nor even knowing of any staff-on-offender sexual
2 contact at the facility.

3 When we asked them about pat-frisks, a number
4 of the same offenders responded that they felt they
5 were being conducted inappropriately by a small number
6 of employees and those offenders described these frisks
7 in a manner that we believe is consistent with a good
8 thorough pat-frisk but stated that they considered that
9 frisk to be a sexual assault. So there is clearly some
10 sort of disconnect between what we as administrators
11 believe is a proper pat-frisk and what the offenders
12 who were subjected to them believe is going too far.

13 Whatever the reason for Elmira's results in
14 the National Inmate Survey, DOCCS is committed to the
15 goals of the Prison Rape Elimination Act. Staff and
16 offenders are people who have spent a great deal of
17 time together interacting on a variety of levels.
18 Despite the existence of appropriate policies, those
19 interactions can develop into inappropriate
20 associations.

21 We may never completely eradicate instances
22 of sexual abuse in our prisons, but we do not tolerate

1 it. We continue to improve our policies and practices
2 to protect those offenders placed in our care.

3 I did want to comment on some of the things
4 that -- that I've heard so far today about Elmira and
5 New York, and I -- I will start with Mr. Beck. His
6 organization serves a vital purpose, there's no
7 question about it, and they do good work, but I don't
8 always agree with exactly how their work is
9 characterized, and one of the things that was mentioned
10 in Mr. Beck's testimony was the numbers of -- of
11 offenders who, in the survey, reported being subjected
12 to sexual abuse and -- and the number of questions that
13 they were asked.

14 I'm not intimately familiar with the 2005
15 study that delved into this in more detail. I can say
16 that in the survey that was most recently provided to
17 the inmates at Elmira, that although the information is
18 helpful and perhaps informative, I do not believe
19 it -- it means exactly what was said.

20 The question that was asked is, in general,
21 throughout the facility, how often, if ever, do you
22 hear about sexual abuse by staff occurring at this

1 prison? Mr. Beck testified as to the reasons for not
2 asking those offenders whether they were specifically
3 and individually subjected to some form of sexual
4 abuse, and I can certainly understand his concerns, but
5 we do have to take that into consideration when we read
6 the written report, when we hear his testimony, that
7 offenders hearing about instances of sexual abuse
8 doesn't tell us how many instances there have actually
9 been. It just means that they're talking to each
10 other. It just means that they know somebody somewhere
11 had something perhaps happen to them. So I -- I
12 exercise a little bit of caution there.

13 I'd like to comment on the difference in the
14 reporting numbers that you have seen. This Panel has
15 received for two years the logbooks from Elmira
16 Correctional Facility for staff-on-inmate and
17 inmate-on-inmate sexual abuse allegations as well as
18 the monthly reports. Much more detail than the
19 summaries that were provided under Freedom of
20 Information law.

21 One of the things that you can see from those
22 reports is that we tend to over-report at the first

1 level. At the facility level, we have instructed our
2 security staff to log all allegations that could
3 potentially be allegations that would meet the
4 definitions under PREA of sexual misconduct. You have
5 seen that many of the complaints are complaints related
6 to pat-frisk allegations. They are in fact going on
7 the facility logs and reported up to us, but ultimately
8 when we report to BJS an allegation that an employee
9 conducting a pat-frisk groped an inmate on top of their
10 clothing does not meet their definitions, as I
11 understand them, and, in fact, most recently, Dr. Beck
12 and the group at BJS rejected a number of the cases
13 that we reported in -- in the last calendar year's
14 reporting.

15 I believe it was between twenty-two and
16 twenty-five cases that we reported as meeting the
17 definitions that they decided we were actually going
18 too far and giving them too much information on cases
19 that did not necessarily involve what met their
20 definitions and they excluded those from what they
21 reported.

22 When we look at the Unusual Incidence

1 Reporting System, it's capturing much, much different
2 data. Our Sexual Misconduct Unusual Incident Report
3 essentially captures an employee coming around the
4 corner and seeing two individuals engaged in sexual
5 contact. It could be a willing sexual encounter
6 between two inmates, and I will point out that inmates
7 in our system can still legally consent to have sex
8 with each other. We prohibit by our rules, and for
9 PREA purposes we look at the element of coercion.

10 If there was any coercion whatsoever, it is
11 treated as a reportable incident, but we do still have
12 inmates who engage in willing sexual contact with each
13 other. When they're separately interviewed, they both
14 say, yes, it was willing sexual contact. That is a
15 disciplinary infraction. There are differences.

16 Unusual Incident Reports for Sexual
17 Misconduct also include inmates and their visitors
18 engaging in sexual contact in our visiting room. So it
19 is a much different set of information.

20 I'm sure you'll have other specific questions
21 later, and I've probably missed a few but I'll do my
22 best to answer those as they come up.

1 The grievance system. We don't really
2 encourage use of the grievance process for exploring
3 incidents of -- of staff sexual abuse of an inmate. We
4 try -- our process is refer them, to report it, have
5 them tell someone, let it be investigated.

6 We don't think the grievance process is the
7 best way to handle real honest-to-goodness allegations
8 of: "this employee not only pat-frisked me
9 inappropriately but actually committed some act of
10 sexual misconduct against me", sexual abuse.

11 The grievance mechanism is not really
12 designed to deal with that type of allegation. It's a
13 non-adversarial problem-solving process. So that isn't
14 the place to look for that data. Most of the
15 information you get out of the grievance system dealing
16 with sexual misconduct is related to pat-frisks.

17 The only other thing I would point out before
18 opening this up, we did ask BJS to give us some
19 additional data, as we were trying to understand the
20 reports with respect to Attica, Bayview, and Elmira,
21 and there's been a lot of discussion so far today on
22 reluctance to report, and we know that this is

1 something that is difficult for individuals in society
2 to report, and it's certainly even more complicated
3 when you bring these complicated matters into a prison
4 environment.

5 But one of the things that -- that BJS
6 reported back to us is of the -- of the inmates
7 surveyed under those three correctional facilities in
8 New York State who reported being subjected to staff
9 sexual misconduct, 59.3 percent of them said they
10 reported that incident to facility staff. Nationally,
11 21.3 percent said that. So we believe we are
12 encouraging reporting. We believe we do have proper
13 mechanisms in place to make sure that they will report
14 and I think that is the first most important step in
15 getting a handle on this problem.

16 Thank you.

17 DR. WILKINSON: Well, thank you for your
18 testimony, Mr. Effman.

19 Before we get into the questions, give you
20 the opportunity to maybe make a few statements, either
21 testimony or want to make sure you say before we start
22 asking you questions, some of which has been covered in

1 the testimony, but we'll probably dig a little bit
2 deeper, but before that, let me say that I had the
3 opportunity to visit Elmira along with Joe Swiderski
4 and we appreciate the hospitality and especially the
5 Colonel. The Colonel, I think, went out of his way to
6 make sure that we were in the right place at the right
7 time and saw everything we needed to see. So, Colonel,
8 thank you for that.

9 And we did have an opportunity to meet with
10 the Commissioner via teleconferencing at the prison,
11 along with some of the other Central Office staff; that
12 was very helpful in terms of us having not just the
13 perspective of both Elmira but from the state
14 perspective, as well, and certainly Mr. Effman did that
15 very, very well and continued the tour with us
16 throughout the whole time. So we appreciate that.

17 So -- and I do want to, you know, point out
18 that Mr. Bradt, Superintendent Bradt was --

19 SUPERINTENDENT BRADT: It's actually
20 pronounced Bradt.

21 DR. WILKINSON: Bradt. Okay. Sorry. Was on
22 the teleconference, as well, from Attica and just to

1 remind you, he was the superintendent at the time that
2 this survey was conducted. So thank you, all.

3 Any thoughts before we --

4 SUPERINTENDENT BRADT: I just have one
5 comment, Dr. Wilkinson. I did find the results kind of
6 startling myself. You know, we have the American
7 Correctional Association audit process that also goes
8 on and -- at Elmira Correctional Facility. It happened
9 in 2009. Part of that process is the auditors not only
10 talk to staff, but they also talk to numerous inmates,
11 and at the out-briefing at the end of that process, I
12 closed the correctional facility umbrella, all the
13 staff into the auditorium, and one of the auditors, I
14 think what made to me a very impressive comment, that
15 he felt that the mood and the operations at Elmira
16 Correctional Facility, he would not have any problems
17 if any of his own family members were incarcerated at
18 Elmira Correctional Facility.

19 I thought that just spoke a lot of volumes
20 about their process of what they do when they come in
21 and they do -- I feel the American Correctional
22 Association has a very thorough process in auditing a

1 facility; so we meet the national standards, and I know
2 that they interviewed several inmates. I just wanted
3 to point that out.

4 DR. WILKINSON: Very good. Thank you. So
5 Elmira is accredited as well as Attica?

6 SUPERINTENDENT BRADT: Yes.

7 DR. WILKINSON: I think the whole New York
8 system is accredited?

9 MR. FONDA: That's correct.

10 DR. WILKINSON: Mr. Fonda?

11 MR. FONDA: Very briefly, just so you have a
12 better understanding of the Inspector General's Office,
13 we're broken into several different units that each
14 have a specific function in the overall handling of
15 what goes on and goes in and out of the Inspector
16 General's Office.

17 We have a Sex Crimes Unit that, as Jason
18 alluded to, and I'll just speak to that one for today's
19 purposes, but that unit is made up of fifteen people
20 whose sole responsibility within our agency is to
21 investigate any sex-related crime activity allegation
22 that comes out of any of our facilities.

1 If the -- and that's irregardless of time of
2 day, day of week, holiday, whatever, and those fifteen
3 people average about eighteen years in the department
4 and about eight years within the Sex Crimes Unit. So
5 it's been around for awhile. The -- the person that
6 leads that is the -- in charge of that unit is Barbara
7 Leon. She's got twenty-five years on the job and she
8 was the lead person in 1996 when the unit was first
9 begun, and it only had a couple of members back then.

10 You met Bob Adams, who's the -- Dr.
11 Wilkinson, you did. He's our Assistant Deputy
12 Inspector General. These folks take their -- their
13 role very, very seriously. They work very nicely with
14 the -- we work primarily with the New York State
15 Police. We're all peace officers. All of our
16 investigators are peace officers. They all have the
17 power to arrest, and they all work jointly with the
18 State Police, and we work, unlike the testimony I heard
19 earlier today about Texas where it seemed like they had
20 an AG or a representative, a prosecutor that was
21 assigned specifically to their IG, we can use our AG's
22 Office but more often we use the county district

1 attorneys where our facilities are located, and we've
2 had a tremendous amount of success with those folks and
3 building the relationships with them because they look
4 at all of the things that go on inside our
5 institutions.

6 So when we're going to these district
7 attorneys, we have established relationships, and part
8 of the problem that we see with this particular area,
9 and I've only been in charge of this unit for about
10 four years now, but is simply the -- I won't say the
11 reluctance because we've got some very good district
12 attorneys who -- who will very aggressively go after
13 the folks responsible for these kinds of crimes, but
14 more often than not, we're getting not guilty verdicts.

15 DR. WILKINSON: Do you get indictments?

16 MR. FONDA: We're getting no-billed. We do
17 get indictments, as well, but I think this is just a
18 much bigger picture for the populous just to understand
19 and the communities in and around these prisons to
20 understand that these are felony offenses that should
21 not be taking place inside our institutions, but that
22 is -- that is a challenge that we're faced with every

1 day.

2 To a lesser degree in some areas in the
3 state, we have a lot more success in some areas, and
4 we've even gone so far -- insofar as to ask district
5 attorneys from areas where we've had success to have
6 conversations with district attorneys in areas where we
7 haven't been successful, and to that -- to that degree,
8 we're -- we're continuing to work on that process
9 but -- and we've had folks do that with us.

10 So I'll stick to the Sex Crimes Unit. We've
11 got a hundred guys and we've got our Narcotics Unit,
12 Internal Affairs Unit, Criminal Intelligence Unit, a
13 Counterterrorism Unit, an Escape Absconders Unit, and a
14 Workers Comp Unit. I think I covered them all right
15 there, but this -- today is obviously our Sex Crimes
16 Unit.

17 I just wanted to give you a little insight as
18 to who those folks were and what their responsibilities
19 are.

20 DR. WILKINSON: Mr. Effman, you mentioned the
21 medical person who was engaged or allegedly engaged in
22 an activity who's no longer there, the phlebotomist,

1 but there was a mental health person, as well, who was
2 involved --

3 SUPERINTENDENT BRADT: Yes, sir. There was a
4 social worker. There was a social worker for the Office
5 of Mental Health, that we had information --

6 DR. WILKINSON: Which is a different agency?

7 SUPERINTENDENT BRADT: It's a different
8 agency, and we had information on that she was
9 overly-familiar with a particular inmate.

10 DR. WILKINSON: But none of this rose to any
11 kind of conviction?

12 MR. FONDA: The phlebotomist was actually
13 found not guilty at a jury trial, and the social worker
14 resigned. We have -- OMH is at, you know, just about
15 all our facilities across the state, and we have a good
16 working relationship with them and their IG, as well.
17 Oftentimes, if we get a complaint that is going down
18 the path of another agency's employee, we'll get
19 those -- their IG involved to help us with, whether it
20 be an administrative remedy or a criminal prosecution,
21 however they see fit.

22 MR. EFFMAN: Just to clarify something with

1 the social worker, there was no indication or even
2 allegation of any conduct that would rise to the level
3 of criminal conduct. There's no allegation of -- of
4 kissing, sex. It's just spending a lot of time with
5 one particular offender.

6 DR. WILKINSON: Yeah. And even if I recall,
7 we visited the medical area where the phlebotomist
8 worked. It's a big glass office.

9 MR. EFFMAN: Correct.

10 DR. WILKINSON: I mean, so it would seem like
11 it would be pretty much of a magician to get away with
12 a lot, given the traffic that was there, but, I mean, I
13 don't presume, given what I know about what it is.
14 That was, you know, still possible to do.

15 So I just want to point out that you
16 mentioned a lot in your testimony about, you know, the
17 documentation. I mean, we got your -- your
18 inmate -- Elmira Correctional Facility Inmate
19 Orientation Handbook and the very first thing in here
20 is -- and I don't think you guys did this just for
21 us -- is the whole piece on prevention of sexual abuse
22 in prison. It goes on for pages, and then that's

1 codified in a brochure, and then, if I remember
2 correctly, you also had a video in your reception area
3 that explains this.

4 So whatever's happened, I don't think it's
5 because you aren't informing the inmates that, you
6 know, engage in this behavior is right or wrong, and I
7 believe, Colonel, you talked about, too, what kind of
8 training the staff goes through.

9 Can you talk a little bit more about that,
10 like the in-service or the pre-service training that
11 the staff may get?

12 MR. WENDERLICH: Yes, sir. They're required
13 to -- we have -- we have training every day at the
14 facility, but some of the courses are mandated, some
15 are electives. PREA certainly is mandatory. Other
16 things, like, oh, ethics, ethics awareness, cultural
17 diversity, but PREA is the one that you and I spoke of,
18 that's mandatory, and all our employees have had that.
19 Everybody has to have it.

20 DR. WILKINSON: And I presume -- do you all
21 have a state training academy, or how does that work?

22 MR. FONDA: We do. Our Training Academy is

1 located in Albany, New York. It's an eight-week
2 training program. After successful completion, all of
3 the recruit candidates complete a one-year probationary
4 period, talking about the security staff for the most
5 part.

6 We also have training, in-service and initial
7 training, for our civilian staff that come into our
8 facilities. Some of them is done at our Training
9 Academy. A lot of times the civilian staff are hired
10 by the facilities from the areas at the facilities
11 where they're going to work, and a lot of the civilian
12 training goes on and takes place at the facilities.

13 To that end, all of the IG staff are not only
14 trained through our own department training, they go
15 through a four-week investigative school when they get
16 hired to come into the Inspector General's Office and
17 then they get the -- the specialized training for each
18 area of expertise. For example, the -- all of our SCU
19 staff attend a New York State Police Sex Crimes
20 Training Seminar that goes on that's held for a week.
21 As a matter of fact, it's coming up in May, next month,
22 and what we do is we don't have every individual go to

1 it every year, but we have representation at it every
2 year. So if you haven't been in four or five years,
3 you may be scheduled to go again this year, and
4 everyone gets at least that one week's training.

5 We've also taken it upon ourselves
6 to -- to -- and especially in an area like this,
7 recognize the need for evidence collection,
8 forensic -- forensically-trained investigators and we
9 have five in our agency, in our -- in the Inspector
10 General's Office. They're in each region of the state,
11 and it's helped us out tremendously in instances where
12 a sex offense is alleged by giving one of our own staff
13 there oftentimes trying to tap other resources, other
14 agencies for that resource because those are generally
15 highly-trained individuals. It's very difficult to do.

16 So we've had some continued success with
17 making those folks available to our Sex Crimes
18 investigators in the furtherance of those kinds of
19 investigations, and then we routinely send our folks to
20 interview and interrogation-specific training relevant
21 to domestic violence issues, rape issues, child and
22 family protective services issues, because, for an SCU

1 investigator, one of the other things that they are
2 responsible for looking into is any kind of domestic
3 violence-type issues.

4 So if we have an officer off duty involved in
5 a domestic situation, that Sex Crimes Unit investigator
6 would also be the person responsible for looking into
7 those kinds of events. So they're pretty -- pretty
8 well used and a very good resource for our unit.

9 DR. WILKINSON: So if there's an allegation
10 of a sexual misconduct crime, I noticed in some of the
11 materials you don't have an MOU with law enforcement,
12 but do you call the State Police or Highway Patrol or
13 local law enforcement, or does that rest with your
14 sworn officers from the IG's Office?

15 MR. FONDA: It's a combination of both
16 and -- and that really helps us out because on any
17 given day an event such as that is alleged to have
18 happened, we do an immediate response. The facility
19 where the incident took place would contact our
20 Communications Control Center, our Command Center. The
21 Command Center would then contact my office to have a
22 sex -- well, if it's obviously a sex crimes-related

1 allegation, and then I would immediately dispatch an
2 investigator to that area.

3 At the same time, the facility would also
4 contact the State Police, if it's one of our upstate
5 facilities or -- and even in the five boroughs, we
6 have -- we work jointly with the State Police down
7 there, as well as NYPD, but -- so we're going to get a
8 response by both entities, the New York State Police
9 for the most part and our investigator, and when they
10 get there, they work very, very well together.

11 Oftentimes they know each other because we're
12 sending investigators from the same areas that the
13 State Police investigators are coming from. Obviously
14 we're not going to send someone from 300 miles away to
15 a facility if we've got someone within twenty miles of
16 it, and they know each other and they've worked with
17 each other and -- and it's kind of a two-pronged
18 approach to the investigation.

19 All the criminal stuff is going to be
20 collected by both agents, both ours and the State
21 Police, and we're going to present one package at the
22 end of the day to the prosecuting authority, whether it

1 be the county district attorney's office, which it is
2 most often, or someone else, if we opted to go
3 that -- that direction, and then the facility is also
4 going to be -- because it -- the physical plant where
5 it took place, they're going to be taking measures
6 oftentimes based on information that we're providing
7 them about the investigation as to, you know, perhaps
8 who the -- the alleged perpetrators might be, you know,
9 making sure that the -- that the victim is seen by both
10 Medical and then, if in fact, irregardless of what that
11 medical, that early medical result might be, is going
12 to be placed somewhere where he's not going to be put
13 back in harm's way or is back in danger of anywhere
14 near any of the folks who were alleged in the incident.

15 So we have to work hand-in-hand with the
16 facility administration. We work hand-in-hand with the
17 State Police. Oftentimes we're there by ourselves or
18 the State Police might get there before us, depending
19 on the location and the time and the availability of
20 getting a sworn member there.

21 But for the most part, we all get there, and
22 we all get together, and we conduct a complete and

1 thorough investigation.

2 DR. WILKINSON: So your staff is kind of a
3 PREA SWAT Team of sorts. They go in and do this. Do
4 you investigate these pat-frisks?

5 MR. FONDA: Not oftentimes. We -- there are
6 pat-frisk cases that we've gotten involved in.
7 Generally, we'll get involved in a pat-frisk case if
8 the -- if it's risen to the level that perhaps the
9 facility administration might even say, "Hey, you might
10 want to come in and interview somebody here. We think
11 this -- we -- we also believe that perhaps someone's
12 going too far with a pat-frisk."

13 Oftentimes those kinds of allegations
14 initially are referred through my Deputy Inspector
15 General back to the facility to find out, you know, if
16 in fact what's going on, is this an employee doing a
17 thorough frisk, or is this -- and it could be the same
18 employee doing a thorough frisk. A lot of times, your
19 pat-frisk allegations will go up when you have a
20 graduating class go out and report to the facility
21 because they're these new recruits that are out there,
22 just learned how to do these activities while in the

1 Training Academy, get into a facility, and, all of a
2 sudden, you're -- you know, you get a little bump
3 and -- and pat-frisk complaints.

4 But if you've got a pat-frisk complaint
5 coming out of the facility, you know, like Elmira or
6 Great Meadow or Attica or something like that, and it's
7 the same guy, and it's over an extended period of time,
8 it should be -- obviously our first concern would be to
9 address it with the facility administration, to say,
10 you know, have a conversation with this individual and
11 find out what's going on, if it's, you know, truly just
12 an overzealous pat-frisk, and if you find out that
13 there's more to it than that -- than that, then by all
14 means, bring it back to us and we will further
15 investigate the matter.

16 DR. WILKINSON: Superintendent, there was a
17 spike in the number of pat-frisks probably around the
18 time that the BJS Survey was -- was -- is the pat-frisk
19 practice newer or is it something that's been going on
20 for quite awhile, and I presume the pat-frisks are the
21 same that happens in other institutions?

22 SUPERINTENDENT BRADT: I'd like to comment on

1 that, Dr. Wilkinson, and -- and Deputy Wenderlich can
2 probably support me on this.

3 I probably watch hundreds and hundreds of
4 pat-frisks a week at Elmira Correctional Facility
5 standing out at the center gate area, and as a former
6 dep of security at Auburn Correctional Facility and
7 then at Wyoming Correctional Facility, which are
8 different maximum/medium facilities, I find that
9 our -- our policy, as opposed to practice, there's
10 a -- there's a clear divide there, and, in particular,
11 at a medium-security, I witnessed personally and had to
12 correct the staff on what a thorough pat-frisk is.

13 I would see numerous officers conducting a
14 pat-frisk and they would start at mid thigh and work
15 their way down or at mid bicep and work their way out.

16 They would not do a thorough pat-frisk and maybe
17 that's because of incidents, of unusual incidents are
18 less at medium-security and more at maximum-security,
19 so staff are in tune more at maximum-security to
20 conduct a thorough pat-frisk, and I also know for a
21 fact that inmates carry a lot of weapons in that -- in
22 the groin area and buttocks area and in the mouth.

1 One particular example is while at Elmira, I
2 had a captain come to my office and tell me that -- and
3 I believe this was in 2009, tell me that an inmate in
4 our Special Housing Unit during a superintendent's
5 hearing, a Tier Three superintendent's hearing,
6 informed him that he could provide him with an X-Acto
7 blade. He could get it anywhere in the Special Housing
8 Unit.

9 Now I'm sure you're aware in the Special
10 Housing Unit, there's an admission process, and there's
11 a strip frisk. So I informed the captain, well, you go
12 back and conduct the hearing and tell the inmate to
13 provide it to you. So the captain went back, conducted
14 the hearing, and during the hearing he asked the
15 inmate, I thought you told me you could get an X-Acto
16 blade, the inmate spit it out of his mouth on to the
17 table. Then he proceeded to tell the captain that just
18 about any inmate in this facility has that and carries
19 it with him.

20 At that point in time, I -- I contacted our
21 Deputy Commissioner and asked for specialized equipment
22 that was actually sent to us from Texas, the Adams 3000

1 Handheld Detector, that could detect these X-Acto
2 blades because they were 99.9 percent stainless steel
3 pure.

4 So this is some of the functions that we have
5 to combat in these correctional facilities like that.
6 Inmates are very inventive in how they have weapons,
7 carry weapons, and -- and pat-frisking is a part of the
8 process of trying to recover them and again we're our
9 own worst enemies sometimes because some people, even
10 in the maximum-security environment, and it's probably
11 based more upon their own personal makeup. We all have
12 our own personal makeup, and some people are detail
13 people, and they will do a thorough pat-frisk as
14 directed by the department because that's the way
15 they've been taught.

16 Like Mr. Fonda mentioned with our training
17 recruits, at Attica and at Elmira, both facilities are
18 OJT facilities, that's on-the-job training facilities,
19 where we would get these recruits from the Training
20 Academy, and you could clearly see a different way of
21 pat-frisking from the recruits as to the veteran. They
22 were just taught. They just viewed the video. They

1 knew how to do a thorough pat-frisk and they would
2 conduct a thorough pat-frisk and it's -- it's the same
3 thing at Attica, at Elmira. You have some staff that
4 have a detailed makeup and they'll do a thorough
5 pat-frisk and some that are a little more lax, and they
6 don't and try to have supervisors there onsite every
7 time a pat-frisk is being done, when recreation is
8 running out, is kind of hard to do.

9 DR. WILKINSON: Sir, maybe we can get TSA to
10 kind of review the video some time. They get a lot of
11 complaints about it. So it's not just --

12 SUPERINTENDENT BRADT: I was pat-frisked by
13 TSA from Buffalo flying to here, so --

14 MR. WENDERLICH: Thank you. You asked the
15 question about the possible spike in frisk at that
16 period.

17 I have the distinct advantage of working as
18 the Deputy Superintendent for Security under
19 Superintendent Bradt, and I say that because he came
20 from the Security ranks and understood how we would
21 combat problems. I didn't. I spent nineteen years in
22 a medium-security facility and was experienced with

1 less than the violence and the things that went on
2 that -- that do at a maximum-security facility.

3 Well, one of the things Mr. Bradt would have
4 us do was we would -- when the -- there's a lot of gang
5 activity in the maximum-security prisons, Elmira, but
6 all the big old max joints, and when we had a spike in
7 violence, a lot of cuttings, they don't necessarily
8 want to kill each other, they -- they slash each other
9 in the face with a scalpel or a utility blade, and when
10 we had a spike in those, we would slow things down and
11 we would frisk more people on the way to the chow, on
12 the way to rec.

13 Some people go through a walk-through metal
14 detector. Everybody goes through a walk-through metal
15 detector and then randomly pat-frisked. What we would
16 have to -- we would slow them down and we would
17 pat-frisk a lot more people during those times where we
18 would have, say, three or four cuttings a week and it
19 was quite apparent that this thing was escalating.
20 Somebody gets cut, now another gang member is going to
21 do a retaliation. So there was -- there was quite a
22 bit of time --

1 DR. WILKINSON: So it's quite likely that,
2 you know, there was reason for the spike and --

3 MR. WENDERLICH: Well, there's no question,
4 there's no question about it. We -- we slowed things
5 down and put our hands on a lot more people than we did
6 due to the spike in violence.

7 SUPERINTENDENT BRADT: Sir, one of the things
8 that I did do is because of that, I would sit with my
9 Dep of Security, my Crisis Intervention Unit Team
10 leader or my captains, and I would propose let's shut
11 down the whole facility for what I called the half-day
12 frisk, and I would run a normal morning meal run and
13 then all of a sudden turn the inmates back from their
14 morning meal run, back to the Housing Units and with
15 the information that my Dep of Security or captains
16 gave me or my Crisis CIU Team leader, they would
17 provide me information of certain areas where they knew
18 that there was more inmate activity, where there was
19 more gang activity, or if there was a shotgun where
20 they knew throughout the facility we've had problems,
21 and we would do a frisk in those -- those certain areas
22 which included pat-frisking of the inmates.

1 DR. WILKINSON: Anne?

2 MS. SEYMOUR: We've heard testimony today
3 from Mr. Beck and Ms. Hutchings about their perception
4 of inmate underreporting of sexual abuse because of the
5 perceived fears of retaliation. Do you agree that this
6 is a problem at your institution and if it is,
7 how -- how are you addressing it?

8 MR. EFFMAN: It's always a risk, of course,
9 and as I mentioned, one of the things that we've been
10 putting a lot of focus on recently is putting more and
11 more information out in our policies that we are going
12 to treat an allegation of retaliation that is connected
13 to a sexual abuse investigation report just in the same
14 manner as we would that original allegation. So it is
15 going to get stepped up to a more intense
16 investigation.

17 It's always really been the policy. Once IG
18 had a case and they were working the case, an
19 allegation of retaliation that came out afterwards
20 would be folded into that investigation, and it is not
21 uncommon for them to reach conclusions that there was
22 some instance of retaliation in connection with one of

1 those cases.

2 You know, I think a lot of the -- the
3 comments or testimony are generalized, and, generally
4 speaking, there is a fear that any time an inmate
5 reports any sort of misconduct by a staff member, they
6 are going to be subjected to retaliation and that staff
7 members are going to rally around their coworker.

8 One of the things that we are hearing now is
9 there are several areas where there's zero-tolerance
10 from the staff members with their coworkers.

11 They -- sexual activity or misconduct between an
12 employee and an inmate is looked upon by the employees
13 as despicable.

14 MS. SEYMOUR: Is this one of them where all
15 the employees agree it's despicable and --

16 MR. EFFMAN: You sit in a room of
17 half-a-dozen or twenty correction officers or civilians
18 and you ask them about the pressure to maybe not report
19 something or -- or, you know, is this the sort of thing
20 that are you going to be hesitant to take this
21 information up, they all say, "Oh, no, not -- not this
22 stuff, you know, when -- if we have information,

1 someone tells us that one of our employees is engaging
2 in sexual misconduct with an inmate, we take that right
3 up. We don't tolerate that stuff."

4 That's -- they -- they think it's -- it's absolutely
5 despicable. They don't understand why it is going on,
6 how it happens.

7 There's always the possibility that you're
8 going to have that unusual case where the staff have
9 their own thoughts or impressions or feelings as to
10 what's going on, and they might believe that an inmate
11 is making a retaliatory allegation, and -- and so, yes,
12 the potential for retaliation is real, but we take it
13 very, very seriously.

14 MR. FONDA: I should just point out that if
15 we have an allegation of a sex offense involving a
16 staff member, steps are taken immediately to prevent
17 that retaliatory opportunity from even having a chance
18 of taking place.

19 Oftentimes, what we will do, if it involves a
20 staff member, we will have the inmate that made the
21 allegation removed from that facility almost
22 immediately.

1 MS. SEYMOUR: To where?

2 MR. FONDA: Into another -- into another
3 facility, usually in close proximity to where -- to the
4 facility where the incident took place, but just -- and
5 we'll have the facility that we're sending the inmate
6 to pick him up or her up and bring them to their
7 facility as opposed to having staff from the facility
8 where the incident took place do the transportation,
9 not that we don't believe that there are professional
10 staff there that could get that job done, but why take
11 the chance? No one knows. You know, these are very
12 tight communities within, and I agree with Jason
13 wholeheartedly.

14 I see it with my different elements of the
15 folks that work for me. The Internal Affairs guy walks
16 into Elmira Prison, he might not be greeted as
17 respectfully as a Sex Crimes investigator who walks in
18 to, because they know why the Sex Crimes guy is there.
19 They know that if it's -- if it's a staff member
20 that's, you know, involved in a relationship with an
21 employee, most of our employees, the greater portion, I
22 believe, just based on what I've seen over the years,

1 don't want anything to do with that employee, and we
2 use that same philosophy, if it's an inmate-inmate
3 allegation.

4 What we have to be careful of and oftentimes
5 what we do is we'll -- we'll move them within the
6 institution so they can't be next to the -- the
7 victim's not going to be anywhere near the -- the
8 perpetrator, but we have to be very careful.

9 MS. SEYMOUR: Where would you put the victim,
10 the person who alleged charges in a case like that?

11 MR. FONDA: He could be in the hospital. He
12 could be placed in a hospital if the alleged act
13 warranted medical treatment, as well. He could be
14 placed in a protective custody unit or even on
15 another -- you know, just on another -- in another
16 block so that he's not necessarily -- the last thing
17 you want the victim to do is feel like he's being
18 revictimized by, you know. "I told you, now look what
19 happened to me, I ended up in Special Housing Unit."

20 So we try to avoid those circumstances, but
21 we also have to be diligent to make certain that an act
22 actually occurred, and because we get an awful lot

1 of -- so that's what this immediate response kind of
2 thing really helps us out with. We get an awful lot of
3 people who, for lack of any other reason, if they know
4 that if they make a sexual allegation, they're going to
5 get transferred out of that facility and for
6 whatever -- whatever the underlying real reason is for
7 why they want to be out of there might be, they make
8 the allegation and get moved, and we have to be
9 careful.

10 So, you know, we look at each one
11 individually but even in cases involving inmates and
12 definitely in cases involving staff, we take the
13 necessary steps to act immediately so that that
14 retaliatory stuff has -- I mean, does it still have a
15 risk of occurring? Sure. But I think it's minimized
16 by our efforts.

17 DR. CHRISTENSEN: Superintendent Bradt, you
18 have -- you have the unique -- the unique perspective
19 of having been at Elmira and Attica, two different
20 facilities, both of which are referenced on the report,
21 and you heard my questions earlier to Mr. Beck
22 regarding the disparity in the inmates or the data that

1 are presented within the New York State DOCCS data and
2 the BJS data.

3 I'm wondering if you have thoughts or can
4 comment on that.

5 SUPERINTENDENT BRADT: In reference to
6 Elmira?

7 DR. CHRISTENSEN: Well, Elmira and Attica,
8 given your experience in both.

9 SUPERINTENDENT BRADT: My -- my thoughts with
10 the Elmira one, with -- with the survey being done back
11 to back like that, there might be an issue of a very
12 savvy inmate taking advantage of an opportunity to
13 manipulate a transfer somewhere, and I know for a fact
14 that we had an incident occurred at Elmira when, under
15 the Disability Advocates, Incorporated, lawsuit and the
16 mental health issues, is if an inmate attempted to
17 commit suicide, he was right away taken into a RCTP
18 area and then possibly transferred to a Central New
19 York psychiatric center, and we had evidence that an
20 inmate in our Special Housing Unit was coaching another
21 inmate on how to do this, and this is the result of it.
22 "If you do this, this is what's going to happen.

1 You'll get out of the facility."

2 So with the survey being conducted back to
3 back like that, I'm not indicating that it could be a
4 possibility that a savvy inmate took advantage of it
5 and that's why the numbers are higher, but it's
6 certainly something that should be looked at.

7 DR. CHRISTENSEN: In your -- your
8 observations of practice from Attica and Elmira, are
9 you surprised that they come out differently here and
10 the same here or is there any surprise there for you?

11 SUPERINTENDENT BRADT: There really isn't a
12 surprise. Given the environment of the Attica and the
13 Elmira Correctional Facility, there can be a spike in
14 violence and -- and even at Attica, I'm out walking all
15 the time and watching pat-frisks being conducted in the
16 housing units as they're going out to recreation, and I
17 have yet to have a comment to a security staff that
18 that wasn't a thorough pat-frisk because I -- I've, you
19 know, firsthand observation of watching them pat-frisk
20 an inmate, and I've walked in all the galleries, and I
21 have yet to have an inmate tell me that he was sexually
22 abused by a pat-frisk.

1 So again, I find it -- you know, I'm not sure
2 the survey and the anonymity of the survey might have
3 something to do with an inmate feeling freer to talk
4 rather than if you're firsthand observing something.

5 DR. CHRISTENSEN: Thank you.

6 DR. WILKINSON: We heard testimony earlier
7 about the lack of cameras. Can you talk a little bit
8 about that and your video surveillance at Elmira
9 particularly, maybe, Colonel?

10 MR. WENDERLICH: Yes, sir. Be happy to. We
11 don't have -- well, being one of the old
12 maximum-security facilities, we don't have it upgraded
13 to having cameras in some of the high-frisk areas. I
14 know Mr. Effman has entered into discussion with the
15 Commissioner on the possibility of putting some cameras
16 in the, say, high-traffic areas, the high-frisk areas,
17 areas where we know that we're going to be frisking
18 inmates on their way to rec every day, three or
19 four-hundred of them. So we could have cameras in that
20 area.

21 Right now the cameras are in the Mess Halls,
22 three different Mess Halls, and in our SHU, and, of

1 course, on the perimeter fence, but that does very
2 little good for what we're talking about here, but in,
3 like I say, the SHU, --

4 SUPERINTENDENT BRADT: Also the Field House.

5 MR. WENDERLICH: Yes, sir. In the recreation
6 areas, we went up when you were there, we went up to
7 the big open -- the big indoor recreation area. That
8 is viewed, too, but there's not cameras on one specific
9 area where they do the most frisking and that would
10 be -- that's an advantage. That would be an advantage.

11 DR. WILKINSON: Yeah. It would be.
12 The -- we heard testimony from the Executive Director
13 of the Texas Department of Criminal Justice and they
14 added 117 cameras in some of their high-security
15 facilities and, you know, we saw in the Elkton Federal
16 Facility cameras all over the place. So in part of the
17 testimony there is that cameras are not only good for
18 surveillance and detection but, you know, prevention --

19 MR. WENDERLICH: I would like to see more.

20 DR. WILKINSON: -- and deterrence.

21 MR. WENDERLICH: I would welcome them.

22 MS. SEYMOUR: How many high-frisk areas do

1 you have within your institution?

2 MR. WENDERLICH: One, two, three, four, four.

3 So we really could do that.

4 MS. SEYMOUR: You super easy could do that,
5 couldn't you?

6 MR. WENDERLICH: Two cameras on each site,
7 maybe three.

8 MS. SEYMOUR: Yeah. Just saying.

9 MR. WENDERLICH: Yeah.

10 MR. EFFMAN: Nothing in New York is super
11 easy. I would say that --

12 MS. SEYMOUR: Go to Best Buy. It's not a lot
13 of area.

14 MR. WENDERLICH: I would welcome that.

15 MR. EFFMAN: The agency has actually been
16 doing a lot of camera projects in recent years but our
17 focus -- I think Ms. Hutchings mentioned something in
18 her written testimony that -- about cameras. We've
19 been putting a lot of cameras in our female
20 institutions. That's been our priority in recent
21 years, is getting those camera'd up as much as
22 possible.

1 In fact, right now it's -- I believe the
2 Bayview Project is well underway and the last two at
3 the Alameda Correctional Facility and Bedford Hills
4 Correctional Facility are done and up and running for
5 several years each now. So, you know, these are big
6 dollar projects obviously, and -- and it's difficult to
7 undertake more than one at a time.

8 DR. WILKINSON: We heard Mr. Beck testify
9 that most of the allegations of sexual misconduct
10 happen on the second shift between three and eleven
11 o'clock. That's also reiterated in the BJS report that
12 forty percent of all the allegations happen between
13 four and midnight, but I actually saw there's not a lot
14 of mass movement, if any, and if it is, it's escorted.

15 So what kind of opportunities would there be
16 on second shift to engage in, you know, sexual
17 misconduct?

18 MR. WENDERLICH: I personally don't see a lot
19 of opportunity to engage in sexual conduct, misconduct
20 on the three-to-eleven shift. I don't see the
21 opportunity there. But I will agree with Mr. Beck that
22 the three-to-eleven tends to be the more inexperienced,

1 younger staff, and we have less security supervisors
2 on.

3 DR. WILKINSON: Is that because of collective
4 bargaining or -- ?

5 MR. WENDERLICH: Absolutely, absolutely.
6 Yeah.

7 DR. WILKINSON: So you have a pickup post
8 system or something?

9 SUPERINTENDENT BRADT: It's a bidding.

10 DR. WILKINSON: Bidding.

11 MR. WENDERLICH: By seniority. So the people
12 who want to be on days, day shift takes about fifteen
13 or twenty years to get days, and three-to-eleven gets
14 what's left over. I'm sorry. The younger staff gets
15 three-to-eleven which is what's left over.

16 MR. FONDA: But there's still a lot of
17 movement in our facilities during that three-to-eleven
18 tour. I mean, between the yards for recreation, the
19 evening schools and the evening programs that are out
20 there, the libraries that are open, the field houses,
21 the gyms, the running them back and forth to meals, our
22 Medical is open. There's still a lot of movement going

1 on in our institutions up until ten o'clock at night
2 pretty much.

3 SUPERINTENDENT BRADT: Ten o'clock.

4 MR. FONDA: Yeah. The large portions of it
5 would be the rec movements, you know, out to the yards
6 and out to the field houses and recreation areas,
7 things of that nature, which again, you know, for
8 Upstate New York, from four in the afternoon until, you
9 know, seven, eight o'clock the next morning, it's dark
10 in the winter. So, you know, if you didn't have all
11 those great opportunities during the daylight hours,
12 you know, you've got fourteen to sixteen hours of
13 darkness to add to a maximum-security prison
14 environment.

15 So the area you need to accomplish something
16 evil, it doesn't need to be that big, and I just wanted
17 to make sure you knew that we did a lot of evening --

18 MR. WENDERLICH: Of course, everybody's
19 frisked when they go to those areas, too. Nobody goes
20 to rec in the evening without being frisked nor to
21 library, school, religious classes in the evening.
22 Everybody's frisked when they go out.

1 DR. WILKINSON: I know that most of your or
2 all of your Mental Health staff are employees of a
3 different agency, the New York Department of Mental
4 Health, whatever you call it, but seemingly having met
5 some of those folks who work for that agency, there's a
6 rather good relationship there.

7 MR. WENDERLICH: Very good relationship
8 between -- Elmira's comprised of not only DOCCS,
9 Department of Correctional Services, now it has a new
10 name, I'm sorry, good old DOCCS, and the Office of
11 Mental Health as well as Parole, but Parole now is in
12 the process of combining with DOCCS, but at this time
13 that we're talking about, it was three separate
14 agencies working as one inside, and I can't speak for
15 other facilities, but I'm told that the relationship
16 between Mental Health and -- and DOCCS employees is as
17 good as any place in the whole state that rated Elmira.

18 We -- they have thirty employees, three
19 psychologists. This is what they're approved to be
20 staffed. Three psychologists, three psychiatrists, and
21 how many social workers? Three social workers, four
22 psychologists.

1 DR. WILKINSON: Yeah. I did recall, though,
2 where the Mental Health Department is -- it's kind of
3 in a distant area from --

4 MR. WENDERLICH: Yes, sir.

5 DR. WILKINSON: So it's not easily -- easy to
6 get to by an inmate. So there's some maneuvering an
7 inmate's got to do in terms of getting permission and
8 so forth to get there. So, I mean, does that impede
9 any inmate from being able to access the Mental Health
10 staff? Do the Mental Health staff come to them?

11 MR. WENDERLICH: It's out there pretty good,
12 isn't it?

13 DR. WILKINSON: It's way out there.

14 MR. WENDERLICH: Yeah.

15 MS. SEYMOUR: Is it obvious like they're
16 going to Mental Health when it's --

17 DR. WILKINSON: No.

18 MR. WENDERLICH: No. They're going out to a
19 program area and they take a right. It's probably
20 apparent they're going there, but when they're put on a
21 call-out, when they're on the OMH caseload and they're
22 put on a call-out, they have to go. They don't have to

1 talk to anybody, and they don't have to take medication
2 if it's a medication run, but they have to go to that
3 call-out.

4 DR. WILKINSON: What do they do a pill call
5 for inmates on psychotropics? Do they do that inside
6 the cell block where they bring it to them? Is there
7 an area?

8 SUPERINTENDENT BRADT: Both ways.

9 MR. WENDERLICH: It is.

10 SUPERINTENDENT BRADT: There's a Mental
11 Health nurse that would go out with an officer escort
12 to deliver the medications, and then others would be
13 escorted out to the Mental Health Building, and certain
14 housing units would be escorted out to the Mental
15 Health Building for their medications.

16 MR. WENDERLICH: Different factors, could be
17 key blocks. Obviously he wouldn't go out there at that
18 point or he might be one of the -- we call them a blue
19 tag in the ICP Unit. He might not be one that does go
20 out there on his own. So both.

21 SUPERINTENDENT BRADT: And at Elmira, there's
22 also a reception center. The inmates are in the

1 reception center. The nurse would go over there and
2 deliver medications.

3 DR. WILKINSON: So I do remember, I think,
4 the time period of the survey, that there were several
5 suicides, is that right? Three?

6 SUPERINTENDENT BRADT: There were, yes, and
7 that caused Elmira to -- to look at things a little
8 closer and have an extended classification cells put
9 in. You probably saw that in B Block, the small
10 reception block on the front side of the gallery.
11 There was twenty-eight cells that were put in. You
12 probably saw the electronic plate device where the
13 officers were monitored and making their half-hour
14 rounds to ensure that they were looking at the inmates.

15 DR. WILKINSON: And that was -- that was well
16 done, that observation and very clean. Probably I
17 think it was the cleanest part in the prison, quite
18 frankly.

19 SUPERINTENDENT BRADT: Then it's gone
20 downhill after that.

21 DR. WILKINSON: So, I mean, -- I mean, we've
22 probably asked you the majority of the questions that

1 we want to ask you, but I'll go around one more time.

2 MS. SEYMOUR: I actually -- mine is as much a
3 comment, maybe it's for your agency, as a
4 clarification. On Page twenty-two of your response to
5 us, you said that you do not access or use partner with
6 community-based victim advocates because of limitations
7 on victims of crime funding which is from the
8 Department of Justice, Office for Victims of Crime.

9 I thought it was interesting that
10 Ms. Hutchings suggested that you make better use of
11 external community-based victim advocates, and I can
12 speak to Elmira. You have one of the great rape crisis
13 centers in the country, not just New York, and you have
14 a wonderful coalition of sexual assault victim
15 advocates.

16 I just want to clarify that you can't use
17 VOCA funds for PREA yet, that may be changing, but VOCA
18 is a tiny portion of what most victim advocates get.
19 So do not -- I'm correcting your testimony, I think.
20 Do not let that preclude you from partnering with
21 victim advocates because (a) I think it's a really good
22 idea, it was recommended by another witness, and (b),

1 as I said earlier, you really do have some good
2 advocates who can do some of the work with -- with
3 people, whether they're at the hospital or provide
4 supportive services to -- to victims.

5 MR. EFFMAN: I appreciate that and as you
6 know, we have a very good victim person at the agency.

7 MS. SEYMOUR: You sure do. She was just here
8 last week.

9 MR. EFFMAN: And she says hello. I speak to
10 her frequently.

11 MS. SEYMOUR: Okay.

12 MR. EFFMAN: And we -- you know, there are
13 some of the organizations, I obviously can't speak to
14 all of them, I -- my understanding is some of them
15 are -- are hesitant to -- to risk the mix-ups and
16 having to track what's what. I'm sure that's not true
17 of all of them, but we are certainly watching what DOJ
18 does with VOCA, and this is -- that's an area that we
19 need to do some work. We know that.

20 MS. SEYMOUR: VAWA doesn't preclude it, for
21 example.

22 MR. EFFMAN: Right. So, yeah, that's

1 something -- that is something we need to do some work
2 on. One of the things we didn't mention today is our
3 medical response protocol whenever we have an
4 allegation that involves penetration of any type within
5 that ninety-six-hour window, in particular. They go to
6 the community hospital, and they are treated just like
7 anyone who walked in off the street, brought in by any
8 law enforcement. We have, you know, the SANE nurse is
9 going to be there. So they have full community-based
10 treatment and, you know, at Elmira in particular, many
11 of the cases that we did look at, we did see that
12 Mental Health was talking to them thereafter.

13 It's not perfect. We know that. It's
14 something we're working on.

15 MS. SEYMOUR: Thank you.

16 DR. WILKINSON: Is that probable cause for an
17 HIV test?

18 MR. EFFMAN: It's offered. Absolutely. It's
19 absolutely offered. I don't think we require probable
20 cause for HIV testing, but they -- when there is an
21 allegation of -- of any sort of sexual assault, our
22 medical people will make HIV testing available.

1 DR. WILKINSON: Anything else,
2 Superintendent?

3 SUPERINTENDENT BRADT: I'd like to just say
4 one thing, Ms. Seymour.

5 MS. SEYMOUR: Sure.

6 SUPERINTENDENT BRADT: As one of the things I
7 also did, it was kind of twofold, I did at Elmira and
8 now at Attica, is I put the Prevention for Suicide and
9 also the PREA pamphlets in our Hospitality Visiting
10 Center, twofold it, thinking that -- that the offender
11 victim would be embarrassed to bring it to a staff
12 member and might readily talk to a family member or
13 loved one about it and also to prevent some retaliation
14 possibly by talking to a staff member. So both of
15 those facilities I've done that, as well.

16 MS. SEYMOUR: Well, I think -- my final
17 comment, I think you're integrating some things in a
18 really interesting way. You've mentioned earlier that
19 you would investigate domestic violence allegations
20 against an employee would be investigated by your
21 group.

22 Violent tendencies are violent tendencies.

1 So whether you're beating your partner or you're being
2 violent against an inmate or another staff member, I
3 mean, I just think things like that, I made note of it,
4 I think it's a real important nuance to -- to be
5 looking at -- through that lens like that.

6 DR. WILKINSON: Mr. Fonda?

7 MR. FONDA: No. Actually, I -- I want to
8 thank you for the opportunity to get down to Washington
9 and see our great capital, even though it's a very
10 short stay. We're going to be jumping on a flight here
11 pretty soon and heading back up to New York.

12 Thank you very much for the opportunity to
13 come down and discuss the issues and welcome any other
14 opportunity in the future.

15 MS. SEYMOUR: Thank you.

16 DR. WILKINSON: Colonel?

17 MR. WENDERLICH: Well, there's a lot of
18 issues in a short time period. I know the Panel is
19 going to cover everything. I appreciate the
20 opportunity to be here, too.

21 One of the things I felt most strongly about,
22 and I don't know that we discussed it very much, was I

1 know from being at Elmira as long as I have deep in my
2 heart that -- that we encourage them to come forward.
3 If there's a problem, they should know and my staff
4 knows that there is a zero-tolerance. They should -- I
5 want the inmates to know from the day they come in, we
6 get both reception as well as general population, and I
7 want them to know that we do -- we claim, we pursue
8 zero-tolerance. We'd like to get to that zero level,
9 like Mr. Effman said.

10 DR. WILKINSON: You've got it bolded and
11 highlighted in your pamphlets.

12 MR. WENDERLICH: And we want them to know,
13 and the staff knows how we feel, that they can report
14 and they should report. I don't know of any cases of
15 retaliation, and certainly the administration wouldn't
16 stand for it. I can only speak for Elmira, but we
17 wouldn't stand for retaliation. If somebody made a
18 claim, we're going to take that seriously, and we're
19 not going to let something happen to that victim. It's
20 not going to happen.

21 So thank you, again.

22 DR. WILKINSON: Jason?

1 MR. EFFMAN: Just thank you very much.
2 You're doing, you know, very important work, and I
3 certainly look forward to seeing your report and seeing
4 what new recommendations you have that we can work on.

5 DR. WILKINSON: Yeah. And we don't want to,
6 you know, and don't take lightly, you know, the report
7 oftentimes, you know, where there's smoke there's fire,
8 you know, with, you know, the numbers that BJS came up
9 with. So I would, you know, continue to do your due
10 diligence and making sure that you haven't overlooked
11 anything that would tend to make sense to try to
12 prevent any sexual assaults from taking place or
13 mitigating them, at least, you know, and cameras, for
14 example, is a good way to, you know, kind of deter as
15 well as detect, you know, sexual violence.

16 I also know that you don't have a PREA
17 coordinator per se at the institution, is that right?

18 MR. WENDERLICH: Yes, sir.

19 DR. WILKINSON: Is that true for all the
20 facilities?

21 MR. WENDERLICH: Well, that's not my title
22 but as the deputy -- the directive clearly calls for

1 the deputy superintendent --

2 DR. WILKINSON: In many places, it's kind of
3 a double duty title. It's not a dedicated person
4 necessarily.

5 MR. WENDERLICH: Yes, sir.

6 DR. WILKINSON: But, you know, it wouldn't
7 hurt at some point to say, you know, Colonel Wenderlich
8 is also the PREA coordinator. I mean just kind of
9 declare it, say, you know, and that would be something
10 that would need to come from Central Office, you know,
11 and again in a lot of places the PREA coordinator is
12 not a full-time -- is not an FTE but just a designated
13 person. So when people from the Department of Justice
14 call, they'll know who to talk to, you know,
15 about -- about issues.

16 So, but other than that, we -- we
17 appreciate -- unless, Gary, do you have anything else?

18 DR. CHRISTENSEN: Nothing. Thank you.

19 DR. WILKINSON: We appreciate you showing up,
20 glad you had an opportunity to get to the nation's
21 capital today.

22 MS. SEYMOUR: Thank you.

1 DR. WILKINSON: Thank you for your testimony
2 and if we need anything else, we'll reserve the right
3 to -- to call on you for any future documentation, but
4 unless the staff has anything else, I'll close the
5 hearing.

6 MS. SEYMOUR: Early.

7 DR. WILKINSON: Okay. The Panel concludes
8 this session of the Public Hearing on Prisons With A
9 High Incidence of Sexual Victimization. The Panel
10 reserves the right to gather additional testimony and
11 other information to supplement the record.

12 Thank you, all, for being here.

13 MS. SEYMOUR: Thank you.

14 DR. CHRISTENSEN: Thank you.

15 (Whereupon, at 2:52 p.m., the meeting was
16 concluded.)

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