

1 female, as of yesterday I believe we had 115 kids. But as  
2 of yesterday there were two people in our prison system  
3 under the age of 18, with all those ways to do that, so,  
4 again, jurisdictions are extremely different.

5           Again, I really thank you, I appreciate being  
6 here, and I look forward to any questions you may have.

7           CHAIRMAN WALTON: Thank you, Mr. Gibson.

8           Ms. Becker.

9           MS. BECKER: Good afternoon. It's an honor and a  
10 privilege to testify this afternoon about some of the work  
11 that we do in our Special Litigation Section in the Civil  
12 Rights Division at the Department of Justice.

13           The Department's authority to investigate and  
14 initiate civil lawsuits relating to conditions of care for  
15 juveniles, both those confining adult facilities and  
16 juvenile correction facilities, stems from two statutes:  
17 The Civil Rights of Institutionalized Persons Act of 1980,  
18 which we call CRIPA, and the Violent Crime Control and Law  
19 Enforcement Act of 1994, which we call Section 14141 in  
20 reference to its statutory cites. These statutes give the  
21 department broad authority to investigate more than just  
22 sexual abuse and rape in juvenile facilities, but it also  
23 covers other types of abuse: physical abuse, lack of medical  
24 care, lack of mental health facilities, education, things of  
25 that nature, and it also covers other types of facilities,

1 not just juvenile facilities, but adult prisons, mental  
2 health hospitals and so forth.

3           It's worth noting that these statutes do not  
4 authorize the department to represent individual plaintiffs,  
5 so, we could not represent a juvenile who's suing a  
6 facility, for instances. To the contrary, our cases are  
7 focused on a pattern or practice of constitutional or  
8 federal statutory violations. In addition, the Special  
9 Litigation Section does not have the authority to prosecute  
10 rapes, rather, their work is limited to civil matters.

11           We initiate our investigations when we receive  
12 allegations, usually from a number of different sources:  
13 media, advocacy organizations, parents, or the staff from  
14 the facility. Once we decide to investigate, we will work  
15 with professional clinicians, experts in the field, go out  
16 to the facility, do an on-site tour, review documents,  
17 interview people, and prepare a findings letter which we  
18 would then share with the jurisdiction that sets forth all  
19 the conditions that we allege are in violation of the U.S.  
20 Constitution or federal laws, the facts supporting it, and  
21 suggested remedial measures that they can take. We publish  
22 our findings letters on our website, and the website is  
23 listed in our written testimony if you'd like to see some  
24 examples.

25           After our findings letters are issued we continue

1 to work with the state to try to come up with a plan to  
2 remedy some of their violations, and usually our efforts end  
3 with the filing of a complaint in federal court and a  
4 countermittant consent decree or a court-enforceable  
5 settlement agreement.

6           In recent years, as Dr. Krisberg has alluded to,  
7 we've significantly expanded our juvenile justice  
8 enforcement program. Since 2001 we've commenced 19 new  
9 investigations of juvenile justice facilities across the  
10 United States. By contrast, only eight investigations were  
11 initiated in the last five years of the prior  
12 administration. These investigations can involve multiple  
13 facilities within the same jurisdiction. We are currently  
14 investigating conditions in facilities in California,  
15 Maryland, New Jersey, Ohio, and Oklahoma. In addition, we  
16 are monitoring consent decrees or settlement agreements in  
17 Arizona, Arkansas, California, Georgia, Hawaii, Indiana,  
18 Maryland, Michigan, Mississippi, Nevada, New Jersey, Puerto  
19 Rico, and the Commonwealth of the Northern Mariana Islands.

20           Interestingly, sexual abuse is not one of the most  
21 prevalent violations that we typically uncover when we  
22 investigate juvenile facilities. We've uncovered evidence  
23 of sexual abuse or sexual misconduct in roughly about a  
24 third of our investigations, and these includes the States  
25 of Arizona, Hawaii, Indiana, Oklahoma, Maryland, and Puerto

1 Rico. We typically have not found evidence of rape; rather,  
2 we find sexual abuse or sexual misconduct of juveniles by  
3 staff, and I list several examples in my written testimony.

4 I will just highlight a couple for you right now.

5 One, female staff have engaged in sexual  
6 relationships with male youth, some as young as 14 years  
7 old. We've also had evidence of sexual intimidation or  
8 inappropriate relationships between youth. For example,  
9 three youth attempted to place a pepper shaker in the anus  
10 of another youth. An 18-year-old had anal sex with a  
11 14-year-old in the bathroom, even though the staff were  
12 supposed to know the whereabouts of one of these youth at  
13 all times. In another instance, while the staff were in the  
14 kitchen and not supervising youth, one youth put his penis  
15 in the mouth of a sleeping youth.

16 With respect to the causes of why this is  
17 occurring, I think I will just be corroborating things that  
18 other witnesses have testified to this morning. In cases  
19 where we have uncovered evidence that staff is sexually  
20 abusing youth, we have found problems with the facilities'  
21 investigation systems. Often despite repeated complaints,  
22 facility management fails to adequately investigate or  
23 follow up on indicia of inappropriate conduct. Often  
24 misconduct is allowed to continue for significant periods of  
25 time, as we've heard.

1           In cases where we've uncovered evidence of sexual  
2 intimidation between youth, we typically find that age and  
3 size disparity between the youth is a significant risk  
4 factor. The older, bigger, more sophisticated youth  
5 obviously are preying on the younger, smaller, more  
6 vulnerable children. And, of course, as has already been  
7 stated, there is just simply not enough staff to supervise  
8 the youth adequately.

9           If we make a finding that a facility is violating  
10 the rights of the youth we make every effort to enter into  
11 an agreement with the facility to reform the conditions that  
12 we've discovered. Under both CRIPA and Section 14141 we may  
13 only seek prospective injunctive relief. In those types of  
14 cases we typically include provisions in our agreements that  
15 ensure improved investigative systems in a facility, improve  
16 staffing, not just in the number of staff, but also in their  
17 training, and improved classification of youth to ensure  
18 that youth who are younger and smaller are not housed in  
19 areas with older and stronger youth.

20           Thank you very much.

21           CHAIRMAN WALTON: Thank you very much.

22           Dr. Bidwell, do you believe that the circumstances  
23 that resulted in the testimony that we heard earlier this  
24 morning have been addressed by the State of Hawaii?

25           DR. BIDWELL: I would say at this -- no, they