

1 basis. Something was stolen from me that I cannot get back,  
2 and I speak out today to prevent other young people from  
3 going through this.

4           And the only last thing I would like to say is  
5 that we know prison is a form of punishment, but must it be  
6 cruel and unusual?

7           Thank you.

8           CHAIRMAN WALTON: Thank you very much. Questions?

9           COMMISSIONER SMITH: One of the things -- and this  
10 is actually -- good morning, first. And thank both of you  
11 for your testimony. While I know that it was difficult, it  
12 was very helpful and useful to us. One of the things that  
13 actually stood out in both of your testimony was the fear of  
14 reporting and the failure to report these incidents, and I  
15 understand the reasons why those reports didn't happen. But  
16 from the point of view of the Commission, what can we do,  
17 what kinds of things would you suggest in order to make it  
18 safer for people to report and what kinds of mechanisms  
19 should be in place for youth to report? Either one of you.

20           MS. HARDIN: Well, I think one of the biggest  
21 fears of reporting, you know, attacks, or anything against  
22 like a guard -- on the guard, then I'll talk about the  
23 inmate level. On the guard level, I mean, who will you be  
24 reporting to? Another guard. And we, you know, they stick  
25 together; they're not going to stick their neck out and, you

1 know, defend an inmate or so-called criminal. I mean, one  
2 of the things I would suggest that you could put in place is  
3 like some type of autonomous committee or counseling or  
4 person who actually talks and engages with the other inmates  
5 to make sure nothing, you know, inappropriate is going down.

6           And on inmate level, nothing is a secret in  
7 prison, nothing. Not what you do, not what you eat, not who  
8 you see on the VI floor, nothing. So, last thing, like I  
9 said in my testimony, is you want to be a snitch, I mean,  
10 there's no form of secrecy, I mean, and also, again, you're  
11 reporting it to a guard. And, look, guards, as much as they  
12 get training, as much as they're supposed to be there to  
13 protect and secure safety, they're also human, and they fall  
14 -- they fall subject to, like, human characteristics and,  
15 you know, if you piss a guard off and you get on his or her  
16 bad side, they're going to retaliate against you, and  
17 sometimes that's, you know, telling other inmates that, you  
18 know, you're snitching and you're reporting things. And  
19 also in the manner that they approach you when you do a  
20 report it's obvious that you've made a report, so, it's not  
21 like you could kind of like get around it or hide that you  
22 made this report. So, to feel retaliation from both sides  
23 is very real, and that's why personally I did not report  
24 what was going on.

25           COMMISSIONER SMITH: Ms. Hall-Martinez, I can

1 rephrase it, I can say it again.

2 MS. HALL-MARTINEZ: Okay. Great.

3 COMMISSIONER SMITH: The question was, what can we  
4 -- the short version is what can we do in order to encourage  
5 reporting and what kinds of mechanisms would help make your  
6 reporting better?

7 MS. PASION: Well, in Hawaii, back in Hawaii,  
8 there -- the process of a grievance is like I guess what you  
9 might call corrupt, because one of, like a couple of times I  
10 filed grievances but then I haven't received response back  
11 immediately.

12 COMMISSIONER SMITH: What would be the most  
13 effective way, then, to file a grievance? I mean, how ---

14 MS. PASION: To report it like to someone who's  
15 much more trustworthy than the guards, like, you know, I  
16 guess counselors or the staff members. I mean, not staff  
17 members, but then the doctors or the nurses in the facility.

18 CHAIRMAN WALTON: Was there any type of  
19 orientation provided to you that told you a process by which  
20 you could make reports?

21 MS. PASION: Yes, there is, but then it's corrupt,  
22 I guess, like the process was like slow, I guess.

23 MS. HARDIN: Yeah, they gave me orientation that,  
24 you know, was a step-by-step of where things were at and  
25 what to do, but, again, you know, this is -- this is --

1 especially at Bedford, this is prison, and, you know, and I  
2 thought I was going to be there for the long haul, so, I  
3 didn't want to ruffle anybody's feathers. And at Riker's  
4 Island, I mean, reporting a grievance really is a joke, I  
5 mean, to be, seriously, it's not like, you know, you put a  
6 grievance and the guard is immediately removed and  
7 everything is okay. So, you know, I mean, the only thing  
8 you can do -- I think I'm talking too loud.

9 CHAIRMAN WALTON: No, no.

10 MS. HARDIN: I mean, the only thing you can do is  
11 the DET who is like the highest officer, and depending if  
12 you know the DET, you might can reach out to her and she  
13 might get you moved to another facility, but, at the same  
14 time, especially with Riker's Island, it's an adolescent  
15 facility. When I was there in the nineties there was only  
16 six upper and six main, six main was for -- it's adolescent  
17 in protective custody and six upper was for everybody else  
18 going back and forth to court or waiting to go upstate. So,  
19 even if they got you moved, there wasn't too many other  
20 places you can go on the island, and when you did  
21 recreational, when you went to the mess hall, you was going  
22 to see that other inmate, you know, and bound to see the  
23 other guards.

24 CHAIRMAN WALTON: Other questions?

25 COMMISSIONER STRUCKMAN-JOHNSON: First of all, to

1 both of you, I'm very sorry for what's happened, it's  
2 terrible, and it's just -- I -- anyway, could you tell us  
3 for each, in each of your cases, who finally helped you?  
4 Who were you able to go to and have -- who responded in a  
5 way that gave some relief and some help to start the process  
6 that brought you here today?

7 MS. HARDIN: With regards to me being an  
8 adolescent at Bedford Hills, the other part to that story  
9 that kind of was in my testimony is that after I kissed the  
10 woman ---

11 CHAIRMAN WALTON: It's not you, it's the system.  
12 I don't know what's going on.

13 MS. HARDIN: Apparently no system likes me.

14 (Laughter.)

15 So, the other part to that is that I had been  
16 carrying, you know, for lack of a better word, a shank,  
17 which was only a piece of plastic with some tape around it,  
18 so, it really wasn't that -- for my protection, because I  
19 had knew what was going down, you know, I knew that she  
20 wanted to attack me, I knew -- I knew what was playing out,  
21 and plus I was scared of like other retaliation from like  
22 other inmates. So, after I got my clothes on and we was out  
23 in the corridor, I told her that if she ever tried that  
24 again I will killer, know what I'm saying, and she swung on  
25 me and I kind of ducked up under that and a lot of commotion

1 went on, and what ended up happening, I ended up pulling the  
2 shank out to protect myself and she actually ended up  
3 getting it and an officer got cut. And then all hell broke  
4 loose. I mean, when an officer gets hurt in a facility,  
5 they shut it down, know what I'm saying, so, you know, the,  
6 what we call the turtles and the boom squad came in with  
7 full gear and the riot gear and so on and so forth and shut  
8 us down, and by that time my Grandmother had went and got my  
9 like birth certificate, my baptism record, she had talked to  
10 the church, other elected officials in my neighborhood and  
11 where I came from in Brooklyn and was moving with the  
12 process to try to get me out. So, my sentence got -- got  
13 voided out and I got released.

14           As to like Riker's Island, I mean, I was released  
15 just because I was, you know, and back and forth with the  
16 judge, so, I was released. But I think what ended up  
17 happening to me is while I went in and out of prison is that  
18 I became used to what happened, like the sister said, you  
19 know, I kind of became numb to what was going on in and out  
20 of prison, so, it didn't really bother me too much, and plus  
21 I'd gotten a lot bigger. And, you know, whatever you do in  
22 prison, you know, goes with you, so, after that first  
23 incident, you know, happened with the older woman at Bedford  
24 Hills, I didn't really have any trouble with any other  
25 inmates.

1 MS. PASION: Who helped me was Dr. Bidwell and the  
2 ACLU of Hawaii, after I was released.

3 COMMISSIONER STRUCKMAN-JOHNSON: After. After.  
4 Okay. So, you did receive -- and when did you decide to  
5 come forward about realizing your activism?

6 MS. HARDIN: I got introduced -- actually, right  
7 after I got out of jail, I got introduced to this  
8 organization called the Orchard Law Project which organizes  
9 with LGBTSEQ, Lesbian, Gay, Bisexual, Transgender, Gender  
10 Non-Conforming Folks of Color, in Brooklyn, New York, and it  
11 started -- it started to give me the vocabulary and the ways  
12 to articulate everything I was feeling. So, you know, to be  
13 honest with you, you know, they were paying money and I  
14 didn't have to flip a burger for it, so, I was with it. And  
15 after that, I kind of got wind of Prison Moratorium Project,  
16 and that's exactly when the Justice for Youth Coalition was  
17 just forming. So, you know, being involved in these  
18 campaigns and like this, you know, these different  
19 non-profits, I've actually got to travel across the country  
20 to express my personal experiences inside prison and also  
21 develop my analysis of what -- around what we call the  
22 prison industrial complex. And I also got to travel to  
23 Nigeria to the International Conference on Penal Abolition  
24 and talk about my experiences in the States and what was  
25 happening here. So, that was kind of like what helped me

1 and how I got into it. I was just looking for a job, kind  
2 of tripped in it, luckily I'm here now.

3 COMMISSIONER STRUCKMAN-JOHNSON: Well, I just think  
4 it has -- who can -- who can come out and tell after it's  
5 over, who can come speak, and I don't think people are  
6 speaking, particularly what happens in juvenile, I think  
7 it's a great, great silence, so, we are -- we are indebted  
8 to your -- to your voice today.

9 MS. HARDIN: Thank you.

10 COMMISSIONER STRUCKMAN-JOHNSON: What do you think  
11 about -- I'm just trying to think in terms of  
12 recommendations -- who can -- it sounds to me like somebody  
13 has to be there almost around the clock who is not in a  
14 security position. What about it, is there some idea of  
15 like a -- like a house mother, house father, some  
16 independent person who -- who is present there to just quell  
17 anything, to stop the verbal harassment, to -- I mean, rules  
18 have to be set, but somebody there who's truly an advocate,  
19 or at least neutral, does that -- I mean, does that sound  
20 possible? Does that concept sound like it might work in an  
21 adolescent facility?

22 MS. PATION: More access to counsel, you know, the  
23 counseling, I guess in Hawaii, well, they were, but then  
24 actually I -- I was just like, you know, didn't like to talk  
25 about anything, I was just, you know, scared.

1 MS. HARDIN: I think like a house mother or a  
2 house father, you know, someone that, whatever their title  
3 or position might be, but someone who has nothing to gain or  
4 lose by protecting these young people.

5 COMMISSIONER STRUCKMAN-JOHNSON: Right.

6 MS. HARDIN: And I think just like a fail-safe to  
7 the house mother or house father would be someone who just  
8 goes into a facility and inspects what's going on, talks to  
9 the guards as well as like the inmates who are willing to  
10 talk. It has to be, you know. And then I guess also, too,  
11 just recognizing that you are going to have segments of the  
12 population with special needs. Far too often we try to  
13 catch the problems on the back end. I think it would  
14 behoove the Commission to try to solve this problem on the  
15 front end before it becomes a serious problem and all of  
16 these like ill things that happened to me and the sister  
17 over here, you know. So, I mean, putting a house mother or  
18 house father in and then someone else to come in just to see  
19 what's going on in the facility to make sure everything is  
20 running accordingly, and just understanding that we're going  
21 to have special needs. I mean, you know, this is 2006, I'm  
22 -- you know, everybody doesn't fit into the male/female  
23 category and we need to recognize that population because  
24 it's ever growing and especially for queer young people,  
25 they get it the worst on both ends, from the guards and also

1 from the inmates. So, my next recommendation also to the  
2 Committee would be some type of training for the guards  
3 around these special needs population so they know how to  
4 interact with them and the things to say to them on an  
5 everyday level, like calling somebody a transvestite is not  
6 the best thing in the world, or dyke, you know, doesn't give  
7 me cheerful cheers in the morning to be called a dyke, know  
8 what I'm saying?

9           COMMISSIONER STRUCKMAN-JOHNSON: All right. Well,  
10 thank you.

11           COMMISSIONER SMITH: I guess one of the things is  
12 that your testimony has raised a bunch of different issues  
13 one related to solitary confinement, medical and mental  
14 health issues for people who are victims, the advisability  
15 of dormitory-style housing, so, that's sort of a facility  
16 question, you know, the slowness of the response, housing,  
17 things like that. There were also two other issues that  
18 came up. One -- and I'm hoping that some of the witnesses  
19 later can talk about this -- one was related to cross-gender  
20 supervision, right? Supervision of girls in custody by male  
21 staff, which I would like people to talk about. I'm hoping  
22 that the experts will talk about that when we talk about  
23 standards and sort of what -- what's permitted in juvenile  
24 settings. I know that that issue is contested in the adult  
25 setting.

1           Another issue that you raised was the issue of  
2 consent. I believe Chino, Ms. Hardin, you mentioned people  
3 having consensual sex in these settings. Can you talk about  
4 that a little bit, particularly given that all sex in  
5 juvenile facilities is prohibited?

6           MS. HARDIN: Yeah. Well, all sex in every  
7 facility is prohibited.

8           COMMISSIONER SMITH: Well, we're just talking  
9 about juveniles here right now.

10           MS. HARDIN: Yeah, so, the, you know, I mean, the  
11 lockdown, and the only time they see each other is through  
12 like rec. or the mess hall or what not, and the guards would  
13 let the boys who had girlfriends on the girls' side come  
14 into the cells and have consensual sex. Now, mind you,  
15 these are very young kids, you know. I was 13, so, some of  
16 them were like 13 or 14, you know, I think there was like a  
17 12-year-old there. So, yeah, I mean, consensual, I wouldn't  
18 necessarily call it consensual, but sex that wasn't being  
19 contested was happening between juveniles in Spofford  
20 Correctional Facility. Yeah. And I think what would have  
21 been actually better is, you know, like if we have the  
22 foresight to understand that while you're adolescent in a  
23 juvenile facility that you need school, you also need all  
24 the other things that come into play with coming to, you  
25 know, know your body and growing up, so, there should have

1 been some type of like sexual educational class in the  
2 facility so to, you know, no one with sex ed. through the  
3 consequences of sex, like STDs, HIV, pregnancy, so on and so  
4 forth, and also the mental capacity of having a sexual  
5 encounter at a very young age. There is a lot of young  
6 women in the facility who had STDs, you know, things like  
7 crabs, chlamydia, syphilis. Now, imagine being like 13, 14  
8 years old, I mean, you're barely learning how your body's  
9 working, let alone you're going to have to deal with this  
10 disease. So, you know, that would be like a recommendation  
11 from me, you know, to like have that type of class, or  
12 incorporate it into like the school. It doesn't have to be  
13 an all-day, every-day thing, but just so they have some type  
14 of awareness, some type of pamphlet that, or you could even  
15 have other organizations come into the facility to teach  
16 that type of things.

17           COMMISSIONER SMITH: So, the issue of consent is  
18 being contested because I think that your point is that it's  
19 not clear whether there was consent, whether people had  
20 enough information to be able to really be engaging in  
21 consensual interactions.

22           MS. HARDIN: Yes. And there are so many social  
23 coercions that play out in a juvenile facility. You know, a  
24 girl wants to be liked, you know, or whatever, whatever the  
25 case might be -- I can give a lot of examples -- you know,

1 that plays out, and they do that. Or, you know, a boy who  
2 wants to look like a man, quote unquote, you know, is going  
3 to try to befriend a girl or even force himself on a young  
4 lady. So, definitely, that, the issue of consent is because  
5 of lack of information, and also, in my opinion, lack of  
6 mental capacity to make those decisions as of yet at the age  
7 of like 13 or 14.

8 MS. PASION: Back in Hawaii, I was sent to the  
9 boys' side but I was inside the short term facility while  
10 there were also a secured custody facility for the long term  
11 boys, so...

12 COMMISSIONER SMITH: Can you talk a little bit  
13 about the issue of cross-sex supervision, right? You know,  
14 girls being supervised by men, boys being supervised by  
15 women. It also sounds like that happened in the showers and  
16 where people were nude. Is that accurate?

17 MS. HARDIN: Yes. In the adolescent house, I  
18 mean, they had to watch the women take a shower, and it  
19 would play out two ways: either the guard would actually  
20 physically come in the shower facility which had a, like  
21 three-foot stalls separated by walls but no shower curtain,  
22 and then a door that would lock. So, either he will come in  
23 and that door would lock behind him, or he will just stand  
24 in the corridor. The guards that were half-way decent would  
25 stand in the corridor and not really look at you, just make

1 sure you weren't hurting nobody in the facility, in the  
2 shower. The guards who were obviously not decent would come  
3 in and lock the door behind them. So, yeah, I mean, that is  
4 a huge issue of -- of being a woman and having male guards  
5 look at you in a way that's not for safety. And, you know,  
6 just even in the intake, in the intake, you know, when you  
7 have to, you know, bend over and squat and stuff like that,  
8 like all these like crazy positions that you have to go  
9 through, male guards are present and watching you do that.  
10 Even in the intake facility when you have to see the GYN,  
11 which is a very intrusive procedure for the women, I'm  
12 pretty sure you know, having a male guard watch that is  
13 almost outrageous. I mean, I couldn't for the life of me  
14 figure out what would be the problem of getting a female  
15 guard to, you know, stand there and watch that, you know,  
16 play out. But, you know, they had male guards. It's -- in  
17 Riker's Island, when I was there, there was a lot of male  
18 guards and not as much female guards, but there were a few  
19 female guards.

20 CHAIRMAN WALTON: Any other questions? Okay.  
21 Yes.

22 MS. PASION: To me, I think it's better to have  
23 like I guess on the girls' and boys' side, the girls' side  
24 has all female staff and then the boys' side gets all males.

25 COMMISSIONER STRUCKMAN-JOHNSON: You think that's

1 better?

2 MS. PASION: Yeah. And I think it's better if  
3 transgender won't be -- any transgender would be -- belong  
4 in the boys' side, I guess, you know, with the girls.

5 CHAIRMAN WALTON: Well, thank you. I'm sorry.

6 COMMISSIONER SMITH: I guess another issue, Judge  
7 Walton, that we didn't discuss, which, again, you raised,  
8 both of you raised, is sort of the inappropriate placement  
9 of people, you know, which I don't even know if we can -- we  
10 can address, because all those issues around supervision, I  
11 mean, for example, sort of the issues -- I want to respond  
12 to your question, your comment, Ms. Pasion -- I think that  
13 for employment law reasons that it's very difficult to  
14 prohibit, to have a situation where all male and all female  
15 work in those facilities, but certainly many are thinking  
16 that in sensitive positions where nudity is involved that  
17 there should be same gender staff. But I wonder how that  
18 issue plays out in the situation of people who are  
19 transgendered.

20 MS. HARDIN: It's a very interesting questions.

21 COMMISSIONER SMITH: And I would really appreciate  
22 your thinking about that and providing some recommendations  
23 to us on that.

24 MS. HARDIN: Well, I think it all -- I think -- I  
25 would think it begins mostly -- I wouldn't know exactly how

1 that would play out with transgender folks because I would  
2 imagine -- this is my opinion -- I would imagine a  
3 transgender woman would much more prefer to be in the female  
4 side rather than a male; but at the same token, a  
5 transgender male, I wouldn't think he necessarily would want  
6 to be on the male side because he would still be targeted  
7 because, you know, they would say things like, I would  
8 imagine, "You're still a woman, let's see how much woman you  
9 are," and that would play out. But I think, you know, with  
10 the guards, I would, you know, of course, I know there's  
11 like different laws that, you know, can't have all males  
12 here, all females there, I don't know exactly how it plays  
13 out, but I know there's laws like that, right?  
14 Discrimination laws. Again, my suggestion would be the  
15 training and, you know, some type of like evaluation of  
16 guards, you know, and how they're doing, how their job  
17 performance and what they're doing. I think a guard who's  
18 got like six write-ups or even one write-up or two write-ups  
19 from female or male inmates regarding like sexual harassment  
20 or attacks or allegations, that should be taken very  
21 seriously and looked into. Regarding transgender and guards  
22 watching them, again, that's all with the training; they  
23 need training around those sensitive issues, so if you get a  
24 transgender woman who might be before she's had her complete  
25 surgery, you know, you won't be gawking and making fun of

1 her new body or a transgender male and his new body. So, we  
2 just need sensitivity training around those different  
3 issues, and when allegations or cases of violence or assault  
4 arise, just to be taken serious so the guards know, look,  
5 you know, I'm not gonna do this because I don't want to put  
6 my job in jeopardy, what I'm saying, or I might just end up  
7 on the other side of the fence.

8 MS. PASION: Back in Hawaii, transgenders, it's  
9 usually rare to have a transgender enter in the facilities,  
10 probably, like, you know, once in a blue moon or something,  
11 because I was the -- I think I was the last transgender  
12 female to enter in the facility.

13 MS. HARDIN: And a note also in New York City on  
14 Riker's Island we used to have a gay housing unit, but Marty  
15 Horne has taken that out. I think the Commission should  
16 look into that, how gay housing unit plays out, and the pros  
17 and cons of a gay housing unit.

18 COMMISSIONER STRUCKMAN-JOHNSON: Could you tell me  
19 what you think the pros and cons are?

20 MS. HARDIN: The pro, I would think you'll be --  
21 you're in a population who are more like you or identifies  
22 like you, so, comfortability levels are there, and, you  
23 know, the risk of sexual assault I think is lower, you know,  
24 in a gay housing unit. But on the flip side of that, a con  
25 might be being in a gay housing unit you're probably more

1 targeted, you know, for -- for being queer by other inmates,  
2 because just because you live in a gay housing unit does not  
3 mean you don't eat or have rec. with other inmates. It's  
4 not completely segregated like that. But there are folks in  
5 New York City who -- one organization, the Civilian Law  
6 Project, might be good for the Commission to contact who's  
7 actually trying to get Marty Horne to make sure that the gay  
8 housing unit is -- I don't know if it's closed, but either  
9 opened or reopened on Riker's Island Correctional Facility.

10 COMMISSIONER STRUCKMAN-JOHNSON: So, they're  
11 moving to -- there's movement to reopen it.

12 MS. HARDIN: Yes.

13 COMMISSIONER STRUCKMAN-JOHNSON: Thank you.

14 CHAIRMAN WALTON: Thank you very much for your  
15 testimony, and if there are other things that you didn't  
16 think of today that you would like to communicate to us,  
17 please do that, because we would like to hear that so we can  
18 consider that information. I think, obviously, one of the  
19 big issues that the nation has to constantly confront is,  
20 when it comes to youth, is who we lock up and what type of  
21 facilities we put them in, and I think if we make the right  
22 decisions at that point, that in and of itself I think would  
23 have an impact on the incidence of sexual assault of  
24 juveniles in detention facilities. So, thank you very much.

25 MS. HARDIN: Thank you.

1 MS. PATION: Thank you.

2 CHAIRMAN WALTON: We'll take a ten-minute break.

3 (Recess.)

4 CHAIRMAN WALTON: Good morning to our first panel.  
5 Your reputations precede you. We welcome all of you; we're  
6 happy to have your presence on this panel.

7 We have Mr. J. Robert Flores who is the  
8 Administrator of the Office of Juvenile Justice and  
9 Delinquency Prevention in the Office of Justice Programs in  
10 the United States Department of Justice.

11 Our second witness will be Ms. Gwendolyn Chung who  
12 is President of the American Correctional Association.

13 Our third witness will be Mr. Howard Beyer, who is  
14 President of the Council of Juvenile Corrections  
15 Administrators.

16 Our fourth witness will be Mr. Leonard Dixon,  
17 President of the National Juvenile Detention Association.

18 And our final witness will be Mr. Mark Soler, who  
19 is Executive Director of the Center for Children's Law &  
20 Policy.

21 Again, thank all of you for your presence. If  
22 you'll stand and take the oath, we'll have your testimony.

23 (Panel Sworn)

24 CHAIRMAN WALTON: Thank you. Mr. Flores.

25 MR. FLORES: Thank you, Mr. Chairman, members of